



IRC AWARD ARBITRATION DECISION

This morning the IRC handed down its decision in our Award Arbitration for all three Awards after five months of deliberation.

Respect, Protect, Value your firefighters was the message members took the NSW Government. Our Log of Claims, delivered to the employer in 2023, took steps to address the persistent wage stagnation endured by FBEU members under the previous Liberal Government. Today, those circumstances were acknowledged by the IRC in a decision that will see wage rates and wage-related allowances increased by 14% over three years, distributed as follows:

- 4% effective 26 February 2024 (being a further 1% on top of the interim 3% delivered in 2024);
- 4% effective 26 February 2025; and
- 6% effective 26 February 2026 (3% of which is an increase to recognise competency in RCR work)

That is on top of a 1% increase in statutory superannuation contributions.

The 3% RCR component of the February 2026 increase is in recognition that the current composite rate of pay for the base grade of firefighter does not reflect the fact that every firefighter needs to have the basic rescue competencies to perform RCR work. The IRC decision grants a 3% increase in wages across the board payable for all purposes which includes during leave, overtime, for superannuation purposes, and will have a compounding effect on wages.

As the RCR component is being granted as an increase for all firefighters, the current Rescue Operator allowance will be known as only as a GLR allowance from 26 February 2026. This is in recognition that GLR rescue is a skill and qualification over and above the RCR competency. This allowance will be half of the current Rescue Operator Allowance but can be increased in line with new allowances granted by the IRC for:

- In Water Flood Rescue
- Vertical Rescue
- USAR
- Trench
- Partial Structural Collapse
- Large Animal Rescue

It is important to note that this will not result in an overall net reduction in entitlements to members. In fact, all members will still see an ultimate increase, particularly taking into account the adjustment to wages to recognise the core rescue function of our role.

The decision also provides for the following:

- New allowances to recognise RPAS
- The expansion of Hazmat and Major/Minor Aerial allowances
- New On-Call and Disturbance Allowances
- Improved Deployment and Travel allowances for and firefighters who travel in their private vehicle to a work event where public transport is not reasonably available or practicable.
- The consultation structure set out in Schedule 5 of the Permanent and Retained Awards are to be maintained and are now entrenched in our Award.



- Increase the minimum payment for Retained Firefighters from 1 hour to 1.5 hours.
- Introduction of an ex gratia payment where a retained firefighter has accepted a deployment offer and that deployment is cancelled, delayed, or altered with less than 48 hours' notice.
- Cultural and ceremonial leave to be introduced.
- Entitlement to overtime pay at single time is to be introduced for Superintendents and Chief Superintendents for hours worked outside the ordinary span of hours which they are directed or required to work due to an incident or emergency.

In addition, the IRC has made recommendations concerning the appropriate work value and relativities for firefighter positions, particularly the relative work value of non-station-based roles and senior officer roles; feedback for unsuccessful candidates for promotion; the provision of galateas for retained firefighters; and the performance of ComSafe duties by permanent firefighters.

AWARD NEXT STEPS

'The work of firefighters is currently significantly undervalued, due to historic or intrinsic factors..', the Commission has said. Their decision, which moves members beyond the 9% wages offer from the NSW Government, will begin to turn these circumstances around. Importantly, the decision also provides a framework for the FBEU to continue to progress improvements to wages and conditions into the future.

The decision is lengthy, relative to our complex and ambitious claims. As such, FBEU officials and staff are diligently reviewing the decision in whole, in preparation for a further, more detailed, analysis to be provided in due course.

In the meantime, I want to acknowledge your work and participation in this campaign, particularly those whose provided evidence during hearings. Your actions contributed directly to this decision which provides plenty to celebrate and to build upon.

A copy of the decision can be found attached.

In Unity,

A handwritten signature in blue ink, appearing to read "L. Drury", is written over a light blue horizontal line.

Leighton Drury
State Secretary



Industrial Relations Commission New South Wales

Medium Neutral Citation:

Fire Brigade Employees' Union v Industrial Relations Secretary (on behalf of Fire and Rescue NSW) [2025] NSWIRComm 1063

Hearing dates:

11, 12, 13, 14, 17, 18, 19, 20, 21 February 2025, 24–25 March 2025, 14 April 2025 (final submissions filed on 23 April 2025)

Date of orders:

14 August 2025

Decision date:

14 August 2025

Jurisdiction:

Industrial Relations Commission

Before:

Taylor J, President
Chin J, Vice President
Commissioner McDonald

Decision:

The Commission orders that:

(1) The parties are to have discussions with a view to providing us with draft Awards that reflect our decision by 4pm on 4 September 2025.

(2) To the extent that any revised clauses are not agreed upon, the parties are to file a document by 4pm on 4 September 2025 setting out their competing draft clauses that: (a) reflect our decision; and (b) address the issues listed in Order 3.

(3) These proceedings will be listed before Commissioner McDonald on 11 September 2025 at 10:00am for further directions and conciliation, including as to the following matters to the extent they have not by that time been resolved by agreement:

(a) the text and quanta of the accommodation and deployment allowances for firefighters who are sent on intrastate, interstate and international deployments;

(b) how firefighters who have Hazmat and Major/Minor Aerial skills and are employed in positions where it is expected that they will from time to time be required to utilise that skill are to be appropriately remunerated;

- (c) how firefighters who are not full-time pilots are to be appropriately remunerated if they are requested to obtain skills to operate RPAS and on each occasion they are required to operate RPAS;
 - (d) as to the terms of the award clauses necessary to reflect our conclusion that allowances ought to be introduced for retained firefighters who hold additional rescue competencies, along with the quantum of new allowances; and
 - (e) whether anything beyond the insertion of the words "and practicable" after "reasonably available" in clause 20.7 of the Permanent Award is required to ensure that firefighters are reimbursed whenever they need to use their private vehicle because public transport, while technically available, is impracticable and if there is any other textual amendment to assist to reduce disputation as to the circumstances in which the entitlement arises.
- (4) Commissioner McDonald is to provide a report to the Full Bench following conciliation, identifying what has been agreed and what remains to be determined by the Full Bench.
- (5) The hearing of the applications for the Crown Employees (Fire and Rescue NSW Firefighting Death and Disability Award) 2024 is adjourned to allow further conciliation before Commissioner McDonald on 11 September 2025 at 10:00am.

The Commission makes the following recommendations:

- (1) During the nominal term of this award the parties are to consult and seek to reach agreement on the work value and appropriate relativities for the various firefighter positions. Consideration should include the relative work value of the various non-station based roles and senior officer roles.
- (2) The Commissioner should provide feedback to unsuccessful candidates for promotion as to the reasons they were not selected if requested.
- (3) The Commissioner should take steps to determine a practical means by which retained firefighters can, on reasonable notice, obtain a suitable galatea that they can wear at formal or ceremonial events. Without limiting how the Commissioner might determine this could best be achieved, we recommend the Commissioner consider:
- (a) providing officers with more than 10 years continuous service who request one, with their own galatea; and
 - otherwise (b) having a store of such uniforms in one or

more locations in a range of sizes that retained firefighters are entitled to use on request and return.

(4) The parties are to address whether and how permanent firefighters are performing ComSafe duties as part of the negotiations for the next award.

Catchwords:

EMPLOYMENT AND INDUSTRIAL LAW — Awards and enterprise agreements — Applications for new awards for permanent and retained firefighting staff — Applications for new award for benefits payable to firefighters who have suffered injury resulting in incapacitation or death — Mandatory consideration of the fiscal position and outlook of the NSW Government — Mandatory consideration of the state of the economy of NSW — Approach of the Commission when considering the changing value of money over time — Component of wage increase claim based on work value of road crash rescue work — Special Case Principle satisfied — Allowances recognising work value of holding rescue competencies and other skills — Whether other allowances sought by the FBEU should be granted — Remuneration of retained firefighters — Need for parties to undertake holistic review of remuneration for retained firefighters — Consultation processes — Extent of consultation varies with the nature of change — Approach of Commission towards removing clauses introduced by consent — Whether leave claims sought by the FBEU should be granted — Whether other claims sought by the FBEU or FRNSW should be granted

Legislation Cited:

Fair Work Act 2009 (Cth), s 104
Fire and Rescue NSW Act 1989 (NSW), ss 5A, 8, 69, 70
Health Records and Information Privacy Act 2002 (NSW), Sch 1, cl 7
Industrial Relations Act 1996 (NSW), ss 3, 10, 132
Privacy and Personal Information Protection Act 1998 (NSW), s 14
State Emergency and Rescue Management Act 1989 (NSW), s 457
Superannuation Guarantee (Administration) Act 1992 (Cth), s 19(2)
Work Health and Safety Act 2011 (NSW), s 47
Workers Compensation Act 1987 (NSW), Sch 4
Workplace Injury Management and Workers Compensation Act 1998 (NSW), Ch 3, Pt 2

Cases Cited:

Application for Crown Employees (Public Sector – Salaries 2020) Award (No 2) (2020) 301 IR 321; [2020] NSWIRComm 1066

Application for Crown Employees (Public Sector – Salaries 2020) Award and Other Matters (No 3) [2020]

NSWIRComm 1077

Construction, Forestry, Mining and Energy Union (New South Wales Branch) v South Western Sydney Local Health District [2016] NSWIRComm 1047.

Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023 – Award Variation [2025]

NSWIRComm 1003

Crown Employees (NSW Fire Brigade Retained Firefighting Staff) Award 2008 (No 2) [2013] NSWIRComm 34

Crown Employees (NSW Police Force Special Constables) (Security) Award 2023 [2024] NSWIRComm 1034

Crown Employees (Police Officers – 2009) Award (2012) 220 IR 1; [2012] NSWIRComm 23

Fire and Rescue NSW Firefighting Staff Awards 2021 [2021] NSWIRComm 1062

Fire Brigade Employees' Union of New South Wales v Industrial Relations Secretary in respect of Fire and Rescue NSW (Busby Temporary Relocation) (No 2) [2023] NSWIRComm 1070

Health Services Union and Ambulance Service of New South Wales re Changes to Demand Protocol [2008] NSWIRComm 1027

Re Butchers, Wholesale (Cumberland) Award [1971] AR (NSW) 425

Re Crown Employees (Administrative and Clerical Officers) (State) Award (No 2) (1993) 52 IR 243

Re Crown Employees (Scientific Officers – Division of Science Services, Department of Agriculture) Award [1962] AR (NSW) 250

Re Equal Remuneration Principle (2000) 97 IR 177; [2000] NSWIRComm 133

Re Operational Ambulance Officers (State) Award (2001) 113 IR 384; [2001] NSWIRComm 19

State Wage Case 2024 (No 3) (2024) 337 IR 111; [2024] NSWIRComm 19

State Wage Case 2024 (No 4) (2024) 337 IR 111; [2024] NSWIRComm 25

Texts Cited:

Australian Government, Productivity Commission, *PC Productivity Insights: Australia's Long Term Productivity Experience*, (November 2020)

D Kahneman, *Thinking, Fast and Slow* (2011, Farrar, Straus and Giroux)

D Kahneman and A Tversky, "Prospect Theory: An Analysis of Decision under Risk" (1979) 47(4) *Econometrica* 263

Fire and Rescue NSW, *Annual Report 2023–24*, (October 2024)

NSW Government, *NSW Budget 2024–25: Budget Paper No 1*, (June 2024)

NSW Government, State Rescue Board of New South Wales, *NSW State Rescue Policy*, (5th ed, September 2024)

NSW Treasury, *Expert Report: Fiscal Evidence – Fire and Rescue NSW Award Proceedings*, (28 November 2024)

Category:

Principal judgment

Parties:

Fire Brigade Employees' Union
Industrial Relations Secretary

Representation:

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M Watts / L Meagher (Industrial Relations Secretary)

Solicitors:
Hall Payne Lawyers (Fire Brigade Employees' Union)
Crown Solicitor (Industrial Relations Secretary)

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HEADNOTE

On 22 February 2024, the Fire Brigade Employees' Union (FBEU) filed applications for three new awards, to be known as Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2024 (Permanent Award), Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2024 (Retained Award), and Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2024 (D&D Award). Subsequently, on 14 August 2024, the Industrial Relations Secretary (Secretary) filed competing applications for new three-year awards on behalf of Fire and Rescue NSW (FRNSW).

The FBEU sought a 20% increase to wages and wage-related allowances over 3 years, in the form of an 8% wage increase commencing 26 February 2024, a 6% increase commencing 26 February 2025 and a further 6% increase commencing 26 February 2026. The 20% increase comprised a 17% increase to reflect past changes in the cost of living and projected changes in the cost of living during the life of the award and a further 3% to reflect the prevalence of road crash rescue (RCR) work performed by firefighters.

Regarding the 'cost of living' component of the wage increase, the FBEU contended that the Commission, when considering the changing value of money over time, should not take the usual approach of limiting its consideration to changes in money values since the date on which the last wage increase for the relevant employees took effect, but 'repair' the fall in real wages caused by wage increases awarded by this Commission in 2021 and 2022 that with the benefit of hindsight were substantially lower than necessary to maintain real wages. The FBEU further contended that the 'RCR' component of the wage increase ought to be granted on the basis of the Work Value Principle, submitting that RCR work has increased in prevalence and complexity since the Awards were last assessed for work value in 2008.

The FBEU also made a great number of further claims, including an increase in superannuation contributions to 15%, the creation of new allowances recognising the work value of holding particular rescue competencies, the introduction of on call and disturbance allowances, increases to overtime rates, adjustments to how retained firefighters are remunerated, and the creation of a 'Remuneration Taskforce' that would aim to reach agreement on new classifications and rates of pay for firefighters which FRNSW would then implement.

The parties agreed on several variations proposed by the FBEU, which the Commission is content to implement, on the basis that they are by consent. The Secretary opposed the remainder of the FBEU's application.

The Secretary's applications sought a 9% increase to wages and wage-related allowances over 3 years, in the form of 3% annual increases; a no extra claims clause for the duration of the nominal term of the awards; and a large number of textual changes, especially regarding the consultation obligations in the Permanent and Retained Awards.

The Commission held:

- (1) When having regard to the mandatory consideration of the fiscal position and outlook of the Government and the likely effect that the making of an award would have on that position and outlook, the Commission will consider the extent to which a non-budgeted increase to wages and wage-related allowances would increase overall debt levels and the consequential effect on borrowing costs and the State's credit rating in the context of the overall NSW Budget. The Commission may also consider the potential for a decision to flow on to other public sector employees and the impact that would have on the Government's fiscal position and outlook.
- (2) The usual approach taken by the Commission when considering the changing value of money over time is to have regard to the date on which the last wage increase for the relevant employees took effect, and the changes in money values since that date and which are forecast during the term of the award. In adjusting rates of pay to have regard to changes in the value of money so that they remain fair and reasonable, the Commission will not precisely adjust wages to reflect the extent to which the previous award accurately predicted inflation and the exact predicted rate of inflation for the balance of the term of the award, but set increases that are broadly capable of absorbing changes in the cost of living over time.
- (3) It is however appropriate for an award to include a one-off "reset" in an extraordinary situation where below-trend wage increases combined with significantly above-trend inflation caused a substantial fall in real wages in the past, as happened after the COVID-19 crisis. The FBEU established that needs to occur in respect of these awards.
- (4) A special case was made out which justified the RCR component of the wage increase sought by the FBEU being granted. The work of firefighters is currently significantly undervalued, due to historic or intrinsic factors, because the rates of pay in the Awards do not reflect the fact that every firefighter needs to have the basic rescue competencies that are associated with RCR work.
- (5) Overall, wage rates and wage-related allowances are to be increased by 14% over three years, in the form of 4% effective 26 February 2024 (being a further 1% on top of the interim 3% already granted), 4% effective 26 February 2025

and 6% effective 26 February 2026 (3% of which is an increase to recognise competency in RCR work). That is on top of a 1% increase in statutory superannuation contributions.

- (6) The current Rescue Operator allowance is to be reduced from 26 February 2026 to avoid double counting the work value of conducting RCR work.
- (7) New allowances are to be introduced or expanded to recognise the work value of holding other competencies in rescue work, Remote Piloted Aircraft System work, Hazmat work, and Major/Minor Aerial work.
- (8) Allowances are to be introduced or expanded to compensate firefighters who are rostered to be on call or disturbed, firefighters sent on deployments, and firefighters who travel in their private vehicle to a work event where public transport is not reasonably available or practicable.
- (9) The consultation structure set out in Schedule 5 of the Permanent and Retained Awards are to be maintained. Other clauses relating to consultation are to be amended to remove the need for agreement between the parties when there are changes to entitlements that arise where an employee is given notice of transfer to work in a new location as well as the Country Relief model subcommittee.
- (10) A clause identifying the extent to which it is open to the parties to make further claims that would take effect during the life of the Awards is to be introduced.
- (11) The Retained Award is to be amended to increase the minimum payment for Retained Firefighters from 1 hour to 1.5 hours.
- (12) The Retained Award is to be amended to introduce an ex gratia payment where an officer has accepted a deployment offer and that deployment is cancelled, delayed, or altered with less than 48 hours' notice.
- (13) Cultural and ceremonial leave is to be introduced.
- (14) Entitlement to overtime pay at single time is to be introduced for Superintendents and Chief Superintendents for hours worked outside the ordinary span of hours which they are directed or required to work due to an incident or emergency.

In addition recommendations are made concerning the appropriate work value and relativities for firefighter positions, particularly the relative work value of non-station based roles and senior officer roles; feedback for unsuccessful candidates for promotion; the provision of galateas for retained firefighters; and the performance of ComSafe duties by permanent firefighters.

DECISION

Outcome

- 1 We have determined to make two new awards to apply to permanent and retained firefighters in NSW to be known as:
 - (1) Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2024 (Permanent Award), and
 - (2) Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2024 (Retained Award).
- 2 The awards will apply for a nominal term of three years commencing from 26 February 2024. In summary they will:
 - (1) increase wage rates and wage-related allowances by 14% in addition to a 1% increase in statutory superannuation contributions, in the form of the following increases:
 - (a) 4% to wages and wage-related allowances, effective 26 February 2024, or a further 1% on top of the interim 3% already granted in January of this year;[1]
 - (b) 4% to wages and wage-related allowances, effective 26 February 2025;
 - (c) 6% to wage and wage-related allowances effective 26 February 2026, 3% of which is an increase to recognise competency in road crash rescue (RCR) work;
 - (2) reduce the current Rescue Operator Allowance from 26 February 2026 to avoid double counting the work value of conducting RCR work;
 - (3) introduce additional allowances to recognise the work value of holding other rescue competencies from 26 February 2026;
 - (4) introduce into the Permanent Award an on call allowance and a disturbance allowance;
 - (5) introduce into the Permanent and Retained Award a Remote Piloted Aircraft System allowance;
 - (6) expand the coverage of Hazmat and Major/Minor Aerial allowances;
 - (7) increase the minimum payment for Retained Firefighters from 1 hour to 1.5 hours;
 - (8) introduce an ex gratia payment which Retained Firefighters may apply for if they have accepted a deployment offer and that deployment is cancelled, delayed, altered with less than 48 hours' notice;
 - (9) confirm that the consultation structure set out in Schedule 5 of the Permanent

and Retained Awards will be maintained on an ongoing basis;

- (10) remove the need for agreement between the parties in the event of changes to entitlements that arise where an employee is given notice of transfer to work in a new location;
- (11) remove the Country Relief model subcommittee;
- (12) include a clause that identifies the extent to which it is open to the parties to make further claims that would take effect during the life of the award;
- (13) introduce cultural and ceremonial leave for Permanent and Retained firefighters;
- (14) introduce an entitlement to overtime pay at single time for Superintendents and Chief Superintendents for hours worked outside the ordinary span of hours that they are directed or required to work as a result of an incident or emergency;
- (15) permit permanent firefighters to be reimbursed at the official business rate when they travel in their private vehicle if public transport is not reasonably available or practicable;
- (16) extend the accommodation allowance to employees who are on intrastate and international deployments;
- (17) extend the deployment allowance to employees who are on intrastate and interstate deployment who have to stay in accommodation that is either not indoors or has no private sleeping and bathroom facilities;
- (18) extend the entitlements in current clause 26 of the Permanent Award to DART members engaged in training; and
- (19) make by consent a number of other variations to the Awards.

3 We have determined that there should also be changes in respect of the following matters, but they require further discussions or conciliation before we can determine exactly how they are to be resolved:

- (1) accommodation and deployment allowances for firefighters who are sent on intrastate, interstate and international deployments;
- (2) how firefighters who have Hazmat and Major/Minor Aerial skills and are employed in positions where it is expected that they will from time to time be required to utilise that skill are to be appropriately remunerated;
- (3) how firefighters who are not full-time pilots are to be appropriately remunerated if they are required to operate RPAS;
- (4) to reflect our conclusion that allowances ought to be introduced for retained firefighters who hold additional rescue competencies, along with the quantum of new allowances; and
- (5) whether anything beyond the insertion of the words “and practicable” after “reasonably available” in clause 20.7 of the Permanent Award is required to ensure that firefighters are reimbursed whenever they need to use their private

vehicle because public transport, while technically available, is impracticable and if there is any other textual amendment to assist to reduce disputation as to the circumstances in which the entitlement arises.

- 4 The Commission has also determined to make recommendations concerning the work value and appropriate relativities for the various firefighter positions, particularly the relative work value of non-station based roles and senior officer roles; feedback for unsuccessful candidates for promotion; the provision of galateas for retained firefighters; and the performance of ComSafe duties by permanent firefighters.
- 5 The parties are to have discussions with a view to providing us with draft Awards that reflect our decision within 21 days. To the extent that any revised clauses are not agreed upon, the parties are to file a document setting out their competing positions on the terms of clauses that reflect our decision. That is to include their position as to any of the issues which are identified above at [3] that are not agreed. To the extent any such issues are not resolved by conciliation the Full Bench will determine the variations necessary. It is the intention of the Full Bench to finalise and make the new awards by no later than 30 November 2025.
- 6 In respect of the application by the FBEU to vary a third award that applies both to permanent and retained firefighters in NSW, namely the Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2022 (D&D Award), we have determined that there be directed conciliation before Commissioner McDonald to attempt to resolve a dispute as to the terms of a recommended change to clause 11.4. If the dispute cannot be resolved by conciliation before the end of 2025 it will be determined by the Full Bench by arbitration early in 2026.

Introduction

- 7 On 22 February 2024, the Fire Brigade Employees' Union (FBEU) filed applications pursuant to s 10 of the *Industrial Relations Act 1996* (NSW) for three new three-year awards, to be known as:
- (1) Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2024,
 - (2) Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2024, and
 - (3) Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2024.
- 8 Subsequently on 14 August 2024, competing applications for new three-year awards in respect of the above awards were filed by the Industrial Relations Secretary (Secretary) on behalf of Fire and Rescue NSW (FRNSW).
- 9 FRNSW is the Government agency responsible for the provision of fire, rescue and hazardous material (hazmat) services across NSW.
- 10 The Secretary is the deemed employer of permanent and retained firefighters for the purposes of these proceedings, pursuant to *Fire and Rescue NSW Act 1989* (NSW), s 70. The Commissioner of FRNSW (Commissioner) is otherwise the person who exercises the functions of employer of fire brigade members, such as the dismissal, suspension, or reinstatement of employees...[2]
- 11 The Secretary sought in his application:
- (1) increases to wages and wage-related allowances amounting to 3% from the first full period of each year commencing 26 February 2024, for three years;
 - (2) a no extra claims clause for the duration of the nominal term of the awards; and
 - (3) a large number of textual changes, many of which sought the removal of clause-specific consultation obligations in favour of one overarching consultation obligation, but extended beyond that issue to a variety of other changes.
- 12 The FBEU's major claims were for:
- (1) an 8% wage increase commencing 26 February 2024, a 6% increase commencing 26 February 2025 and a further 6% increase commencing 26 February 2026. This amounts to a wage increase of 20% over three years, which comprises:
 - (a) a 17% increase to reflect both past changes in the cost of living and projected changes in the cost of living during the life of the award; and
 - (b) a further 3% to reflect the prevalence of RCR work and associated increase in the work value of firefighters which is currently compensated

by an allowance payable only to certain firefighters;

- (2) an increase in superannuation contributions to 15%;
- (3) the creation of a 'Remuneration Taskforce' to be constituted by representatives of the parties that would, amongst other matters, investigate and report the role of firefighters and appropriate work value and seek to reach agreement on new classifications and rates of pay for firefighters which FRNSW would then implement. Absent agreement, the issues would be arbitrated by the Commission;
- (4) the creation of a number of new allowances recognising the work value of holding particular rescue competencies;
- (5) the introduction of an on call allowance and a disturbance allowance;
- (6) increases to overtime rates; and
- (7) for retained firefighters, several adjustments that would enhance remuneration, including an increase in the minimum payment for attending an incident, an increase in the hours allocated to perform non-incident work and the potential to increase retainer amounts for stations with low call outs.

- 13 The parties have agreed on several other variations proposed by the FBEU. On 21 March 2025, the Secretary filed a document setting out the agreed text for the respective agreed clauses in the awards. Following closing submissions, the parties reached a consent position in respect of cl 63.6 of the FBEU's proposed new Permanent Award and filed a copy of the proposed clause on 30 May 2025. We are content to implement these variations, on the basis that they are by consent.
- 14 The parties filed a statement of agreed facts on 19 March 2025, which forms Annexure A to this decision.
- 15 In addition to its major claims and the agreed variations, the FBEU sought a very large number of other claims.
- 16 At the outset of the hearing, counsel for the FBEU confirmed that all claims were pressed. At a late stage of the proceedings, the FBEU proposed that a large number of those claims should not be determined, but instead be placed into one of two forms of leave reserved clauses in the award, on the basis that they would be the subject of further discussions and arbitrated only if those discussions were unsuccessful.
- 17 Specifically, the FBEU identified eight claims in the Permanent Award and five claims in the Retained Award that it submitted should be first considered by its proposed 'Remuneration Taskforce'. In addition, the FBEU specified a further 19 claims in the Permanent Award and 15 claims in the Retained Award that would be the subject of a more traditional leave reserved clause. Pertaining to both sets of claims, the FBEU sought to preserve its ability to bring them before the Commission to ultimately be

determined on the evidence led before us. The FBEU contended that if the Bench was not minded to place those claims in a leave reserved clause they were nevertheless pressed and so needed to be determined.

18 The log of claims compiled by the FBEU which was then reflected in its application appears to have been prepared based on union member feedback and then pressed at hearing without the union having first given each claim careful consideration as to the evidence necessary to justify the claim and its prospects for success.

19 The same point can be made in respect of a number of textual changes sought by the Secretary about which the Secretary put no submissions, and in some cases led no evidence, but nevertheless pressed. The net result is the need to consider more than 90 separate claims made by the FBEU and about 30 claims by the Secretary.

20 This aspect of the parties' approach to the arbitration is to be deprecated. It would have been much better if the parties had taken a more forensic and discerning approach to their claims, reducing what needed to be determined. Had that occurred our decision would have been considerably shorter and handed down much earlier.

21 In order to maintain certainty during the life of the awards and bring about industrial certainty, which was one of the focal considerations of the proceedings in the 2024 State Wage Case, [3] we are not inclined to include clauses in the award that would allow for the identified matters to be the subject of arbitration during the life of this award. Instead, we will proceed to determine them.

22 While we reject most of the claims that the FBEU sought to be placed in a leave reserved clause, that is not to say that discussions on those matters cannot occur which, if successful, would result in consent variations to the awards during their nominal term. Alternatively, they could be the subject of an application to the Commission during the life of the awards that could be the subject of conciliation. We note for completeness that the Secretary accepted the proposition that he would be open to engage with the FBEU on claims brought during the life of the awards that could be the subject of appropriate and full conciliation prior to the expiry of the awards.

Nature of the work of firefighters

23 FRNSW is the NSW Government agency "responsible for the provision of fire, rescue and hazardous material services within NSW" [4]

24 The functions of the Commissioner derive from the *Fire and Rescue NSW Act*. The Commissioner has the duty to take all practicable measures to prevent and extinguish fires and protect and save life that is endangered by fire in any fire district or hazmat incidents. [5] The Commissioner is authorised to take measures anywhere in NSW to protect persons from injury or death and property from damage, regardless of whether a fire or hazmat incident is involved, and to carry out, by accredited brigades, rescue operations allocated by the State Rescue Board (SRB). [6] To exercise these functions,

the Commissioner may establish permanent and retained fire brigades with the Minister's approval and provide those brigades with suitable premises and equipment.

[7]

25 We suspect most members of the general public would think that firefighters' primary role and predominant work is the fighting of fires, and that the words "and Rescue" in the title of FRNSW is the rescue of people from a fire. In fact the majority of the work of FRNSW firefighters is rescue work not involving a fire, such as rescuing people trapped in motor vehicles, and the proportion of their overall work that is rescue work continues to increase.[8] That is driven by a number of factors, including FRNSW's increasing provision of support to other agencies, such as the NSW Rural Fire Service during bushfires, the NSW State Emergency Service during major storms and floods, and NSW Ambulance for medical assistance calls, and additional rescue responsibility that is given to FRNSW by the SRB.[9]

26 Notwithstanding that rescue work is not only a core function but now constitutes the most prevalent form of work, that work is currently not recognised in the base rate of pay for a firefighter, but instead as an additional allowance. For reasons that follow we determine that should change, so that the general firefighter rate of pay is increased (and a corresponding allowance removed) to recognise the fact that every firefighter is employed in a service in which rescue work is a core function. Specialist rescue skills, above a base level, ought to continue to be recognised by an allowance relevant to those that have and need to exercise that skill.

27 FRNSW is staffed by two types of firefighters: permanent firefighters, whose primary employment is for FRNSW, and retained (on call) firefighters. Retained firefighters are employed on a permanent basis, but their work has many of the characteristics of casual employment. Most retained firefighters will have as their primary employment a completely different job. For instance, they might be teachers, bus drivers, labourers or run their own business. Retained firefighters are not rostered to do regular shift work, but instead respond to requests to attend incidents when available. They are required to provide minimum hours of availability each week, during which they must be able to respond to an incident and be at the incident or station within 30 minutes of notification. They are additionally paid for the performance of duties (eg, attending weekend training courses, regular drills etc) and attending incidents. They are engaged in locations where FRNSW has determined there is insufficient work to justify staffing the station with permanent firefighters.

28 As at 30 June 2024 there were 584 vacancies for retained firefighters, equating to more than 15% of all positions. As a result of the high level of vacancies FRNSW regularly has to locate a permanent firefighter at a retained station to ensure safe minimum staffing levels exist to operate the station's appliances. The permanent firefighters who are so deployed usually do the additional work on top of their usual rostered station duties at overtime rates. This has been the major reason why FRNSW has overspent

its overtime budget to a significant degree in recent years. FRNSW's overtime budget for permanent and retained firefighters in 2023–2024 was \$54.5 million; actual permanent firefighter overtime in that financial year cost \$82.8 million.

29 As of 30 June 2024, there were 3,548 permanent firefighters and 3,214 retained firefighters. There are 200 retained fire stations, 97 permanent 24-hour fire stations, and 38 mixed fire stations (fire stations which are staffed by a mix of permanent and retained firefighters) across NSW..^[10]

Remuneration

30 It is our statutory responsibility to set fair rates of pay for firefighters covered by the two awards, which the parties agree should be incorporated within three-year awards commencing 26 February 2024.

31 Rates of pay were last set by the Commission by arbitration in *Fire and Rescue NSW Firefighting Staff Awards 2021*..^[11]when the Commission determined to increase rates of pay and allowances by 0.3% effective 26 February 2021. This was the increase determined to be appropriate to maintain the real value of wages until February 2022..^[12]That was in circumstances where there was “no contest between the parties that firefighters ought to maintain the real value of their earnings” and inflation was expected to remain low..^[13]

32 Subsequent to that decision the Commission made new awards, by consent, increasing the rates of pay and allowances by 2.5%, effective 26 February 2022 and 4% effective, 26 February 2023.

33 On 13 December 2024, after these proceedings were commenced, the Secretary made a consent application to vary the Permanent and Retained Awards to provide for an interim increase of 3% to wages and wage-related allowances from 26 February 2024 pending the outcome of these proceedings. That 3% interim increase was granted by Commissioner McDonald on 15 January 2025.

34 At issue is what further increases should apply for the three years commencing from 26 February 2024.

Competing rate of pay claims

- 35 As earlier noted, the FBEU's claim is for an increase in wages and allowances of 20% (less the 3% interim increase) made up of two components. First, the FBEU seeks a 17% wage increase in order to partially restore the real value of firefighters' wages since the Awards were last arbitrated in 2021, in the form of the following increases:
- (1) a further 2% increase effective 26 February 2024 (making a total of 5% including the interim increase);
 - (2) 6% effective 26 February 2025; and
 - (3) 6% effective 26 February 2026.
- 36 Second, the FBEU seeks a further 3% increase effective 26 February 2024, to reflect what it contends to be the increased work value of firefighters arising from the prevalence and complexity in RCR work.
- 37 In addition, the FBEU seeks an increase in superannuation contributions from the minimum compulsory superannuation contribution to 15%. It also seeks a protective clause requiring, in the event that CPI exceeds the determined wage increases, FRNSW to make a top-up payment.
- 38 The FBEU relied on the expert report of Martin O'Brien, Professor at the University of Wollongong and expert in labour economics and employment relations for their economic claim.
- 39 The Secretary contends that the Commission should award a 9% wage and wage-related increase over three years, in the form of 3% increases effective from 26 February of each year, the first of which has already been made by consent. The Secretary relied upon three expert reports prepared by:
- (1) Elizabeth Anne Livingstone, Deputy Secretary for the Policy and Budget Group within the NSW Treasury;
 - (2) Gregory John Houston, founding partner of HoustonKemp Economists; and
 - (3) Joann Wilkie, the Deputy Secretary for the Economic Strategy and Productivity Group within the NSW Treasury.

Relevant considerations to determining pay increases

40 We are mindful that in addition to any increases that the Commission awards, firefighters will receive increases in the amount contributed on their behalf to superannuation over the life of the award as a result of Commonwealth legislation, namely a 0.5% increase from 11% to 11.5% effective 1 July 2024 and a further 0.5% increase from 1 July 2025..^[14]

41 In determining the quantum of pay increases that would be fair and reasonable, we have had regard to:

- (1) the mandatory considerations that the Commission must have regard to when determining an application to make a new award, as summarised in principle 2 of the 2024–2025 Award Making Principles (AMPs) including:
 - (a) the state of the economy of NSW and the likely effect of the decision on that economy;
 - (b) the fiscal position and outlook of the Government and the likely effect of the award as made or varied on the position and outlook;
- (2) changes in the cost of living; and
- (3) the FBEU's case for an increase in wages to reflect RCR work.

42 We turn to each of those considerations.

Mandatory consideration – Fiscal position and outlook of the NSW Government

43 The Organisation for Economic Co-operation and Development defines fiscal sustainability to be a government's ability to maintain public finances in a credible and serviceable position over the long term, thereby allowing it to sustain services for its citizens..^[15]

44 The Government's fiscal strategy is guided by the following two fiscal principles which were articulated in the 2024–25 NSW budget:

- (1) returning to a sustainable operating position which should maintain a sufficient buffer to ensure the Government can respond appropriately to economic and fiscal shocks; and
- (2) returning to and maintaining a suitable debt position.

45 The Secretary relied on the report prepared by Ms Livingstone, which considered the impact of the competing proposed increases in wages on the Government's fiscal position and outlook.

46 In short, Ms Livingstone's evidence was that the fiscal position and outlook of the NSW Government is challenging, with large budget result deficits and cash deficits contributing to increasing debt, at the same time as interest rates (or the cost of

borrowing) has increased. It was her evidence that *any* pay increase the Commission awarded, including the increases sought by the Secretary, would have a negative effect on the Government's fiscal position and outlook.

47 Ms Livingstone's report recorded that the NSW general Government sector budget had been in deficit since 2019–20 and that the 2024–25 budget projected a further operating deficit of \$3.6 billion, being 3.1% of the General Government revenue.

48 That projected deficit will add to existing debt levels and increase interest expenses. Ms Livingstone's report identified that the 2024–25 budget projects the general Government cash deficit over the four years to 2027–28 to be \$51.5 billion, primarily driven by the State's infrastructure program. The report warned that in order for the government to maintain existing services, absent any substantial revenue uplift, any unbudgeted increase in expenditure including any additional wage-related expenses would require additional borrowing, which would in turn increase gross debt and interest expenses. Interest expenses are fixed costs that the Government must pay to avoid defaulting on its debt. As they increase, less money is available for public services and programs. As a result, the Government must either borrow more money (which in turn increases fiscal pressure) or raise additional revenue through measures like State taxes to maintain these services. Further, any increase in borrowings has credit rating implications for the State, and if the State's credit rating is downgraded this in turn increases the cost of borrowings. This is in circumstances where the two main credit rating agencies, Moody's and S&P Global, have recently made statements identifying the potential for increases in the State's debt burden and failures to ensure appropriate financial management as factors which are placing downward pressure on the State's credit rating.

Impact of increases in pay for firefighters on fiscal position

49 FRNSW is not funded in the same way as other government agencies. The majority of the expenditure of FRNSW is funded by insurer and local council contributions by reference to funding targets set by the Minister for Emergency Services and the Treasurer pursuant to the *Fire and Rescue NSW Act*.

50 Under this funding mechanism FRNSW is funded by payments from insurers (73.7%), councils (11.7%) and the NSW Government (14.6%). The costs to insurers are passed on to policyholders through premiums and councils are able to recover these costs from ratepayers.

51 Due to the legislated methodology that determines how funding targets are calculated and the timing of payments, revenue from insurers and councils may not align with expenditures incurred by FRNSW in a given year. However, over time it is expected that the cost to the NSW Government (and accordingly the impact on the Government's fiscal position and outlook) of an unbudgeted increase in employee-related costs will be about 14.6% of the total costs.

Impact of the FBEU's and Secretary's claims on the fiscal position and outlook of the Government

- 52 As noted, it was the evidence of Ms Livingstone that any pay increase the Commission awarded would have a negative effect on the Government's fiscal position and outlook. She provided calculations to estimate the total cost of the increases proposed by each party, having regard to council and insurer contributions, including the superannuation increases.
- 53 She estimated that the total cost of the increases proposed by the Secretary would be \$245 million over the four years to 2027–28. To fund such an increase there would also be an increase in interest expenses over the four years of \$11.6 million. Offsetting those increases would be \$217.5 million of additional revenue from insurers and council contributions over the four years. The result would be an increase of \$39.2 million in gross debt over the four-year period.
- 54 The estimated total cost of the increases proposed by the FBEU in contrast, not including superannuation, were estimated to be \$1,042.2 million over the four years to 2027–28. There would also be an increase in interest expenses of \$58.2 million over the four years. Offsetting those amounts would be \$921.8 million of additional revenue from insurers and council contributions over the four years. The result would be an increase of \$178.6 million in gross debt over the four years.
- 55 Ms Livingstone identified that such increases would extend to an increased debt and interest burden, higher revenue requirements, increased pressures on the budget and an increase in bond yields,^[16] thereby further increasing interest expenses.
- 56 Ms Livingstone's report concluded by saying:
- “The larger budget result deficit and the larger state debt burden under the FBEU Position means more fiscal remedial measures will be required to achieve the Government's fiscal strategy. For example this may involve decisions to reduce services or programs and/or to increase revenue (e.g. through increased or new taxes, charges or fees), which would have potential impacts on the people of New South Wales.”
- 57 It is worth noting that the NSW Budget for 2024–25 assumed there would be increases in public sector pay over the four-year period ending 2027–28 in accordance with the pay increases proposed by the Secretary. In those circumstances we presume that while the increase in gross debt arising from such an increase to the pay of firefighters will impact on the NSW Government's fiscal position, it is an outcome that is consistent with its fiscal outlook. It is accordingly the difference between the respective positions of the parties of an approximate \$140 million increase in public sector debt over four years that constitutes the relevant impact on the NSW Government's fiscal position and outlook. While that is a significant sum, we are mindful that total NSW Government gross debt in 2027–28 was forecast by the 2024–25 Budget to be \$199.883 billion,^[17] and \$140 million amounts to 0.07% of that debt.
- 58 Having calculated the impact of the parties' respective positions on the NSW debt, Ms Livingstone's report then turned to estimating the potential “precedent risk” of any decision to increase firefighter remuneration. By this she meant the risk of the increase

having what industrial practitioners would call a 'flow-on' effect, leading to increases in wages for other groups of employees. Ms Livingstone presented calculations that assumed that the FBEU's position on wages and superannuation (but not other entitlements) would be granted in full and would then flow on to all other public sector workers covered by unsettled awards across the sector.^[18] Her evidence was that if that were to occur, gross Government debt would increase by \$15,071.2 million over the four years to 2027–28, made up of a \$13,918.7 million increase in employee expenses and \$1,152.4 million increase in interest expenses.

59 In light of Ms Livingstone's evidence, we form the following conclusions that inform our determination of the appropriate level of pay increases:

- (1) Any increase in pay for firefighters will have a negative effect on the fiscal position and outlook of the Government (including the increases proposed by the Secretary).
- (2) It does not follow that there should not be pay increases. The NSW Budget assumes that there will be increases, notwithstanding that any increase in pay rates will lead to an increase in overall debt.
- (3) Accordingly, our concern is to consider the extent of the impact that any particular increase will have on the fiscal position and outlook of the NSW Government including by comparison to that which was budgeted. In the current context that means having regard to the extent to which a non-budgeted

increase would increase overall debt levels and the consequential effect on borrowing costs and the State's credit rating in the context of the overall NSW Budget.

- (4) Increasing firefighter pay does not of itself have a significant effect on the overall NSW Government fiscal position and outlook because about 85% of any increase will in due course be funded other than by the NSW Government.
- (5) If the FBEU wages claim was granted in full (before considering its superannuation and other entitlement claims) it would lead to something in the order of a \$140 million increase in NSW Government debt over 4 years above that which was budgeted. While that is a significant sum, as a percentage of the overall budget that increased cost to the NSW budget is negligible.
- (6) While the impact of the particular claim on the NSW Budget is not of itself particularly significant, that is to be balanced by two factors that we also take into account:
 - (a) any increase will in turn give rise to a likely increase in council rates and insurance premiums that will impact NSW residents, although there is no material before us to know how significant any such impact would be; and
 - (b) the potential for a decision to flow on to other public sector employees which, if it occurred, would have a much more significant impact. This is something we pay particular regard to, noting that a significant aspect of the claim for increased remuneration rests on past changes in the cost of living which might be said to be applicable to other groups of public sector employees.

Mandatory consideration – State of the economy of NSW

- 60 The Secretary relied on reports prepared by Ms Wilkie and Mr Houston, which considered the current state of NSW's economy, its predicted state across the next three years to 30 June 2027, and the impact of the competing proposed increases in wages on the NSW economy.
- 61 The evidence from Ms Wilkie and Mr Houston was to the effect that while NSW's economy has grown in real terms since the COVID-19 pandemic, as indicated by growth in NSW's gross state product and employment, it is currently capacity-constrained, meaning that demand for goods and services in NSW outstrips the economy's capacity to supply those goods and services. This is reflected in consumer price inflation exceeding 3%, which is above the target band of 2–3% inflation set by the Reserve Bank of Australia (RBA).
- 62 Household, government and business expenditure on goods and services grew at a slowing rate over 2023–2024, due to an increasing cost of living arising from an increase in interest rates and prices. Average consumer spending is estimated to have

declined by about 2% per person during the 2023–2024 financial year. At an overall economy level however, NSW's economy is still growing because the weakness in individual household spending is largely offset by stronger population growth.

63 Ms Wilkie and Mr Houston projected that demand would continue to exceed supply until June 2027, but that capacity constraints would ease. Headline and underlying inflation will decrease below 3% but remain around the top of the 2–3% band until late 2025.

64 Both reports found that NSW productivity was growing at a low level, at just 0.5% on average per year over the ten years to 2023–2024. Real wages growth over that period has increased at a greater rate than productivity growth, with Mr Houston noting that the RBA's Statement of Monetary Policy, published in November 2024, expected wage growth to moderate in the future. Ms Wilkie gave evidence that

“if a 6.67 per cent wage increase (being the average increase sought by FBEU's position in these proceedings over the three-year period) was adopted for all workers in the economy, the outcome would be consistent with inflation being well above the RBA's target band. Put another way, for nominal wages growth of 6.67 per cent, average productivity growth would need to be over 4 per cent in order for inflation to move to the centre of the RBA's target range. This would be more than three times the long run projection contained in the 2021 NSW IGR.”^[19]

65 We accept the evidence from Mr Houston that an increase to public sector wages would have a positive stimulative effect on the economy, while dampening the downwards trend in future inflation and therefore increasing the risks associated with the current above-target levels of inflation.

66 Ms Wilkie gave evidence that public sector wage increases not only directly impacts the NSW economy by way of giving more money to individuals to spend on goods and services but indirectly impacts the economy by putting “pressure” on public sector and private sector wages, which Ms Wilkie defined as “precedent risk”. High wages growth in one sector of the economy or jurisdiction may put pressure on other employers to lift their wages to retain workers who would otherwise move to the sector or jurisdiction which has received the pay increase.

67 To analyse the impact of an increase in wages to NSW public sector workers on the NSW economy, Ms Wilkie used an economic model called the MARTIN model used by the RBA which produces forecasts and conducts counterfactual scenario analysis relating to how a “shock” can impact the economy. The “shock” inputted into the model was the difference between the wage increase sought by the FBEU and the baseline forecast for wages, being the forecast for wages within NSW Treasury's 2024–25 NSW Budget. For example, if it is assumed that all NSW State public sector workers eventually receive the increases in wages and superannuation sought by the FBEU, the model predicted that gross state product and consumer prices would increase by 1.48% and 1.13% respectively, above the baseline forecast.

68 The FBEU contended that this modelling could not be relied upon. The model's output rests on an assumption that the wages increase would pass through to currently unsettled public sector awards and, to a degree, the private sector. Specifically, it assumed that in the first year after a wage increase, a 1% increase to public sector

wages would result in a 0.3% increase in private sector wages. The FBEU submitted that the selection of this figure, which was obtained from an analysis of a line on a chart in an International Monetary Fund paper, could not be reasonably justified and as such had little probative value. To the extent the model projected increases in national inflation, the model had to be manipulated to remove the steps that the RBA might be assumed to take to respond to an increase in inflation. More fundamentally, the FBEU submitted that wage increases ordered by the Commission could not be modelled as “shocks” to the economy, because the increases will be accounted for in the following year’s budget.

69 We accept the force of the FBEU’s arguments as to the usefulness of the MARTIN model and the conclusions drawn from it by Ms Wilkie’s evidence as to the impact of the wage increase granted in this decision on the economy as a whole. The conclusions depend on high level assumptions which are arguably possible, but insufficiently grounded in fact to allow us to find that they are sufficiently probable to have any utility, beyond perhaps as a demonstration of the broad point (which we accept) that any increase in pay for workers will have an impact (however small) on the economy as a whole. That an increase in pay for just over 3,500 permanent public sector firefighters in NSW would cause an increase in private sector pay levels for all employees in Australia and in turn increase national inflation is, in our view, improbable.

70 That is not to say that we reject one assumption made by Ms Wilkie in her modelling, namely that to the extent that the Commission agrees with the FBEU’s submissions that the Commission should grant a wage increase which repairs real wage diminution, other public sector unions could identify that argument as applying to them, and seek equivalent or similar increases.

71 The impact of this flow-on effect on the NSW economy and more specifically on the fiscal position and outlook of the NSW Government is a subject we consider further in the next section on changes in the cost of living, along with the evidence which Ms Wilkie and Mr Houston gave on firefighters’ real wages since 2008 and 2011.

72 Finally on this subject, we have also had regard to the evidence of Mr Houston that public sector wage increases can have a positive effect on the economy of NSW. He noted that the primary consequence of an increase in public sector salaries is an increase in consumer expenditure which stimulates additional economic activity in the form of additional output and jobs, to the extent that the additional remuneration after tax is spent rather than saved. If businesses are unable to increase their capacity and hire additional staff to meet the increased demand, heightened consumer expenditure can increase inflationary pressure.

Cost of living component

73 The Commission, when determining what wage increase should be awarded, will consider the changing value of money over time. The usual approach taken by the Commission in doing so is to have regard to the date on which the last wage increase

for the relevant employees took effect, and the changes in money values since that date or which are forecast during the prescribed life of the award to be made, as set out in *Re Crown Employees (Administrative and Clerical Officers) (State) Award (No 2)*.^[20]
 74 In *Re Crown Employees (Scientific Officers – Division of Science Services, Department of Agriculture) Award (Scientific Officers Case)*,^[21] a Full Bench of the Commission explained the purpose of considering the changing value of money over time at 274:

“It is substantially correct to say that each case in which wages are to be fixed involves the tribunal concerned in determining the value of the work to be done for the wages to be fixed, but, nevertheless, it would not be an adequate description of the wage-fixing function of the Commission and of conciliation committees to say baldly that the function is to ascertain the value of work. ... [The] tribunal will have a duty to consider for itself whether rates of pay to be awarded are just and reasonable in the circumstances of the case. And another special character of the valuation which is involved in fixing wages or salaries by award is that an inquiry must be made as to the amounts which will provide just and reasonable salaries for a future term of years. ...

[In] a particular case involving the valuation of work, there may be no issue between the parties which requires the arbitrator to consider the nature of the work and what it entails. Suppose, for example, that an award has been made after a review of an industry in the course of which a detailed examination of the work made, and that, a year or two later, the value of money having substantially declined, application is made by an industrial union of employees to increase the rates of wages on the ground that the wages have lost their purchasing power. The employers do not dispute that the work was valued correctly when the award was made, and the only issue submitted to the arbitrator is whether the rates should be altered on the economic ground relied on by the applicant. In such a case, although in essence [sic] the task which the arbitrator will have to perform will be to value the work, consideration of the work itself will not be called for in the arbitration. *The question will be whether work which was valued correctly when the award was made can be regarded as valued correctly after a decline in the purchasing power of money.*” (emphasis added.)

75 This passage was cited with approval in *Re Butchers, Wholesale (Cumberland) Award*,^[22] in which Cook J stated:

“It being the duty of the tribunal to consider for itself whether a rate to be awarded is just and reasonable in the circumstances of the case and when the basis of the claim does not call for a consideration of the nature of the disability suffered in encountering the conditions in question, because the nature of the disability has not changed, it is my

view that *in such a case the question will be whether the allowance which was correctly assessed originally can now be regarded as valued correctly having regard to the fact that there has been an erosion in money values.*" (emphasis added.)

- 76 Ordinarily, the Commission will consider the changing value of money by only having regard to the considerations set out in *Re Crown Employees (Administrative and Clerical Officers) (State) Award (No 2)*. In this case, that would mean that the Commission would only have regard to the changes in the value of money since the last Awards were made in 2023.
- 77 The FBEU contends, however, that in this case there is an "extraordinary intervening feature", namely, that recent past increases were based on assumptions about future inflation which, as it transpired, were significantly incorrect, such that the Commission should treat it as a special case. For the reasons following, we accept that contention.
- 78 Over time wages ought to grow in real terms, consistent with improvements in productivity.^[23] There have been improvements in Australian standards of living since Federation that are explained in part by real growth in wages.^[24] As Mr Houston said, growth in wages has a positive effect on the economy of NSW.
- 79 While the RBA has a mandate to use monetary policy levers to keep inflation within a range of 2–3%, there will be periods when inflation is below or above that range. Consistent modest wage increases in nominal terms will result in periods where wages grow in real terms and periods where they fall.
- 80 Our task is to set fair and reasonable conditions of employment, including fair and reasonable remuneration for the value of work. It is not a precise mathematical process. It involves a multifaceted approach that weighs up various, often competing factors. Adjusting such rates to have regard to changes in the value of money so that they remain fair and reasonable involves setting increases that are broadly capable of absorbing changes in the cost of living over time. That might in some years mean that the rates in real terms fall a little and in other years increase a little. In other words, the exercise is not one of precisely adjusting wages to reflect the extent to which the previous award in fact accurately predicted inflation along with an amount that precisely reflects the predicated rate of inflation for the balance of the term of the award.
- 81 That broad approach faces difficulties during periods in which inflation substantially outstrips wage increases, as occurred in respect of this workforce between 2020 and 2024. Professor O'Brien gave evidence which was not contested, that firefighters' real wages reduced by 7.94% between September 2020 to June 2024. After the conclusion of the hearing, the FBEU filed a spreadsheet with calculations as to the real value of firefighters' wages that took into account the interim 3% increase (effective from February 2024), which concluded that, even with that increase, firefighters' wages declined in real terms by 6.94% from 2020 to the end of 2024.
- 82 There is a danger however in placing significant weight on a calculation based on a particular snapshot in time. The extent of any gain or loss in real terms will vary significantly, depending on the time period selected. That is reflected in the findings of the economic experts. Professor O'Brien, as noted above, was instructed to analyse

firefighter salaries and changes to the cost of living in NSW from 1 July 2020 to September 2024. Mr Houston's report indicated that permanent firefighters have experienced a cumulative increase of 0.5% in their real wages, or 0.03% per year, over the period 1 January 2008 to 26 February 2024. Ms Wilkie's report, which looked at the historical trends in real wages from the September quarter in 2011 to 2023, concluded that the real remuneration (including superannuation) for a permanent qualified firefighter increased by 3.2% over that period, using the NSW HFCE deflator.^[25] The FBEU did not challenge this evidence from Mr Houston or Ms Wilkie.

83 Humans generally weigh losses above gains.^[26] There are firefighters who were first employed after 2020 who have seen their wages fall considerably in real terms since they started, putting aside promotions. There are also long-serving firefighters whose remuneration grew in real terms for many years, but who would have adjusted their standard of living accordingly such that they too have been significantly affected by the recent reduction in real terms.

84 The following table compares firefighters' nominal wages between 2023–2026 if the Commission grants the wage increases proposed by the Secretary, with actual and projected changes in the cost of living. The table uses the actual Sydney CPI percentage change from the corresponding December quarter for past changes and the RBA trimmed mean measure of inflation for future changes.

Year	Actual and projected Sydney CPI (%)	Annual nominal change in wages and wage-related allowances (%)	Annual nominal changes in wages and wage-related allowances proposed by Secretary (%)
2023	4.2	4	
2024	2.4	3 (interim)	
2025	2.7		3
2026	2.7		3
Total	12	13	

85 Hence, taking into account only the period since the last awards were made in 2023, and before considering any changes in rates that rely on arguments other than cost of living, we might expect that two further increases of 3% each, as proposed by the

Secretary, would be sufficient to maintain the rates in real terms. The table also does not include the fact that in that period there would be two increases in superannuation contributions of 0.5%, in July 2024 and July 2025.

86 The FBEU however, rightly point to the fact that the nominal wage as at 2023 had only increased by 2.3% over the previous two years (0.3% in 2021 and 2% in 2022), a period during which CPI increased by 10.7%. It contends that the Commission ought to proceed on the basis that award rates which are worth so much less than they were in 2020 would not be fair and reasonable, with the consequence that there needs to be a top-up payment.

87 The table above, if expanded to include those years, reads as:

Year	Actual and projected Sydney CPI (%)	Increases as occurred and as proposed by Secretary (%)
2020	0.8	2.5
2021	3.1	0.3
2022	7.6	2.04
2023	4.2	4
2024	2.4	3
2025	2.7	3
2026	2.7	3
Total	23.5	17.8

88 The net difference is almost -5.7%. Hence, if we were to use that specific time period, the further increases in 2025 and 2026 would need to be in excess of 6.5% each year (or an additional 3.5% each year above the amount proposed by the Secretary) to maintain the rate in real terms.

89 The Secretary responded by contending that, were the Commission to go back in time to a datum point before 2023, it should go further back than 2020, and have regard to the period since 2011, when the wages cap was introduced, or indeed back to 2008,

when the two awards were last reviewed on work value grounds. That is because there were sustained periods of real wage growth before 2020, which offset the fall in real wages in the period 2021–22.

90 It is objectively the case that for most of the period of the wages cap (2011–2023) public sector wages increased in real terms, because the standard increase of 2.5% was, in almost every year from 2011 to 2020, greater than the change in CPI. The result is that, as Mr Houston pointed out, even taking into account the significant inflation in 2021–2023, cumulatively the wages cap produced a (slightly) above inflation outcome. While there has been commentary that the wages cap reduced wages, that is true only in the sense that it generally prevented the Commission from awarding an increase greater than 2.5% to recognise matters such as changes in work value and improvements in productivity.

91 To the extent that there was a significant reduction in the real value of public sector wages in 2021 and 2022, that was not the result of the wages cap. In 2021, the Full Bench of the Commission awarded a 0.3% wage increase, [27] and in 2022 the parties consented to a 2.04% wage increase. The Full Bench's decision in 2021 was based on evidence of forecasts that inflation would remain low and the significant challenges that COVID-19 created for the economy of NSW and the NSW Government's budget. The Commission thus concluded that there ought to be wage restraint to assist the NSW budget. [28] As it turns out, the inflation forecasts were wrong.

92 The wage restraint allowed the NSW Government to accumulate significant savings that were to be placed into the "Infrastructure and Job Acceleration Fund" to assist the NSW economy as it recovered from the COVID-19 crisis. Those sacrifices from workers appear to have had the intended effect. With the benefit of hindsight however, those wage increases were wholly inadequate to maintain the real value of wages. That is not to say the decisions of the Commission to award those lower increases were wrong. They were mindful of the economic conditions of the time and reflected the evidence of expected inflation that was put before the Commission. The question however arises as to what should be done, if anything, to address the significant fall in real wages that occurred as a result.

93 As the table above shows, the Government agreed to a 4% increase in 2023, which resulted in a gain in real wages in that year. However, that change was not sufficient to offset the fall in real wages that occurred in 2021 and 2022.

94 As noted, there is a danger in converting the exercise of increasing rates based on changes in the cost of living into a purely mathematical exercise which must start with a particular rate on a particular date and assumes that that rate was the precisely correct rate as at that date and its real value must be exactly preserved. Quite apart from the distortions that can occur depending on the choice of the reference datum point, it

creates the danger of inequities that will arise between different groups of public sector workers, depending on when their award was last made or the date their rates were last the subject of arbitral review.

- 95 Going forward, other than where there have been significant unexpected changes in the value of money, we expect that the Commission will consider, in addition to the mandatory considerations, what changes in the value of money have occurred since the last award was made, along with projected changes over the life of the new award, consistent with past authority, applying the broad approach described earlier.
- 96 However, given the extraordinary situation caused by the COVID-19 crisis, which led to below-trend increases combined with significantly above-trend inflation that was not anticipated when the Commission last set rates, we consider it appropriate when determining this award to include a one-off reset.
- 97 The FBEU seek to have that reset made in the first year of the award (less the 3% interim payment). Given that the reset is addressing past failure to increase rates, there is merit to that position. However, we have to be mindful of the impact that would have on the fiscal position of the Government and its outlook. A substantial change to the rates, particularly if effective from February 2024, is unbudgeted. A change will have less of an impact if it is introduced over time and affects future budget years.
- 98 The FBEU rightly point to the fact that, particularly given the way FRNSW is funded, the impact on the NSW Budget of any increase awarded will be negligible. However, we nevertheless are minded to spread the catch-up for two reasons. First, while most of the increase will ultimately be funded by industry and local councils, there will be a delay in that funding being received. Second, we accept that our decision in this respect at least has the capacity of creating a precedent effect, which in turn has the potential to magnify its impact.
- 99 Having due regard to the economic evidence, including the above inflation increases during most of the period between 2008 to 2024, we have decided that the one-off reset for these awards should be an additional 2% above the Secretary's position, which can be expected to give rise (as the table below demonstrates) to an increase of 3.2% in real terms between 2024 to 2027, to be spread over the life of the award in addition to the two 0.5% increases in superannuation (4.2% in total). That we are not increasing it by the full 5.7% difference in real terms since 2020 is because of the matters we identified earlier as to economic cycles, along with the mandatory considerations noted earlier, in particular, the impact on the fiscal position of the NSW Government including the potential for a flow on effect.
- 100 On current projections that will mean wages will increase in real terms over the life of the award as follows in the table, which excludes superannuation. The 4% annual increase in 2024 includes the 3% already awarded as an interim increase.

Year	Annual increase (before including the RCR increase) (%)	CPI actual and projected (national, trimmed mean) (%)	Difference in real terms (%)
2024	4	2.4	+1.6
2025	4	2.7	+1.3
2026	3	2.7	+0.3
Total	11	7.8	+3.2

Road crash rescue component

- 101 The FBEU seeks, in addition to increases that reflect changes in the cost of living, a 3% wage increase reflecting the work value of RCR work, which it claims has increased in prevalence and complexity.
- 102 RCR is defined in the NSW State Rescue Policy (SRP) as “capability required to gain access to and free casualty(ies) from vehicles travelling on the road such as cars, motorcycles, buses, trucks and semi-trailers while minimising the potential for further injury and preserving the integrity of evidence.” [29]
- 103 The FBEU justified this component of the wage increase primarily on the basis that RCR work has increased in prevalence and complexity since the Awards were last assessed for work value in 2008. Mr Etienne during cross-examination agreed that FRNSW does more RCR work and is “better at it than it was ten years ago”. All FRNSW pumper appliances are fitted out to be able to respond to incidents requiring RCR. It was submitted that the difficulty and risk of RCR has increased due to technological changes, including the danger that lithium batteries in cars can explode, which requires firefighters to undertake training for and apply specialised skills and knowledge, as well as to undergo ongoing skills maintenance.
- 104 The Secretary opposed this increase, submitting that firefighters have performed RCR prior to 2008 and undertaken training of an equivalent level since 2004. He submitted that changes to RCR work reflect technological and policy-based changes which firefighters would be expected to adapt to over time.
- 105 The Full Bench has resolved to grant the claim for a 3% wage increase for RCR work because, as we explain, we find that the work of firefighters is currently significantly undervalued, due to historic or intrinsic factors. The current composite rate of pay for firefighters is not set with regard to the fact that every firefighter needs to have the basic rescue competencies that are associated with RCR work.
- 106 The Special Case Principle in the AMPs provides:

“13. Special Case Principle

13.1 A new award or a variation to an existing award can be granted otherwise than under one or more of the preceding Arbitrated Case principles where an applicant can demonstrate that the matter has special attributes or is out of the ordinary in a manner that warrants approval by the Commission despite the restrictive considerations imposed by these principles.

13.2 Care should be taken not to rely on factors already taken into account in establishing a predecessor award.”

- 107 The Principle permits the Commission to create or vary awards arising from an extraordinary case that otherwise falls outside the AMPs, to ensure that conditions of employment are fair and reasonable..^[30] An applicant who seeks to make out a special case must therefore prove that the variation is necessary to establish fair and reasonable conditions of employment and that the matter has special attributes..^[31] The latter element requires the applicant to establish an adequate evidentiary foundation for the factors which they rely upon as being the special attributes of the case..^[32]
- 108 One way that an applicant may be able to make out a special case is to establish that the work under consideration has been significantly undervalued, due to historic or intrinsic factors, such that the current award does not set fair and reasonable conditions of employment..^[33] This approach differs from that taken by parties relying upon the Work Value Principle, which requires an applicant to prove a *change* in work value since an identifiable datum point..^[34]
- 109 For example, in *Re Crown Employees (Police Officers – 2009) Award* the Full Bench of the Commission was satisfied that the Police Association had made out that the work of police prosecutors and Forensic Services Group (FSG) experts, who were paid a “Special Duties Allowance” (SDA) under the Crown Employees (Police Officers – 2009) Award, was undervalued..^[35] The Full Bench determined that, because the SDA regime did not adequately compensate these employees for their specialised knowledge and higher work value compared to other employees under the SDA regime, a new award should be made which fixed a new classification structure for police prosecutors and created a new higher allowance for FSG experts..^[36]
- 110 New South Wales has a two-tiered system of land rescue capability, (excluding Vertical Rescue Units): General Land Rescue (GLR) Units, which are units which meet SRB accreditation standards for RCR, Industrial/Domestic Rescue, and Urban Search and Rescue (USAR) Category 1; and RCR Units, which meet SRB accreditation standards

for RCR in rural, regional and remote areas of NSW. Only accredited GLR units can perform GLR. There are about 79 SRB accredited GLR units and 115 accredited RCR Units.

111 A firefighter can become a RCR operator if they are an operational member of an emergency services agency, hold a nationally recognised senior first aid certificate, and meet the requirements of the following five training packages as set out at Attachment I of the NSW SRP:

- (1) Protect and preserve incident scene;
- (2) Maintain safety at an incident scene;
- (3) Undertake road crash rescue;
- (4) Participate in rescue operation and
- (5) Drive vehicles under operational conditions and drive police vehicles.

112 FRNSW maintains a register of personnel who comprise each accredited rescue unit, including each RCR unit..[\[37\]](#)

113 All permanent firefighters are trained in RCR as part of the recruit program, which the Full Bench understands requires them to complete the five competencies in the SRP, as listed above. After they have finished the recruit program, they hold the Unit of Competency (UoC) in RCR but are not accredited as a registered RCR operator. Retained firefighters are trained in RCR prior to commencing work, but do not obtain the UoC in RCR during their initial training. Firefighters are required to undertake ongoing skills maintenance related to RCR via the Station Training Program.

114 Recruit firefighters can be called on to do RCR from the time they start work at an accredited GLR or RCR accredited station. Further, while they will receive further training when they are stationed at an accredited GLR or RCR unit, they, like all firefighters, can be expected to do rescue work, including RCR work, even if they are stationed at a non-accredited rescue unit. FRNSW is required to respond to every motor accident to provide fire protection. If an unaccredited station is the first emergency service to arrive and rescue is required, they will perform it. In 2024,

FRNSW attended 1,480 RCR incidents, of which 879 (59.1%) were first attended by a GLR unit, 204 were first attended by a RCR unit (13.8%), and 397 (26.8%) were first attended by an unaccredited unit.

115 That all firefighters are trained in doing rescue work and can perform RCR work from the time they start work as recruits is consistent with the nature of FRNSW, as discussed earlier, as primarily a rescue service.

116 Currently only firefighters who are designated to be RCR operators and are stationed at an accredited rescue station receive recognition for these skills, in the form of a Rescue Allowance paid weekly. Other firefighters not attached to an accredited rescue station receive no recognition in pay for their RCR skills, despite being trained to do the work, and from time to time being required to do RCR work.

117 The Secretary submitted that non-station based roles which do not involve rescue work do not need the skill, and that the rescue allowance should not be absorbed into the base rate of pay unless the skill is one that every firefighter uses. As to that, there was evidence that non-station based firefighters are at times called upon to respond to incidents. It is the case that firefighters will rotate into and out of non-station based roles. All firefighters, whether in station based roles or otherwise, can be called on in an emergency, during which they will utilise some of the competencies at Attachment I of the SRP, such as driving vehicles under operational conditions, protecting and preserving an incident scene, or maintaining safety at an incident scene. They may also be deployed as part of a strike team. We also accept the submissions of the FBEU that more senior officers similarly utilise their knowledge and skill in RCR in supervising, managing and directing firefighters who perform that work.

118 There are other rescue competencies that we discuss below, each of which require as their base training the skills that are taught to conduct RCR work. In that sense the RCR competencies can properly be seen to be the 'base' competencies for rescue work.

119 While RCR work has evolved and requires new skills to deal with such risks as lithium batteries, we agree with the Secretary that that type of work has not changed sufficiently to meet the strict requirements of the Work Value Principle. Rather, we grant the increase because we find that a special case has been made out.

120 The special attributes made out by the FBEU in this case are:

- (1) RCR work is core work performed by FRNSW;
- (2) firefighters need to obtain specialised knowledge and undertake ongoing skills maintenance to perform RCR work; and
- (3) as the value of RCR work is only recognised by way of an allowance paid to a subset of firefighters who are working at specific stations that are designated RCR stations, the work performed by firefighters covered by the Awards is currently undervalued.

121 The current composite rate of pay for the base grade of firefighter does not reflect the

fact that every firefighter needs to have the basic rescue competencies that are associated with RCR work. We consider it is no longer appropriate that such skills be recognised only by an allowance paid to those attached to particular stations. It means the base firefighter classification is undervalued. These are special circumstances that take the case out of the ordinary, and so in our view constitute a special case. We find that it is fair and reasonable that the basic rescue competencies that are associated with RCR are ones that constitute knowledge and skill that every firefighter has, such that it should be reflected in the composite rate.

- 122 The Rescue Operator Allowance was first introduced in cl 6.6.20 of the Crown Employees (NSW Fire Brigades Firefighting Staff) Award 2000 and was payable per rostered shift for firefighters who were recognised as a rescue operator by the SRB. The Rescue Allowance in its current form was inserted into Crown Employees (NSW Fire Brigades Permanent Firefighting Staff) Award 2008, and was varied to be payable weekly to firefighters and officers who are recognised as qualified rescue operators by the SRB and who are attached to a RCR or GLR station.
- 123 The current Rescue Allowance constitutes approximately 3.32% of the weekly composite rate of pay for a qualified firefighter attached to a RCR or GLR station. It is not included in the firefighter's ordinary rate of pay for the purposes of superannuation, leave, or overtime.
- 124 By increasing the base rate to recognise RCR competencies, we need to remove the allowance that is payable to RCR operators to avoid double counting.
- 125 As such, RCR operators stationed at accredited rescue units who currently receive the allowance will lose the allowance, but instead have an increase in pay. Depending on their level of pay, they will not receive an overall increase in base remuneration, but will receive higher take home pay to the extent that the increased composite rate is used to calculate superannuation, leave, and/or overtime.
- 126 Mindful of the fact that the pay increase will affect the composite rate of pay for the purposes of superannuation, leave and overtime, we consider it appropriate to increase pay by 3%, as sought by the FBEU, which is less than the 3.32% that equates to the current allowance.
- 127 To avoid any double counting, the current rescue allowance will be limited to those who are qualified GLR operators, or qualified in other types of rescue work, and who are attached to a rescue accredited station. Later in this decision we deal with this in more detail.
- 128 We have decided to make the 3% increase for RCR work effective on and from 26 February 2026. In determining when the RCR increase should take effect, we have had regard to the fact that this increase is not currently budgeted for by the NSW Government. By not backdating the increase we also avoid the double counting of the RCR work that would otherwise occur in respect of RCR operators who have received the Rescue Allowance. The delay will also give the parties time to have discussions and finalise the text for the allowances before the changes are to take effect.

Superannuation

- 129 The FBEU seeks an increase in superannuation contributions from the current minimum compulsory superannuation contribution to 15%. If granted, firefighters would receive higher superannuation contributions than other emergency services workers. It would involve a very significant unbudgeted financial impost on the State of NSW. That impost would be substantially greater if such an increase were to flow on to other emergency workers.
- 130 We accept the submissions from the Secretary that the FBEU has not made out a case to increase the rate of superannuation contributions.
- 131 Mr Drury gave evidence that the average age of retirement has increased from 61 in 2013–2014 to 63 in 2023–2024 for permanent firefighters and from 64 in 2013–2014 to 66 in 2023–2024 for retained firefighters. The FBEU contended that this indicated that firefighters are continuing to work when they are older and are at a potentially higher risk of injury and illness. It also submitted that firefighters have a shorter working life than other workers, due to the physical and dangerous nature of the work, such that they needed higher superannuation contributions.
- 132 We agree with the Secretary's submission that the higher average retirement age indicates that firefighters are in fact working for longer and so do not need to have higher superannuation contributions made during their working life to offset a shorter period of work due to a lower retirement age. While firefighting indeed involves high risk, the evidence does not allow us to conclude it is sufficiently different to the risks of other professions in the emergency services such that arrangements over and above the entitlements available under the *Superannuation Guarantee (Administration) Act 1992* and the D&D Award should be awarded.

Top-up payment

- 133 The FBEU seeks to have inserted into the Awards an "Annual Consumer Price Index Inflation Adjustment Payment". The amount of this payment, payable on the first full pay increase following 31 March 2024, 2025 and 2026, would be the percentage difference between the pay increases in the Awards and any higher rate of inflation for the March quarter of the relevant year. The FBEU submitted that this payment was "integral" in ensuring that, at a minimum, the real value of wages is substantively maintained.
- 134 We reject this claim as a matter of principle. While the Commission is effectively enjoined to ensure that awards remain fair and reasonable, it does not follow that there ought to be an automatic entitlement to an increase reflecting the last 12 months of CPI change. Such a provision is contrary to the Commission's broad approach to cost of living adjustments as described in [80] above, and fails to have regard to the statutory scheme, as explained in the 2024 State Wage Case decision:

"[95] ...The Industrial Relations Act obliges us to have regard to considerations other than the rate of inflation. Subsection 146(2), in particular, requires the Commission, in the exercise of its functions, to have regard to the state of the economy of NSW and the likely effect of our decisions on that economy. The Commission must also consider the

Government's fiscal position and outlook and the likely effect of our decisions on its fiscal position and outlook during the exercise of a function relating to public sector employees. These considerations may compel the Commission to set a wage increase that is lower than the CPI increase in years where inflation exceeds the Reserve Bank's inflation target. Conversely, and particularly in years where inflation is low, considerations of the Government's fiscal position and outlook may allow for wage increases which exceed inflation.

[96] Furthermore, due consideration needs to be given to the fact that the awards in question are paid rates awards, not minimum rates awards. ..."[38]

- 135 As we noted earlier in the section on the NSW economy, Ms Wilkie and Mr Houston gave expert evidence that inflation is expected to fall over the life of the Awards. We accept that such forecasts are not always reliable and are affected by world events. If, contrary to current expectations, inflation was in fact to be significantly greater than forecast, that would be a matter that could be addressed when the next Awards are made.

Total pay increase

- 136 In summary we award the following increases to wages and wage-related allowances, to reflect increases in the cost of living and to compensate for RCR competencies:
- (1) from 26 February 2024, an additional 1%, making 4% in total (having regard to the 3% interim increase), to reflect past and current changes in the cost of living,
 - (2) from 26 February 2025, 4% to reflect past and projected changes in cost of living, and
 - (3) from 26 February 2026, 6%, which is comprised of a 3% increase to the composite rate to recognise RCR competencies and 3% to reflect past and projected changes in cost of living.
- 137 There will also be the two superannuation increases starting from 1 July 2024 and 1 July 2025 identified earlier, amounting to a further 1% increase in overall remuneration.
- 138 The total increase will therefore be 14% over three years, or 15% inclusive of the two superannuation increases. These totals are approximate and do not have regard to the compounding effect of the wage increases, which will result in remuneration increasing by slightly more than those percentages. The 3% increase for RCR competencies is partially offset by the removal of the existing RCR allowance and the reduction in the quantum of the GLR allowance currently paid to firefighters at RCR and GLR stations, which is discussed in the part "Rescue Allowances" of this decision.

Remuneration taskforce and no extra claims clause

- 139 The FBEU contended that the role of the modern firefighter has changed significantly since the Permanent and Retained Awards were last assessed on a work value basis, taking into account the changes in qualifications required to perform firefighting work,

firefighters' duties and responsibilities, the scope of work undertaken by FRNSW, technological and scientific developments, and changes and risks in the environment in which the work is performed.

140 The FBEU chose not to establish an evidentiary case to demonstrate the extent of the change nor ask the Commission to award an increase to reflect the value of that change. Instead, it contended that the parties should attempt to resolve the extent of this change via a collaborative process, considering the focus of the *Industrial Relations Act* on bargaining and cooperative workplace relations.

141 The FBEU's novel proposal was that the issue of revising remuneration to reflect changes in work value be addressed by a consultative mechanism, which it called a "remuneration taskforce".

142 Proposed clause 17 would establish the "remuneration taskforce" consisting of equal numbers of FBEU and FRNSW representatives, who would investigate and report to the "taskforce" on the role of a modern firefighter, and the appropriate work value and relativities to be assigned to the classifications and ranks in the Permanent and Retained Awards. Where the "taskforce" could reach agreement on an appropriate work value and relativities to be assigned to the classifications and ranks in the Awards, FRNSW would implement those changes. Where the "taskforce" could not reach agreement, the parties could agree to have the matter determined by consent arbitration before the Commission.

143 The FBEU characterised it as a consultation clause, stating:

"The clause does not require FRNSW to agree to anything. On one view it is a form of consultation. However, this is why the consequent amendment to the No Extra Claims clause is warranted, to allow the FBEU to pursue the matter within the life of the award. To require it to wait to the end of the term will likely disrupt the progression and resolution of bargaining processes, and is generally undesirable."

144 In closing submissions, the FBEU identified that the role of the "remuneration taskforce" could be extended to address several of the FBEU's other claims, rather than have the Commission determine those claims. These claims were placed in Column 1 of a Schedule, referred to as "Schedule X", and included the claims for licence reimbursement, toll reimbursement, and childcare reimbursement.

145 Consistent with that position the FBEU sought that the no extra claims clause reserve leave to the FBEU to make an application to vary the Award to deal with the matters that clause 17 would give to the remuneration taskforce. Further, in closing submissions, the proposed no extra claims clause was sought to be further varied to allow the FBEU to progress any of the claims that the FBEU sought to be placed into Schedule X, as follows:

18. No extra claims

18.1 The parties agree that, during the term of this award, there will be no extra wage claims, claims for improved conditions of employment or demands made with respect to the employees covered by the award and, further, that no proceedings, claims or demands concerning wages or conditions of employment with respect to those employees will be instituted before the IRC or any other appropriate jurisdiction industrial tribunal *subject to subclause 18.2*.

18.2 The only exceptions to subclause 18.1 are as follows:

(a) leave is reserved for the Union to make application seeking a variation to this Award in respect of the matters dealt with by the Remuneration Taskforce as outlined in clause 17 if unresolved; and

(b) leave is also reserved for the Union to make application with respect to the matters outlined at Column 2 of Schedule X of this Award if unresolved, subject to the following:

a. the Union must have made a genuine attempt to discuss and resolve the matters and such discussions exhausted; and

b. in the event that any such application leads to an arbitration, to be dealt with based on the evidence in proceedings Fire Brigade Employees' Union v Industrial Relations Secretary (on behalf of Fire and Rescue NSW) - IRC 2024/00068961, 2024/00068970 & 2024/00068974; 2024/00301376; 2024/00301414 and 2024/00301353, with any further evidence only by leave of the Commission.

- 146 The Secretary strongly opposed clause 17, which he perceived as an attempt to create a shadow arbitral process (a submission that was inadvertently given weight by the FBEU counsel referring to the proposed taskforce more than once as the “remuneration tribunal”). The Secretary submitted that it called for the creation of an administrative body with powers to circumvent the Commission, which was not a condition of employment.
- 147 The Secretary contended that how the taskforce would undertake its role was unclear and likely to be productive of disputation, querying whether “agreement” from taskforce members required the consensus of all participants.
- 148 The Secretary submitted that clause 17 is contrary to notions of industrial certainty and harmony, in that the clause, when read with the no extra claims clause, is intended to permit an increase in remuneration during the life of the current award. We agree that it is not appropriate to include any provisions that could give rise to a right to seek to arbitrate further wage claims during the life of this award. The FBEU elected not to pursue more significant work value-based remuneration claims in this case. Consistent with the remarks of the Full Bench in *State Wage Case 2024 (No 3)*.^[39] the outcome of this case ought to provide industrial certainty during the life of the new award.
- 149 There is real force in the Secretary’s submission that it is in the interests of both parties to achieve industrial certainty and harmony for the remaining two-year period of the award, considering the significant period of negotiations and disputation on the FBEU’s current claim to date.
- 150 The clause requires the parties to consult as to how remuneration for firefighters ought to be adjusted. However, as drafted, it does more than that. It provides that if agreement is reached by the taskforce, made up of equal numbers of union and FRNSW representatives, then that agreement “will be implemented by FRNSW”.
- 151 That cannot be accepted for two reasons. First, while the Commissioner has employer responsibilities, it is the Secretary who is the employer for the purpose of award setting, and this proposal would purport to avoid the legislated role of the Secretary in respect of changes to the award..^[40] Second, and more fundamentally, the *Industrial Relations Act* provides that it is the role of the Commission to make awards setting rates of pay. In doing so we are required to have regard to various mandatory considerations in the public interest, including the impact any award would have on the fiscal position and

outlook of the NSW government. Whether or not a taskforce agrees to a change would be highly relevant but cannot be determinative of the setting of remuneration. It is arguably beyond our power to delegate the task of setting remuneration in an award of this Commission to a taskforce. Even if we had the power, as a matter of discretion we would not do so.

152 We accept in principle the need for the parties to review firefighters' classifications and remuneration. While the Commission cannot know precisely what the parties have considered when reaching consent positions as to past pay rises, there does not appear to have been an examination of work value of firefighters since 2013..[41] The current remuneration recognises non-station based roles by way of an additional loading, but as explained later in this decision, the rationale for that loading is not clear. That it is a flat loading regardless of the quite varied nature of the different station based roles suggests that it was not devised with a clear eye to recognising the work value of the different roles and whether, and if so how, that differs from the work value of the station based firefighter roles. Addressing such work value by the imposition of a series of standard additional flat allowances, as the FBEU has sought in this case, is unlikely to properly reflect the work value. Further there may be a proper basis to consider whether the relativities between station officers and more senior officers have been set properly.

153 The position of the FBEU is that the existing consultation mechanism has been working well. Indeed, in support of this provision the FBEU contended that the Secretary's position on the claim "is detached from the reality of the current relationship between the actual agency and the union and the current effectiveness of their bespoke consultation arrangements". We accept on the evidence that the current relationship is working well. It does not follow therefore that there needs to be a new consultation process established. Indeed, the existence of an existing successful mechanism would if anything suggest that we ought not alter that status quo by creating a different mechanism.

154 For those reasons we reject the claimed clause 17. We also reject the associated proposed amendments to clause 18 No Extra Claims.

155 We nevertheless make the following recommendation in light of our preliminary view that the existing relativities between station officers and non-station based officers, between different non-station based officer positions themselves, and between senior officers and firefighters appear to be no longer fit for purpose:

During the nominal term of this award the parties are to consult and seek to reach agreement on the work value and appropriate relativities for the various firefighter positions. Consideration should include the relative work value of the various non-station based roles and senior officer roles.

156 Any consent position that arises from such a process will be able to be reflected in an amendment to the award during its nominal term. Any claims that are not agreed can be progressed before the Commission during its nominal term, but on the strict

understanding that no arbitrated outcome will take effect before the end of the nominal term of this award.

Rescue allowances

- 157 As noted, firefighters are trained and equipped to undertake a series of different types of rescue work requiring them to exercise skill over and above the RCR and GLR skills recognised by the current Rescue Allowance. These additional skills are not currently recognised by way of additional remuneration. While the particular types of rescue work that are now being conducted do not constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification,^[42] they are in our view new or changed work that is done from time to time by some firefighters that ought to be compensated by way of an allowance.^[43]
- 158 The Commission is mindful not to award a skill-based allowance to a firefighter who has obtained a skill, but is neither in a position to utilise it, nor is required by the Commissioner to maintain that skill. Unlike general rescue work including RCR work, which can and is expected to be done by any firefighter, these rescue skills are only expected to be utilised by firefighters who are attached to a station that has the necessary equipment to do such rescues and is accredited to perform such rescues. As a result, the new rescue allowances that we award will be limited to those firefighters who are attached to stations that are accredited to do that type of rescue work, which have the requisite appliances, and require staff who are trained in using that equipment.
- 159 As a consequence of the general recognition of RCR work in the base rate of pay, the existing Rescue Allowance at cl 15.2.8 which currently recognises RCR and GLR work will be limited to recognition of GLR work and be renamed the General Land Rescue Allowance from 26 February 2026.
- 160 The existing allowance is paid to those who are at registered stations as an RCR operator. To become a GLR operator, a firefighter must attain two competencies in 'Undertake Industrial and Domestic Rescue' and 'Urban Search and Participate in a Rescue Category 1', which are additional to the five competencies required to become a RCR operator.^[44] In addition, FRNSW requires firefighters to complete internal modules, including modules in heavy vehicle, trains, lifts and escalators and confined spaces, as part of their GLR training. Upon transfer from either the Emergency Services Academy, an unaccredited station, or an RCR station to a GLR station, firefighters receive GLR training such that they can be registered as a GLR operator by the SRB.
- 161 GLR operators have a higher level of skills and knowledge than RCR operators, but there are many skills which are common to both types of rescue. Therefore, an inclusion of the current Rescue Allowance in the overall rate of pay without a reduction

in the current quantum of the Rescue Allowance for those who are trained in GLR work would result in some level of double counting.

162 We take the view, mindful of the fact that the existing Rescue Allowance is in fact 3.32% whereas the RCR component of the wage increase is 3%, and that GLR requires a higher level of skill and knowledge than RCR, that the allowance should be maintained at half the current rate from 26 February 2026.

163 There are other rescue qualifications that require firefighters to have undertaken further training on top of being part of a GLR accredited rescue unit or receiving GLR training. They are:

- (1) Land Based Flood Rescue. Eighty-four GLR stations received Land Based Water Rescue training following the 2022 NSW Flood Inquiry. Land Based Flood Rescue training involves a 2-hour training course in Flood Rescue Awareness Packaging and an additional training day covering three further competencies.
- (2) In Water Flood Rescue. Firefighters need to be part of a GLR accredited rescue unit and be based at a water-based rescue station to undertake this training. To become an In Water Flood Rescue operator, a firefighter has to complete the training for Land Based Flood Rescue, a further 3-day in-water course, and meet annual proficiency swim requirements.
- (3) Vertical Rescue. Firefighters need to be a GLR operator to receive accreditation in vertical rescue. Firefighters need to complete an additional competency in undertaking vertical rescue, a 6-day vertical rescue course, a 5-day vortex course, and a 2-day recertification course which occurs every 3 years.
- (4) Urban Search and Rescue (USAR). FRNSW's USAR unit can be deployed domestically or internationally to respond to structural collapse incidents. Approximately 200 FRNSW employees can be deployed as part of FRNSW's USAR team. Before firefighters can be involved with USAR, they need to be a GLR operator or a Hazmat Technician and apply to attain a higher USAR qualification, USAR Category II. To obtain a qualification in USAR Category II,

firefighters need to undertake a 4-week training program which ends in a major exercise testing agility, abseiling, meeting dexterity attributes and working in confined spaces, as well as ongoing skills maintenance.

- (5) Trench Rescue. Firefighters need to be a part of a GLR accredited rescue unit and be based at a vertical rescue station to undertake this training. They have to complete a 6-day course which covers the skills and knowledge required to undertake trench rescues on their own or as part of a multi-disciplinary team.
- (6) Partial Structural Collapse. This competency is additional to GLR and can be completed as standalone training or to obtain a Trench Rescue qualification. To be qualified in partial structural collapse, firefighters must complete a 4-day course.
- (7) Large Animal Rescue. Large Animal Rescue is performed by stations that have a trench rescue vehicle that can accommodate the animal rescue equipment and training. To obtain a Large Animal Rescue qualification, a firefighter needs to complete a 2-day intensive program focussing on large animal rescue techniques. As the name implies, this is not the rescue of small animals, such as kittens, which is of course part and parcel of the everyday work of a firefighter.

164 It is appropriate that firefighters who hold additional qualifications that require significant additional training and maintain them, receive a higher rescue allowance, provided they are attached to a station that does that work. However, we do not propose that there be a series of allowances, given the overlapping nature of the competencies and the likelihood that there would be some double counting that would arise if firefighters were entitled to multiple allowances.

165 Instead, we propose that the base allowance for GLR could be increased to a higher rate for those who have an additional qualification in one or more of In Water Flood Rescue, Vertical Rescue, USAR, Trench Rescue, Partial Structural Collapse and Large Animal Rescue. Firefighters should be paid an additional 25% for a single additional qualification or an additional 50% if they hold two or more qualifications. A qualification in Vertical Rescue or USAR alone should attract an additional 50%, given the level of training required to obtain those qualifications. To be clear, the maximum quantum payable in respect of allowances for rescue qualifications would be 150% of the GLR allowance, payable to those trained in Vertical Rescue and/or USAR, and otherwise GLR operators who are qualified in two or more rescue qualifications. These changes

depend on the GLR allowance, which will take effect from 26 February 2026, and so will take effect from 26 February 2026. This provides some time for the text of the clauses to be determined.

166 We have decided to not include an additional allowance for land-based flood rescue. While that rescue work is critically important, the evidence did not satisfy us that the additional training (taking just over one day in total) and skill justified a higher allowance.

167 We leave to the parties the task of drafting appropriate descriptors for these allowances but note that the allowance ought to be payable only to those who the Commissioner has determined should obtain and maintain the competencies and skills in the relevant type of rescue work, and only while they maintain those competencies while attached to stations that have the equipment to undertake the rescue work in question and are accredited to undertake the work. In that regard we note that the evidence as to what stations can conduct what type of rescues was not complete.

168 If the parties cannot reach agreement on the text of such clauses, the Commission will seek to conciliate the difference. Failing consent the Full Bench will determine the final text after the parties have provided their competing views.

Other allowances

169 Various claims were made by the FBEU for new allowances that would recognise the particular skills associated with certain non-station based roles. These are roles which are currently remunerated on the basis that they be paid the same as all other firefighters, plus a 15–20% loading. The claims would in effect be an increase in pay for all purposes for those holding one of a number of particular roles, in circumstances where those roles already attract higher remuneration than station based roles.

170 The 15–20% loading was introduced in 2022 by consent. The parties put conflicting submissions as to the purpose of the loading. We place no weight on the evidence put forward by the FBEU as to Mr Drury's recollection as to what he believed to be the subjective intentions of the parties arising from the negotiations. We readily infer that the agreement was reached to attract and retain firefighters in non-station based roles in circumstances where, absent such an allowance, they may prefer to stay in station based roles with their access to overtime pay. We have no confidence that the allowance was set in a manner that paid regard to the relative work value of those in non-station based roles, noting it is a flat percentage regardless of the nature of the role.

171 If the Commission were to consider the relative work value of classifications in the Awards, it might be that some of the non-station based roles in respect of which an allowance was sought ought to be remunerated at a different level than other non-

station based roles, and perhaps at a different level to a qualified firefighter, because their work value is in fact different. The FBEU did not make that submission in these proceedings.

172 In the absence of such a case and in the absence of evidence to justify differential pay levels for different types of non-station based roles the FBEU has not made out a case that there has been relevant change since 2008 to justify that the work of the non-station based staff in question is in fact of a higher work value than that of qualified firefighters, so justifying higher pay in the form of a further allowance over and above the 15–20% loading that was recently introduced by consent.

173 On that basis we reject the claims for the:

- (1) Hazmat Servicing Allowance,
- (2) Bushfire Officer Allowance,
- (3) Driving Instructor Allowance,
- (4) Fire Investigation Allowance,
- (5) Fire Safety Qualification Allowance, and
- (6) Communication Allowance for Trainers and Instructors.

174 The FBEU have also sought a range of other allowances, which we consider below.

Expanding coverage of Hazmat and Major/Minor Aerial Allowances

175 The Hazmat, Major Aerial and Minor Aerial allowances in the current Permanent Award are only payable for firefighters who have the relevant qualification and are attached to a station with the relevant equipment. That is, the allowances recognise higher skills of firefighters who might ordinarily be expected to use those skills.

176 The FBEU seeks to remove the requirement that a firefighter must be attached to a station with the relevant equipment to obtain the allowances. This would convert the allowances into skill allowances which would be paid regardless of whether a firefighter might ordinarily be expected to utilise the skill.

177 The FBEU puts forward three reasons for this change: first, that firefighters who currently receive the allowance are disincentivised to move away from their station, which concentrates skills and qualifications in particular FRNSW stations; second, that there are additional overtime costs resulting from the limited number of firefighters who can cover shortages; and third, that the current clause does not appropriately remunerate firefighters who have taken the time to obtain the qualification and maintain their skills.

178 The Secretary in response submits that it is neither fair nor reasonable to pay an allowance to firefighters for duties they cannot perform because they are not attached to a station equipped to undertake those duties. In closing submissions, the Secretary

contended that a firefighter who does not work at a designated Hazmat station or a station with access to a major or minor aerial appliance would not need to maintain Hazmat or aerial appliance training or be likely to have to perform that work.

179 In our view the allowance ought to be paid to firefighters who have the skill and are employed in positions where it is expected that they will from time to time be required to utilise that skill. A firefighter who has training sufficient to operate major aerial appliances (ie, appliances with ladders that can extend to high heights) who has moved into a position at a station which does not have such an appliance does not have an industrial basis to claim an allowance for that skill. The position is no different for those who have moved into non-station based roles.

180 There is nevertheless an issue of industrial fairness that arises if a firefighter, with a particular skill that would attract the allowance if they were attached to a relevant station, is asked to fill a short-term vacancy at that station and to use that skill, but does not receive the allowance. An issue of industrial fairness also arises if a firefighter is asked to attain an additional skill to provide FRNSW with a greater range of potential available resources even though they are not attached to a relevant station.

181 That can be addressed by way of two additional payments: a one-off payment if a firefighter who is not attached to a relevant station is requested by FRNSW to obtain that skill and does so, and an allowance payment equal to one fifth of the weekly allowance on each day they are deployed to use a relevant skill. The parties are to have discussions as to how that can be addressed by appropriate remuneration. Absent agreement, this issue will be the subject of conciliation by Commissioner McDonald.

Greater Sydney Area Allowance

182 The FBEU seeks an allowance, payable per shift worked or when on paid leave, for each employee attached to a station based position within the Greater Sydney Area (GSA), valued at 2% of the employee's rate of pay. It submits that such an allowance is fair and reasonable because there are higher cost of living pressures associated with living and working in the GSA.

183 This claim, which was clearly ambitious, is rejected. As the Secretary contended, the allowance would create a two-tiered workforce, with Sydney-based firefighters earning more than firefighters in regional areas. That could result in firefighters being reluctant to move to regional areas and lose the allowance.

184 The FBEU's case relied on the evidence of one firefighter, Ben McGowan. His evidence was to the effect that, in his opinion, it was expensive to live in metropolitan Sydney. The FBEU did not attempt to provide any further evidence that would properly consider the relative costs between living in the GSA and other regions in NSW. We note that there are no doubt some costs that will be higher for those living in remote locations,

such as travel costs. Nor was there any evidence of any difficulty in attracting and retaining firefighters in metropolitan Sydney that might suggest a need for a geographically different rate of pay.

Compressed Air Foam System Allowance

- 185 The FBEU seeks an allowance payable to all permanent and retained employees qualified to operate a Compressed Air Foam System (CAFS) Pumper.
- 186 A CAFS pumper is an appliance with a standard water pumping system as well as an entry point where compressed air can be added to a foam solution to generate foam. Firefighters need to complete a five-hour training program which involves both theory and practical components to be eligible to operate a CAFS pumper. To be eligible to complete this training, firefighters need to be attached to a station with a CAFS appliance and obtain approval from the Duty or Zone Commander to undertake the training.
- 187 The FBEU submitted that the CAFS appliance is a highly sophisticated piece of equipment which requires skill, knowledge and experience to operate. As firefighters who hold this qualification provide significant value to FRNSW, FBEU submit that it is fair and reasonable to pay an allowance to those firefighters.
- 188 The Secretary rejects the claim and submits that the use of CAFS marks a natural evolution of firefighting technology and techniques, and that it is in some ways easier to use than the manual system which was previously used, as it is automated.
- 189 While the Secretary contended that it was unclear which AMP the claim is based upon, it seems clear that the FBEU contends that those firefighters who are trained and qualified to operate a CAFS Pumper are able to do work that ought to be recognised as having a higher work value.
- 190 While the use of CAFS Pumps is clearly a technological improvement, the evidence before us does not allow us to be satisfied that those who are qualified to do the work are working at a higher level. Certainly, there is an argument that could be made, based on the training required. However, the evidence before us is insufficient to allow us to determine to what extent the new method merely replaces previous methods that also required training, such that there has not been a significant change in work value. Further, we are not satisfied that this change of itself would in any event be a change of sufficient significance to justify an increase in pay, consistent with the Work Value Principle.
- 191 For those reasons we have determined to reject this claim, but do so without prejudice to the FBEU's capacity to rely on this qualification in any future proceedings as part of a case that seeks to identify that there have been various changes that justify an increase on work value grounds.

Remote Piloted Aircraft System Allowance

- 192 The FBEU is seeking a weekly allowance for permanent and retained firefighters who are qualified to operate a Remote Piloted Allowance System (RPAS).
- 193 RPAS are uncrewed aircraft or drones that are remotely piloted by an operator on the ground. There are five non-station based firefighters who are employed as full-time pilots, who receive the 15–20% allowance for being in a non-station based role. The remaining firefighters qualified in RPAS are called upon to perform this duty only as required. To become qualified as a pilot who can operate a RPAS, firefighters must undertake a seven-day training course about the safe operation of an aircraft, further training to obtain an Aviation Radio Operator Certificate, and additional internal training consisting of an eight-hour day of training in flight management systems and platforms and a night flying session. Pilots are required to complete an annual proficiency assessment and fly at least every 90 days to maintain their certification currency.
- 194 The FBEU contends that all firefighters who are qualified to operate RPAS (which includes the five full-time pilots and the remaining station based firefighters) should receive an allowance for holding this skill.
- 195 We are concerned that there are firefighters at stations who are qualified to operate RPAS, undertake skill maintenance, and do that work from time to time because they work at stations where drones need to be operated, but who do not get any recognition of those skills because they are not one of the five full-time pilots. We consider that this should be addressed in a similar way to the payment of the Hazmat, Major Aerial and Minor Aerial allowances, that is, there should be a one-off payment if a firefighter who is not to be a full-time pilot is requested by FRNSW to obtain the qualifications to operate RPAS, and a daily allowance on each day they are deployed to operate RPAS. The parties are to have discussions as to how that can be addressed by appropriate remuneration. Absent agreement, this issue will be the subject of conciliation by Commissioner McDonald.

Station Relocation Redeployment Allowance

- 196 The FBEU seeks a disturbance allowance payable per shift to an employee who is directed to work from either a temporary work location or whose current work location is subject to any redevelopment, refurbishment or renovation, for all the time that they are working from their temporary work location, or their current work location is being redeveloped, refurbished or renovated. They also seek a travel allowance payable to

employees directed to work from a temporary location, to be calculated using the kilometre allowance for all kilometres between the previous permanent work location and the temporary work location.

197 Prior to closing submissions, the FBEU amended its case to seek that this claim be placed in a leave reserved clause.

198 In support of this claim the FBEU led evidence as to a single dispute over the relocation of firefighters from Busby fire station, which was resolved by this Commission in 2023. [45] The existence of that dispute does not provide a proper basis to create a substantial new entitlement for both a disturbance allowance (for the disability associated with the relocation) and a travel allowance (presumably to address the expenses involved).

199 From time to time a fire station will be relocated. In such circumstances it is not immediately apparent why there will invariably be disability and expenses that arise. The relocation might be close to the first station. It might be a move of some distance, but one that makes it more, rather than less convenient, for certain firefighters. Alternatively, it may indeed cause some level of disability and/or inconvenience, which alone may not necessarily be sufficient to justify additional payment.

200 The existing Standing Orders currently provide a Station Redevelopment Allowance to on duty permanent firefighters whose work location is undergoing redevelopment, in circumstances where that redevelopment results in a noticeable reduction in amenities. The payment of this allowance is authorised by the Commissioner, Director Greater Metropolitan or the Director Regional Operations. The Standing Orders thus already include a mechanism to provide compensation on a flexible basis to recognise actual disability.

201 Absent evidence that the existing system evinces an unfairness, we see no basis to introduce a new obligation. Further, any such obligation would need to be one, like the Standing Orders, that would not apply inflexibly to any relocation.

202 Consistent with the approach set out above, we reject the proposition that this claim ought to be placed into a leave reserved clause.

203 We reject the claim.

Certificate IV Training and Assessment Allowance

- 204 Clause 66 in the current Permanent Award provides that the Department will provide all employees appointed to an Instructor and/or Training Staff role, with the opportunity to obtain the Certificate IV in Training and Assessment, or equivalent qualification.
- 205 The FBEU seeks two changes: first, that instructors and training staff who hold the qualification before taking that role can have the costs of that previous training reimbursed, and second, that instructors and training staff who hold the qualification be entitled to an allowance of \$17 per week.
- 206 The FBEU relies on the fact that only firefighters with this qualification can lead and deliver National Units of Competency without supervision and sign off firefighters as having met National Units of Competency. It otherwise supports the allowance on two bases. First, instructors have a higher skill level as they undertake skills maintenance and are required to be up to date with emerging technologies and industry standards to use in training sessions. Second, the allowance would support the attraction and retention of employees to the roles of instructor and/or trainer.
- 207 We reject the first change on the basis that FRNSW should not be required to reimburse employees who have chosen to undertake a Certificate IV before their appointment to an Instructor and/or Training Staff role.
- 208 As to the second claim, we agree with the Secretary that the evidentiary case presented is not sufficient to establish that the mere holding of the qualification is of itself a proper indicator that the work being done is of a higher work value.
- 209 During cross-examination, Mr Gianluca Bertoldi, Inspector at FRNSW, gave evidence to the effect that training is ordinarily conducted by more than one trainer at a time, some of whom may not hold the Certificate IV qualification. However the trainer who leads the training is required to have the qualification. While there may be a proper basis for a work value claim that recognises higher level work associated with leading training, the evidence did not provide a sufficient basis for evaluating that claim. In particular, the evidence did not go so far as to demonstrate that those who hold the qualification are only or invariably the lead trainer.
- 210 As we have identified earlier, in respect of all non-station based roles which attract an additional allowance, there is a question as to the extent to which that allowance can be said to properly recognise the specialised nature of a particular role and (if established) any higher work value over and above that of a firefighter. As we have said, this is a matter that we recommend the parties consider as part of a holistic exercise examining the proper rates of pay for firefighters, including non-station based staff. It would be to get ahead of such an analysis to award allowances of this type, particularly given the quality of the evidence.
- 211 For these reasons we reject the claim.

On Call Allowance

- 212 Permanent firefighters can be rostered to be on call, that is, to be available to be recalled to work outside of their ordinary hours, from time to time as requested by the Commissioner. Employees can receive overtime payments for attending a call, but they are not paid for holding themselves in readiness to attend.
- 213 We accept the FBEU's submission that it is appropriate to pay an allowance to employees who are rostered to be on call on the basis that they will have to return to work if they are called. Those who are so rostered are required to structure their private affairs in a manner that allows them to return to work at short notice. They must have their phones on them at all times and remain in an area with mobile coverage that is located close enough to work to return in a reasonable time. They cannot drink alcohol or take on sole caring responsibilities. Mr Bertoldi gave evidence in his statement that Appliance Training Unit inspectors who attend events with their family after work hours often drive in a separate vehicle so that they can drive directly to an incident if they receive a call.
- 214 FRNSW requires employees to work different cycles of on call rosters. In their statements, Matt Franklin gave evidence that as a Fleet Operations Officer he is on call about 48 hours out of every 8 days, during which he is expected to receive and respond to calls about motor vehicle accidents and repairs and major incidents. Craig Gordon in his role as a Canine Handler is required to be on call after hours during the week that he is rostered onto every fortnight cycle. Mr Bertoldi gave evidence that ATU instructors are required to always have their phones on them outside working hours.
- 215 The FBEU rely on the Special Case Principle. We are satisfied that there is a disability associated with being rostered on call that is not being remunerated, which provides a proper basis to find, as a special case, that the work when so rostered is currently significantly undervalued. As such the current award does not set fair and reasonable conditions of employment.
- 216 The following awards provide examples of on call allowances with the following rates:

Award	Clause	On Call Allowance Amount (\$)
Crown Employees (Department of Planning and Environment - National Parks and Wildlife Service) Field Officers and Skilled Trades Salaries and Conditions 2022 Award	7.5 On Call Allowance for Skilled Tradespersons in Kosciusko National Park Municipal Services Managed by NPWS	190 (per week) (as of 1 July 2022)

Award	Clause	On Call Allowance Amount (\$)
Crown Employees (NSW Police Force Administrative Officers and Temporary Employees) Award 2009	94.1.1 – On-call allowance	1.00 per hour (as of 1 July 2020)
Crown Employees (Police Officers – 2021) Award	48. Where the period advised to be on call is between 2 ordinary shifts or less then for each such period the rate is	22.80 (as of 1 July 2023)
	48. 24 hours, Where the period advised to be on call is 24 hours, for each such period the rate is	34.14 (as of 1 July 2023)
	48. Vehicle Care as defined in 48.2	11.35 (as of 1 July 2023)
Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009	92.1.1 On-call (stand-by) and on-call allowance	1.02 (per hour) (as of 1 July 2021)
Health Employees' Conditions of Employment (State) Award 2024	10. On Call	29.08 (per day) or 57.32 (per day on rostered days off) (as of 1 July 2024)
Landcom Award 2024	34(4). On call allowance	1.14 (per hour) (as of 1 July 2024)
NSW Ambulance Control Centre Officers (State) Award 2024	5. On Call Rates	26.70 (per 24 hours) or 107.00 (per week) (as of 1 July 2024)

Award	Clause	On Call Allowance Amount (\$)
NSW Ambulance Paramedics (State) Award 2023	26. Employees On Call	29.50 (per day) or 118.40 (weekly) (as of 1 January 2025)
Nurses' (Local Government) Residential Aged Care Consolidated (State) Award 2021	9(iii)(c) 13(i)	21.41 (per day) (as of 1 September 2024)
Public Health Service Employees Skilled Trades (State) Award 2023	4A(ii) – On-call – Rostered on duty	26.90 (per 24 hours) (as of 1 July 2023)
	4A(iii) – On-call – Rostered off duty	53.14 (per 24 hours) (as of 1 July 2023)
Public Health System Nurses' and Midwives' (State) Award 2023	On Call Allowance - per hour	4.20 (as of 1 July 2023)
	On Call Allowance minimum payment	33.60 (as of 1 July 2023)
	On Call Allowance on rostered day off - per hour	8.38 (as of 1 July 2023)
	On Call Allowance on rostered day off minimum payment	67.04 (as of 1 July 2023)
	On call during meal break – per break	16.52 (as of 1 July 2023)

Award	Clause	On Call Allowance Amount (\$)
Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2024	8A. On Call – Physiotherapists, Occupational Therapists and Speech Pathologists	10.65 (per period) (as of 1 July 2024)
	8B. On Call Allowance – Social Workers and Sexual Assault Workers	52.64 (per week) (as of 1 July 2024)
Public Hospital Professional Engineers' (Bio-Medical Engineers) (State) Award 2024	4. On Call	10.27 (per period) and 51.27 (per week) (as of 1 July 2024)
Taronga Conservation Society Australia Wages Employees' Award 2023	22.27 On Call (Standby Allowance)	1.10 per hour (per week) (as of 2023)
Venues NSW	38.1 On-call (stand-by) and on-call allowance	1.10 per hour (as of 26 June 2024)

- 217 It is unusual that the Permanent Award does not include an on call allowance. This is reflective perhaps of the fact that very few firefighters are on call in the relevant sense of having to hold themselves in readiness on the basis that they will have to return to work if called. Nonetheless the FBEU's evidence included witness statements from firefighters in certain roles which require them to work to an on call roster. We uphold this claim provided that such an allowance is limited to employees (particularly in non-station based roles) who are expressly rostered on the basis that they are "on call". It is not an allowance that is payable to any firefighter who might be recalled to work (noting that in an emergency any firefighter can be recalled to duty).
- 218 Using the abovementioned awards as a guide, in particular the NSW Ambulance Paramedics (State) Award 2023, we set the rate at \$1.20 per hour, with a maximum of \$120 per week.
- 219 The parties are to confer to propose an appropriate clause to reflect this finding.

Disturbance Allowance

- 220 The FBEU also seeks an After Hours Disturbance Allowance. The proposed disturbance allowance clause states that employees will generally not be contacted by their employer whilst on annual, long service, personal or consolidated leave or any other time the employee is not being paid to work or be on call. The proposed disturbance allowance is payable to an employee for every day or shift for which they agree to make themselves available for out of hours contact, where they have been requested to do so by FRNSW.
- 221 Whereas the on call allowance sought by the FBEU is payable to an employee who is expected to respond by attending a station or workplace if they are called out of hours, the disturbance allowance is payable to an employee who agrees to be contactable for all work-related matters out of hours, but is not expected to be recalled to a work location. The disturbance allowance is not intended to be payable in addition to the on call allowance, nor to all firefighters who can be recalled to duty in an emergency while they are off duty, pursuant to clause 27 of the Fire and Rescue NSW Regulation 2023.
- 222 We agree with the FBEU that there ought to be a disturbance allowance payable to those required to be available to respond to work-related queries when not at work. It should be clear, however, that it is only payable to those who are rostered to be available to be disturbed and is not payable to those who are rostered to be on call.
- 223 That will require the parties to give some greater thought than the FBEU has given to date as to how to define the disturbance allowance. In that regard we note that the FBEU's submissions say: "It is more likely to be practically relevant to senior Award-level staff, for example Regional Duty Commanders." That was consistent with the evidence of Mr Matt Franklin, to the effect that Regional Duty Commanders are non-station based positions which involve duties which require employees to respond to work communications from time to time when not at work but which do not require them to return to work. However the FBEU also led evidence that Regional Duty Commanders are required to "respond at a moment's notice which requires them to do things such as taking two cars to family events or children's sporting activities, missing family events due to their locality and the requirement that they must be in a reasonable response time within their zone and remain at a zero alcohol level". That is, they are required to be on call. As noted, the new entitlement should make clear that those rostered to respond to work communications without returning to work will receive the disturbance allowance and not in addition the new on call allowance, even if they are also expected to return to work from time to time.
- 224 The FBEU proposes that a disturbance allowance of \$35 per day or shift for the period that the firefighter agrees to make themselves available for out of hours contact. That figure was taken from the Crown Employees (NSW Department of Communities and Justice – Community Services Division) After Hours Service Award, which we accept as a reasonable comparator award and we accordingly determine that the allowance should be \$35 per day or shift.

Deployments

- 225 The FBEU seeks to expand the entitlements in current clause 26 of the Permanent Award for firefighters on intrastate, interstate and international deployments.
- 226 Clause 26 entitles employees who are sent on intrastate, interstate and international deployments to certain benefits. Employees on interstate deployment are entitled to an accommodation allowance if they are not provided with accommodation of a standard comparable to that required in NSW (3-star hotel or above) or to an Incidental Expenses Allowance if they are provided with that standard of accommodation. Employees on international deployment are entitled to a daily Deployment Allowance of \$202.03. Accommodation allowances for interstate deployments and deployment allowances for international deployments were first introduced in Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016 at cl 12a "Interstate and International Deployments".
- 227 The FBEU's claim seeks to extend the accommodation allowance to employees sent on intrastate and international deployments who are not provided with accommodation of a standard comparable to that required in NSW and to double the payment of the accommodation allowance in circumstances where the accommodation is not indoors and has no private sleeping and bathroom facilities. The FBEU also proposes that all such entitlements would extend to Disaster Assistance Response Team (DART) members engaging in training.

Accommodation allowances for intrastate and international deployments and where firefighters have no privacy

- 228 The FBEU justify the extension of the accommodation allowance to employees sent on intrastate and international deployments on the basis that there is no difference between the accommodation conditions firefighters are likely to experience in interstate deployments compared to intrastate and international deployments. In his written statement, David Lewis, Assistant Commissioner of Operational Capability at FRNSW, gave evidence that FRNSW may, at its own discretion, pay firefighters an allowance if they are required to sleep in a tent or accommodation that is less than 3 stars, regardless of where they are deployed.
- 229 In circumstances where the accommodation is not only of a standard that is lower than that required in NSW, but is also not indoors and has no private sleeping and bathroom facilities, the FBEU seek that an additional amount be payable to a firefighter, on top of the accommodation allowance already paid. The claim would effectively entitle an employee, in such circumstances, to double the accommodation allowance.
- 230 There was evidence that on intrastate, interstate and international deployments, firefighters have to, from time to time, camp or sleep in makeshift accommodation, such as halls or stadiums. Michael Nairn, Retained Firefighter, gave evidence in his written statement that during his deployment to Proserpine, Queensland in 2017, he was paid an accommodation allowance for the first three nights when he slept in a basketball

stadium. He was not paid the accommodation allowance for his deployment in Port Macquarie, NSW in 2021, where he also slept in a basketball stadium. Were the FBEU's claim to be granted, Mr Nairn would have been paid twice the accommodation allowance for each night he slept in the stadiums in both Proserpine and Port Macquarie. During cross-examination, Mr Lewis accepted that, as a matter of principle, there was no distinction as to why a firefighter would receive an accommodation allowance in respect of one type of deployment, as opposed to another.

- 231 An accommodation allowance, so called, is paid to an employee to reimburse them for the cost of accommodation where their employer has not provided them with accommodation. It appears that the interstate accommodation allowance in clause 26.6.1 is being wrongly treated as a disability allowance that is paid to firefighters as compensation for the inconvenience and hardship of living in uncomfortable accommodation with no private sleeping or bathroom facilities, such as in Mr Nairn's case.
- 232 The award currently contains a daily "deployment allowance" of \$208.19 for international deployments. This allowance might properly be seen as an allowance which compensates firefighters for a disability, rather than an allowance which reimburses expenses, as firefighters when deployed overseas will ordinarily be sleeping in tents or substandard accommodation. This allowance recognises that the work done by firefighters on international deployments is important work performed in difficult conditions.
- 233 In our view, the current accommodation allowance should be redrafted to only be payable to an employee to reimburse them for the cost of accommodation where FRNSW has not provided them with accommodation, and to be payable to employees sent on intrastate, interstate, and international deployments. To be clear, a firefighter on deployment will not be paid the accommodation allowance if they are in fact provided with suitable accommodation, regardless of the quality of that accommodation.
- 234 The current deployment allowance, which is a disability allowance, should be redrafted so that, in addition to being payable to firefighters on international deployments, it is also paid to firefighters on intrastate and interstate deployments who have to stay in accommodation that is either not indoors or has no private sleeping and bathroom facilities, such as a tent or stadium.
- 235 This means that firefighters on intrastate or interstate deployment who are not provided with appropriate hotel or motel accommodation will receive either the accommodation allowance (to cover the cost of finding their own accommodation) or deployment allowance (where they are sleeping in accommodation that is either not indoors or has no private sleeping and bathroom facilities), but not at the same time. Firefighters on

international deployment will be paid the deployment allowance daily, and the accommodation allowance on top of that if they are expected to stay in a hotel not already paid for by FRNSW.

- 236 The parties are to discuss and settle upon the text and the quanta of each allowance. Absent agreement, this issue will be the subject of conciliation by Commissioner McDonald.

Allowance for DART members when engaged in training

- 237 The FBEU proposed that DART or AUS-02 employees who are activated under the Major Structural Collapse Sub Plan, whether for training, exercises or deployment, should be entitled to the accommodation allowances. "AUS-02" is the United Nations' identification number for NSW's DART.
- 238 The Secretary opposes this claim on the basis that firefighters undertake this training voluntarily.
- 239 We note the evidence that DART members, during training, stay in accommodation that simulates the conditions they would face in an emergency. The claim, therefore, is in truth for a disability allowance that reflects the nature of the accommodation that is provided when training.
- 240 We can see no legitimate basis why an allowance should not be paid to employees accommodated in conditions that simulate disaster conditions, and at the same level as the deployment allowance that will be payable under the previously discussed proposed provision. In other words, the deployment allowance should be drafted in a manner that would apply to DART members when training and accommodated either not indoors or somewhere with no private sleeping and bathroom facilities, such as a tent or stadium.

Retained firefighter remuneration changes

- 241 Retained firefighters are paid a retainer in recognition of and compensation for periods of availability declared by those firefighters. The base retainer is for 24 hours of availability per week, which currently is \$78.28 per fortnight for retained firefighters except for Deputy Captains and Captains. Progression to a higher retainer, requiring more hours of compulsory availability per week, is subject to vacancies and determination by merit selection. FRNSW sometimes offers to pay higher retainers at stations in areas where there is more difficulty recruiting and retaining firefighters, for example, at stations in towns where people commute to a different town during the day for their primary employment, or stations which receive fewer calls and where retained firefighters are as a result rarely paid more than the retainer.
- 242 On top of this, retained firefighters are paid in two other principal ways. First, they are paid for the performance of duties, such as the authorised duties set out in Schedule 2 of the Retained Award (eg, appliance and station maintenance, community safety activities, recruitment, and station management). Each station is allocated a minimum

number of hours per week or month for the performance of authorised duties. Second, retained firefighters are paid for their attendance at incident callouts. Employees are required to attend a minimum of 33% of all calls received by the employee's brigade in any six-month period or 20% of all calls if their station receives more than 700 calls per year and a minimum of 80% of all calls during their periods of compulsory availability in any four-week period. An employee who attends the station or incident within 30 minutes of notification are entitled to a minimum payment of 1 hour for attendance at an incident (unless they were already performing duties at the time of the notification), with all subsequent time thereafter paid to the half hour.

- 243 Both FBEU and FRNSW witnesses during cross examination agreed that recruitment and retention of retained firefighters is a significant challenge for FRNSW. In closing submissions, both parties agreed that the very large and unbudgeted amounts of overtime performed by firefighters at the Station Officer and Firefighter ranks between financial years 2013/2014 to 2023/2024 was directly attributable to the need for FRNSW to fill in gaps where there are insufficient retained staff to keep certain stations open.
- 244 It is clear that there is a need to address the recruitment and retention of retained firefighters. Part of the answer may well be adjusting the way retained firefighters are remunerated. To that end the FBEU made a number of claims to increase remuneration in the proceedings. We note the written statements from the FBEU's witnesses that the low remuneration that is currently paid (less than \$40 per week for retained firefighters who are paid the base retainer) is an important factor in retained firefighters leaving the FRNSW, especially because firefighters often provide availability for more hours than they are required to in order to attend the required minimum number of calls.
- 245 However, we accept the submission from the Secretary that increasing the remuneration for retained firefighters will not of itself solve this problem. Shortages in retained staff are not uniform, as might be the case if inadequate remuneration were the sole cause. Shortages arise from difficulties recruiting to stations in certain geographic areas and the fact that retained firefighters usually have primary full-time employment elsewhere.
- 246 Phillip Etienne of FRNSW agreed with the FBEU that there is a need to modernise the remuneration structure for retained firefighters. We agree that the remuneration structure should be reviewed to provide a better and fairer approach, which would hopefully also assist with attraction and retention.
- 247 We were not given sufficient material however to undertake such an exercise in these proceedings. That is perhaps because the proceedings involved so many different claims that not all could be given the attention they deserved. Remuneration for retained firefighters is complicated, and the parties did not sufficiently focus and provide evidence to enable us to draw clear conclusions beyond those set out above. While we see a need to update the approach to remuneration to improve attraction and retention, that ought to be done in a case that examines the issue properly and which includes an

assessment as to whether the balance between the amount paid in the retainer and the amount paid for attending work is right. As a result, we reject most of the claims, for the reasons set out below, while upholding two of the claims.

248 We do not consider retained firefighter remuneration should be a leave reserved matter, because of the importance of ensuring industrial certainty during the life of the Award. However, it is a matter on which we would expect the parties to focus during the rest of the nominal term of the Award, such that any changes could be made to take effect at the start of the next Award, or alternatively could be the subject of proceedings before the Commission on the basis that they be concluded prior to the start of the next Award.

Minimum payment for incidents

249 Under clause 13.10.1 of the current Retained Award, firefighters are entitled to a minimum payment of 1 hour for attendance at an incident, hazard reduction or training. The FBEU's claim is to increase the minimum payment to 2 hours.

250 We note FRNSW's evidence from Andrew Wibawa, Manager of Financial Planning and Analysis with the Financial Strategy Division at FRNSW, which estimated that paying a minimum of 2 hours for all incidents, hazard reduction and unit training would cost \$3.5 million over the life of the award. We also note the concession from Paul McGuiggan, Deputy Commissioner of Field Operations at FRNSW, during cross examination that the FBEU's claim would not have the effect of doubling the current cost of this allowance, given that retained firefighters would already be paid at least 2 hours for attending an incident of that duration.

251 We determine that it is industrially fair to increase the minimum payment to compensate for the inconvenience of attending incidents and to encourage firefighters to respond to calls.

252 This claim enlivens the Special Case Principle, on the basis that it is likely to assist to attract and retain retained firefighters. It is also likely to increase the response rate. The combined effect may well result in some reduction in the overtime payments to permanent firefighters covering absences, which would offset the additional cost.

253 We do not grant the claim in full. Instead, the current minimum payment of 1 hour should be increased to 1.5 hours, with further payment for every half hour after 1.5 hours.

Increased retainer

254 The FBEU seeks to introduce a new clause to the Retained Award, which would require the Department to offer higher retainers to retained staff at a station where overtime or relief duties have exceeded 24 hours each week for 4 weeks in a row, for the purpose of attempting to reduce the overtime or relief duties being worked at the station. The clause is currently drafted as:

"Where a station has 4 weeks in a row with more than 24 hours in each week where overtime or relief duties are at the station, the Department is to offer higher retainers to all staff at the station in an attempt to reduce the overtime or relief duties being worked

at that station. If the overtime or relief duties situation stabilises, the Department may amend or revoke the higher duties in line with subclause 20.8.2.”

- 255 As noted above, FRNSW, from time to time and on an ad hoc basis at its discretion, already offers higher retainers at locations which struggle to attract and retain retained firefighters.
- 256 We note that this was a claim that counsel for the FBEU identified in closing submissions could be appropriate to implement on a trial basis.
- 257 We accept the Secretary's submissions as to the unclear nature of the claim as it is currently drafted. The text of the FBEU's clause expresses an aspiration rather than an outcome that is capable of being enforced. Expressions such as “offer higher retainers” (without specifying the quantum) and “if the overtime or relief duties situation stabilises” (without setting out objectively how that is to be measured) makes it a claim that cannot be upheld in its current form.
- 258 We consider that it is appropriate for FRNSW to continue to exercise its managerial discretion when awarding above-award retainers to attract and retain retained firefighters in order to fix short-term shortages. There may be a case for increased retainers at stations with lower callouts, but that is a matter that needs to be properly considered as part of a holistic examination of retained firefighter conditions.

Mixed station meal allowance

- 259 The Retained Award currently entitles an employee to a meal allowance when they are required to perform official duties at a temporary work location. The FBEU seeks to expand this clause to include the payment of a meal allowance to employees based at a mixed station (that is, one with both retained and permanent firefighters) who are working a shift to maintain minimum staffing on an appliance which is ordinarily staffed by permanent firefighters. The FBEU submits that this is necessary because they are not aware of their shifts in advance so as to bring food to the station.
- 260 We reject this claim for the reasons given by the Secretary. Retained firefighters never know definitively when they will be called into the station. There is no reasonable basis for granting them a meal allowance while they are working at their regular place of work, regardless of whether they are working on an appliance that would ordinarily be staffed by permanent firefighters.

Retained Officer Allowance

- 261 The FBEU seeks the payment of a Retained Station Management Allowance per week for employees who hold the substantive rank of Deputy Captain, Deputy CFR Captain, or are performing higher duties as one of those ranks, as well as the payment of a

Retained Station Command Allowance per week for employees who hold the substantive rank of Captain, CFR Captain, or are performing higher duties as one of those ranks.

- 262 In short, these are in essence allowances for being a Deputy Captain or Captain. Remuneration is already set for those classifications in the form of higher retainers and hourly rates. It is not clear why any claim for higher pay ought to be granted in the form of an allowance rather than an increase in pay. In any event, the FBEU would need to establish an increase in work value, which was not attempted.

Retained Officer training – Graduate Diploma

- 263 The FBEU seeks the inclusion of clauses in the Retained Award that would entitle employees selected as a Retained Officer or a Retained Captain to be provided the opportunity to complete a Diploma of Leadership or a Graduate Diploma of Applied Management, respectively, within 12 months of their appointment.
- 264 We note that the education requirements for firefighter ranks are set by the Commissioner. If any qualifications are so required, employees ought to be accordingly remunerated for the cost of the training and potentially receive higher pay to have their increased work value recognised. However, such training is not required by the Commissioner. While it may be useful for some firefighters who do not have any management or leadership skills, retained firefighters who achieve that rank may well have leadership skills already and would not wish to be required to do further training.
- 265 We reject the claim accordingly. We also accept the Secretary's proposition that it may often not be practicable for Retained Officers and Retained Captains to complete these qualifications, given that firefighting is frequently their second job.

Increased authorised duties hours

- 266 Authorised duties hours are work hours allocated to a retained station to perform non-incident related work, like cleaning, maintenance, drills, and administration work. Clause 13.13 of the current Retained Award sets out the minimum number of hours which a retained station must allocate to the performance of authorised duties.
- 267 First, the FBEU seeks to increase a retained station's authorised duties hours:
- (1) from 26 to 36 hours per month for station-based duties;
 - (2) from 16 to 24 hours per year for attendance at station open days and local shows; and
 - (3) in the case of any and all other authorised duties:
 - (a) from 19 to 24 hours per month if attending more than 100 but less than 200 incidents per year; and
 - (b) to 30 hours per month if attending 200 or more incidents per year.
- 268 Second, the FBEU seeks to include in a retained station's authorised duties two hours per week for each employee at the station to participate in exercise or physical fitness activities.
- 269 The first set of changes seek to alter the minimum number of hours allocated to non-incident work at the station. This claim is supported by the evidence of Daniel Finney, a Retained Deputy Captain at Bellingen Fire Station. Although the hours in clause 13.13 are expressed as "minimum" hours, the witness said that FRNSW invariably sets those hours as the actual hours in which the authorised duties and tasks must be performed, and that those hours were, in his opinion, insufficient.
- 270 The current award provision sets minimum hours. It is currently a matter for the Commissioner to determine if more hours are required at a particular station, either generally or to address needs at a specific point in time. To satisfy the Commission that the minimum hours ought to be varied, the FBEU would have to mount a substantial case that the existing award provision gives rise to health and safety concerns, or that it is otherwise necessary for the Commission to interfere with a matter that would ordinarily fall to the employer to manage. That has not been attempted, and we reject the claim.
- 271 The second change is to introduce a requirement to pay retained firefighters to attend the station to participate in exercise or physical fitness activities. Retained firefighters are retained on the basis they will be able to attend work for operational reasons. Unlike permanent firefighters, who are rostered for a shift, retained firefighters are not engaged on the basis that they are attending a station for a day, during which they might exercise. We do not see that there is industrial merit in requiring retained firefighters to attend stations to exercise.

Payment for availability

- 272 The FBEU seeks an additional payment for retained firefighters:
- (1) who are on the base retainer and thus only obliged to provide 24 hours of availability a week; and
 - (2) who provide more than 60 hours of availability per week; and
 - (3) whose station attends under 70 calls a year; and
 - (4) who attend 95% of the calls in their nominated period of availability in that week.
- 273 This is a complicated proposal aimed at providing increased remuneration to retained firefighters at stations that have less than 70 calls a year. It is intended to assist with attraction and retention at such stations, where retained firefighters might ordinarily not earn much more than the base retainer of \$78.28 per fortnight.
- 274 It is laudable in its aim to increase the attractiveness of taking a retained firefighter position at such stations, by compensating at a higher level firefighters who provide significant availability and who respond to almost all calls within their nominated availability.
- 275 However, absent a more holistic review of retained firefighter remuneration, we cannot be satisfied that it is fair and reasonable.
- 276 The clause was described by the Secretary as “highly confusing”, “administratively burdensome”, “not illuminated by the evidence of the FBEU’s only witness” and “unsupported by any evidence, sound reasoning or cogent analysis”. We do not endorse those specific criticisms, but we accept that considerably more thought needs to be given to the drafting of any such claim. For example, during cross-examination, it was not clear why the FBEU had drafted the clause to apply to stations attending less than 70 calls a year, rather than any other number. It is also not clear, on the wording of the clause, whether a retained firefighter would be considered to have “attended” 95% of the calls in their nominated availability period in a week where they did not attend any calls because that station did not receive a callout.
- 277 On the limited material we are not prepared to grant such a claim.

Private vehicle usage

- 278 Retained employees are entitled to a kilometre allowance in situations where it is necessary for that employee to use their private vehicle to attend an incident, authorised duties, or other duties. The FBEU seeks to include a clause which would provide that there is no requirement for an employee to gain approval prior to using a private vehicle for travel, and that the onus is on the Department to request non-private vehicle usage prior to travel being undertaken.
- 279 While the drafting is not clear, there seems to be force in the Secretary’s submission that the effect of the FBEU’s clause would be that firefighters would not need to seek approval prior to using their private vehicle for travel to either an incident, authorised

meeting or other duties, which would then require FRNSW to pay them the kilometre allowance. If the claim is no more than a clause that provides that retained firefighters do not need permission in advance to use their private car to attend to an incident or the station, it is not entirely clear why that is necessary.

280 We note that this is a claim that the FBEU ultimately submitted ought to be left to further discussions between the parties. That is sensible since, in its current form, it has a variety of issues, both in respect of its drafting and its industrial merit. If indeed there is industrial merit and a necessity to address the circumstances in which retained firefighters are allowed to use their private vehicles, or when they are to be compensated for such use, it ought to be addressed in those discussions. For the reasons earlier noted, we are not inclined to include it or like provisions, in a leave reserved clause.

Higher duties

281 The FBEU seeks to introduce minimum service periods and educational requirements for the Deputy Captain and Captain retained ranks. The proposed clauses would require an employee to have served no less than 24 months since starting as a Recruit Firefighter prior to being promoted to or performing higher duties as a Deputy Captain, and no less than 48 months prior to being promoted to or performing higher duties as a Captain.

282 It is somewhat unusual for a union to make an industrial claim which introduces barriers to promotion. We see no industrial merit in introducing minimum qualifying periods. The Commissioner is responsible for decisions about promotion, which are presumably based on merit. Given that retained firefighters usually have a range of workplace experience and training from their non-firefighting work, some employees will be able to take on a promotional position more quickly than others.

283 This claim is an example of the sort of claim which one would have thought the FBEU, having raised it as part of a log of claims, would have decided ought not be pursued in arbitration. Pressing claims with little or no industrial merit, is of no utility, increases costs, diverts resources and attention from more important claims and has the potential to cloud the issues in a way that is potentially detrimental to the applicant.

Easter Sunday or additional public holiday

284 The FBEU seeks the addition of a subclause in the Retained Award which it says will serve to clarify or confirm that the Easter Sunday and additional public holiday overtime provisions apply to all work done on such days, whether worked as relief duties or overtime.

285 The claim was formally pressed, but the FBEU led no evidence to identify that there was any need for such a clause. Nor is it clear from the text of the draft clause what is the issue that the clause is intending to address. In the absence of any evidence to suggest that the change is needed or appropriate we reject the claim.

Cancellation payment

286 Clause 24 of the current Retained Award sets out travel entitlements, accommodation entitlements, meals, and payment which apply to employees who have been deployed to a major emergency. The FBEU seeks a clause which entitles an employee to a cancellation allowance in certain situations where an employee has accepted a deployment offer and that deployment is cancelled, delayed, or altered with less than 48 hours' notice. After closing submissions, the Full Bench requested the FBEU to specify whether there was a minimum notice payment for an employee to access the allowance. The FBEU reverted with the following proposed clause:

"Where the Department organises any employee to attend a deployment of over 48 hours in total duration (including travelling time), and any employee member accepts the deployment offer, and the deployment is cancelled with less than 48 hours notice (i.e. the deployment is cancelled within 48 hours of the scheduled departure time), the departure date delayed or the deployment altered to be less than 48 hours in length, the Department will pay the employee the total amount they would have earned for the first day of the deployment had it continued without cancellation or alteration."

287 There are two potential justifications for the claim. The first is to compensate for the disability of arranging personal and work affairs around a substantial deployment that is cancelled. The second is to encourage retained firefighters to accept such deployments. The FBEU led evidence from Rodney Binding, a Retained Captain based at Kariong Station, that he had been requested to assist in a 5-day deployment, but that the strike team was informed on the intended day of departure that they would be leaving the next day instead. He received 1 hour of pay (the current minimum payment for incidents) and the kilometre rate to travel home, instead of the 8 hours' pay for the travel time from Kariong to Lismore he would otherwise have been paid.

288 The Secretary said in response to the claim that cancellations of or alterations to deployments were often outside of FRNSW's control, and that deployments exceeding 48 hours for retained firefighters were themselves rare. However, the fact that the cancellation is often outside the control of the Commissioner is not to the point. The issue is whether there nevertheless ought to be a payment to compensate for the loss of amenity arising from a late cancellation, delay, or alteration to a substantial deployment.

289 The claimed allowance is to be paid, in effect, for work that is not done. It can only be justified if it is a payment that compensates a retained firefighter for the loss of income that the firefighter cannot mitigate (eg, if the firefighter has refused other paid work and because of the late notice is unable to replace the lost income, as Mr Binding said had occurred in the circumstance he identified) and/or any expenses that cannot be avoided (eg, arranging childcare or pet care that cannot be cancelled). There will be retained firefighters in respect of whom no income would be lost nor expenses incurred, such that a blanket obligation to pay a full day when the work is cancelled cannot be justified.

290 We also note the proposed clause, as drafted, continues to present some ambiguity as to whether and when an employee is entitled to a cancellation allowance if the departure date of the deployment is delayed or the deployment is altered to be less

than 48 hours in length, even assuming that the notification of the delay or alteration is provided with less than 48 hours' notice. For example, it is unclear whether the clause intends to make the allowance payable to an employee whose departure date is delayed less than 48 hours before the scheduled departure time, but where that deployment is still the same length as was originally scheduled. Nor is it clear whether an employee would be entitled to the allowance where the deployment is shortened, but still commences on the originally scheduled departure time, such that they would receive the amount of the allowance (ie, the amount they would have earned for the first day of the deployment) *and* the amount they did in fact earn for the first day of the deployment.

291 There is no evidence the Commissioner does not give as much notice as possible of any cancellation. Had there been evidence of dilatory steps, that might have led to us requiring a payment to be made if less than 48 hours' notice is given in order to prompt the Commissioner to give at least that much notice where possible.

292 On balance, while we acknowledge the potential disability that might arise from a substantial deployment being cancelled at short notice, we are not satisfied that the solution of requiring a full day's pay to be paid is the right one. While up to a full day's pay may be justifiable for some retained firefighters in some circumstances to replace foregone income from accepting the deployment, for many it might properly be seen as a windfall payment.

293 We consider that the appropriate outcome ought to be that in addition to the minimum payment (which as a result of our decision above will increase to 1.5 hours) firefighters can apply for an additional ex gratia payment of up to 6 hours pay in total, if they can demonstrate that due to the cancellation of a deployment that was to be 48 hours or more in length with less than 48 hours' notice, they lost income or incurred expenses over and above the 1.5 hour payment.

Leave, including annual leave, long service leave and sick leave

294 The FBEU seeks to include clauses which would change the calculation for the rate of pay for leave and the accrual and deduction of leave. Their proposed clauses would have the effect of setting a retained firefighter's ordinary single time hourly pay rate as their pay rate for leave and make leave accrued and deducted (when taken) at the rate of 7 hours per day.

295 Payment for annual leave, long service leave, and sick leave for retained firefighters is currently calculated on the weekly average of the total amount paid by FRNSW 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. Such a system gives rise to the potential for inequity, as leave payments currently fluctuate with the amount of work that a firefighter has been called on to do in the previous 12 months. Retained firefighters thus get different leave payments when taking the same amount of leave. For example, Retained Deputy Captain and Industrial

Officer Giacomo Arnott in his written statement explained that his leave pay rate from 6 September 2024 to 14 September 2024 was \$11.87 per hour, but was \$19.46 per hour from 17 August to 23 August 2020, due to him having worked increased hours during the 2019/2020 bushfire season. He also gave evidence that firefighters at quieter stations which attend fewer callouts have very low leave pay rates, whereas firefighters who do a lot of overtime can have leave pay rates which exceed their normal hourly pay rate.

296 There is no easy solution for these issues. The FBEU submits that “the perceived inequity identified in Mr Baldi’s evidence is likely to be amenable to further discussion”. We agree that it is a subject about which there needs to be discussion and further work. We do not agree with the FBEU’s proposed simplistic solution that would see all leave (including sick leave) paid out at full hourly rates.

297 We have noted above that the issue of retained firefighter remuneration demands a holistic review, although the material placed before us does not allow us to conduct that review in this decision. The question of how leave payments are to be calculated ought to be properly and carefully considered in a standalone proceeding. As such we do not grant the claim, but accept it is an issue that should be progressed by discussions during the life of the new Award and can be reagitated with any change to take effect after the nominal term of the Award.

Recruit firefighter to firefighter procedure

298 Clause 40 of the current Retained Award sets out the procedure through which firefighters can progress and be promoted to higher ranks. Subclause 40.2.2 currently stipulates that a recruit firefighter who fails to achieve progression to a firefighter rank within a “reasonable time” “will” result in the employee being considered unsuitable for continued employment. The FBEU seeks to amend this subclause to read that a recruit firefighter who fails to achieve progression within a “reasonable time” “may” result in the employee being considered unsuitable for continued employment.

299 We agree with the Secretary’s submission that the proposed amendment has no meaningful effect. The Commissioner already has the discretion to determine whether a recruit firefighter has progressed to a firefighter rank within a “reasonable time”. The word “will” simply conveys the expectation that a recruit firefighter’s employment should be terminated once that “reasonable time” elapses. We reject the claim accordingly.

Meal and refreshment allowances during training

- 300 Clause 43.3.1 of the current Retained Award obliges FRNSW to provide morning tea, afternoon tea and lunch to all employees who attend all-day training programs. The FBEU seeks to add a provision to this clause which would entitle an employee to a meal allowance when lunch is not provided, a refreshment allowance when morning or afternoon tea is not provided, and a kilometre rate for any kilometres driven to buy food.
- 301 We agree with the Secretary's contention that this claim is unnecessary. Clause 43.3.1 already imposes upon the Commissioner an obligation to provide meals and refreshments. A failure to do so would be a breach of the award. The remedy would, presumably, be compensation to those affected who had to expend their own money.
- 302 Mr Arnott gave evidence of two occasions and Mr Binding gave evidence of one occasion where FRNSW failed to provide meals as required by the Award. That is not indicative of a widespread problem.
- 303 We are content to leave the obligation in its current form, while noting that if there was ever an occasion where the Commissioner did not abide by the current obligation in breach of the award, it would be expected that the Commissioner would seek to mitigate that breach by paying employees amounts in lieu, equivalent to the allowances sought.

Training and allowances – Rescue operations

- 304 The FBEU proposed a new clause for the Retained Award which would allow retained firefighters who are stationed at a RCR or GLR accredited station to be offered the opportunity to receive the training to be accredited as a rescue operator with the SRB. The FBEU also seeks allowances for employees who have become accredited SRB rescue operators and are based at GLR stations, employees who have FRNSW In-

Water Flood Rescue qualifications, and employees who have FRNSW Land Based Flood Rescue qualifications. The proposed clause is in similar terms in respect of retained firefighters at Hazmat appliance stations.

305 The FBEU justifies these claims on the basis that retained firefighters attached to these stations, who hold the relevant competencies, and who respond to rescue incidents, should be remunerated in the same manner as their permanent counterparts.

306 The proposed clause can be seen to create a mandatory obligation to train any willing retained firefighter to the relevant standard to become a rescue operator.

307 The evidence was that retained firefighters do undertake training and complete qualifications in RCR, GLR, In-Water Flood Rescue, Land Based Flood Rescue and Hazmat. While there is obvious sense in FRNSW offering such training, it is a matter for FRNSW as to what training it offers and when. It is not a matter that ought to be regulated by the Award.

308 The clauses otherwise seek allowances to be paid on the basis of training. We accept that, like permanent firefighters, there ought to be recognition in the form of an allowance paid to retained firefighters who hold additional competencies in respect of GLR, In Water Flood Rescue, Vertical Rescue, USAR, Trench Rescue, Partial Structural Collapse and Large Animal Rescue, provided they are payable only to those who the Commissioner has determined should obtain and maintain the competencies and skills in the relevant type of rescue work, and only while they maintain those competencies while attached to stations that have the equipment to undertake the rescue work in question and are accredited to undertake the work.

309 The question of the quantum of the allowances that ought to be paid to retained firefighters in respect of the holding of such rescue competencies is not a matter to which the parties directed much attention in their submissions. The FBEU sought exactly the same weekly allowances as sought for permanent firefighters even though retained firefighters do not work full-time and their actual hours can vary considerably, while the Secretary simply opposed the claim outright.

310 The parties are to have discussions as to the terms of the award clauses necessary to reflect our conclusion that such allowances ought to be introduced along with the quantum of new allowances. Absent agreement this is a further matter that will be added to the list of matters to be conciliated by Commissioner McDonald and which may ultimately need to be arbitrated.

311 To provide the parties with some assistance, our starting point would be to ask why allowances should not apply in the same circumstances and manner as for permanent firefighters but set at a reduced percentage reflecting their retainer level percentage. That would mean that a retained firefighter on the base retainer would receive a weekly allowance amounting to 25% of the weekly allowance paid to a permanent firefighter holding the same rescue competencies, while a retained firefighter at the 50% retainer level would get an allowance set at 50% of the weekly allowance paid to a permanent firefighter.

Consultation and Facilitation

Objectives

312 The FBEU proposed that a new clause be inserted in the Permanent and Retained Awards setting out the objectives of the Award as follows:

“8. Objectives

8.1 The broad objective of this Award is to implement initiatives aimed at meeting the challenges facing Fire and Rescue NSW (FRNSW), and to maintain a highly skilled and motivated workforce, which ensures the provision of a professional fire service delivering high quality service to the community.

8.2 The objectives of this Award are to develop a harmonious relationship between the parties including:

- a. the establishment of more varied and fulfilling jobs for employees, including agreed wage outcomes;
- b. enhanced job security for current and future employees;
- c. providing clarity and certainty to employees;
- d. the provision of a healthy and safe working environment with due regard to the safety of employees and the public;
- e. the provision of resources and working arrangements to enable FRNSW to meet new and changing service delivery requirements.”

313 The FBEU contends that this clause will symbolically enshrine the “values of cooperative, innovative and practical workplace relations”, as well as practically guide the interpretation of the Awards and the industrial behaviour of the parties. In its primary submissions, the FBEU accurately described the clause as “aspirational”.

314 An award of the Commission is a manifestation of the Commission’s application of the objects in s 3 of the *Industrial Relations Act*. There is no need for an award to separately set out the overall objectives of the particular award.

315 Awards should not contain terms that are not necessary to ensure that the terms and conditions of employment for those it covers are fair and reasonable.

316 The proposed clause, while encapsulating worthy intentions, is unnecessary. The claim is accordingly rejected.

Consultation

- 317 In 2022, the parties introduced into the Award a new consultation structure set out in Schedule 5 to the Permanent and Retained Awards on a trial basis.
- 318 The FBEU contends the trial was an overwhelming success and seeks minor amendments to existing cl 9.4 to confirm the trial structure will be maintained on an ongoing basis.
- 319 As noted below, the Secretary seeks to remove various parts of cl 9, and delete Schedule 5, which sets out the consultative mechanism. The Secretary did not proffer a replacement mechanism.
- 320 We are satisfied on the evidence that the trial has indeed been an overall success.
- 321 That was the evidence of Mr Michael Baldi (Executive Director of People and Culture), witness for FRNSW, who confirmed in cross-examination that the consultation approach has been beneficial to FRNSW and the union, resulting in improved communication and resolution of matters and the reduction of disputes.
- 322 That is not to say the existing system could not be improved. We discuss this further in the next section when considering the changes sought by the Secretary. However, and subject to the matters we address below, we see no reason not to make the minor change sought by the FBEU to cl 9.4. We grant the claim.

MOUs, Legislation and Reform, Technological Changes

- 323 The FBEU seeks to introduce four new clauses addressing the way particular issues are dealt with by way of consultation.
- 324 A proposed new clause 12, titled "Memorandums of Understanding/ Interstate Agreements", seeks that any existing agreement, memorandum of understanding (MOU), or like arrangement between FRNSW and another fire service, agency, or like

entity which affects the response requirements of employees should be submitted to the FBEU for review, and that any new agreements, MOUs, or like arrangements will be consulted on.

- 325 A proposed new clause 13, titled "Legislation and Reform", seeks that FRNSW consult the FBEU on any proposed change arising from proposed legislative, regulatory or statutory rule changes or reforms which is likely to constitute a major change or effect on employees.
- 326 A proposed new clause 14, titled "Technological Change", seeks that FRNSW consult the FBEU on any technological change affecting the application or operation of FRNSW and/or its employees.
- 327 Finally, a proposed new clause 15, titled "FRNSW Policies" seeks that any policy that affects the application or operation of the Awards or the work of employees is only to be made or varied by agreement with the FBEU.
- 328 The FBEU said in closing submissions that each of these proposed clauses "are intended to feed back in to [sic] the generic consultation at cl 10".
- 329 Notably, proposed cl 15 is drafted on the basis that "the agreement" of the FBEU is required before any policy can be made or amended, which would provide the FBEU with a right of veto.
- 330 The Secretary objected to each of the new obligations on a variety of grounds:
- (1) He objected to clause 12 on the basis that the FBEU had no justification to retrospectively inspect non-legally binding arrangements to which they are not a party and may not materially impact on their membership, nor to be consulted on agreements which are matters that fall within the managerial prerogative of the Commissioner.
 - (2) He objected to clause 13 because it could be impractical for FRNSW to consult the FBEU on statutory changes which FRNSW has no notice of or which are implemented at short notice. The FBEU also engages directly with the government in relation to statutory change.
 - (3) He contended that clause 14 would delay the rollout of any technological change. He also opposed the assumption in proposed clause 14.3 that any technological change proposed in accordance with clause 14 would be a "productivity improvement".
 - (4) He opposed the FBEU's "right of veto" regarding the creation and variation of policies.
- 331 The FBEU seeks to create consultation and agreement requirements in respect of particular matters, notwithstanding that they have not sought to establish that disputes about such matters have not been able to be adequately addressed by the existing consultation processes.
- 332 There is no reason why existing MOUs, interstate agreements or existing FRNSW policies ought to be "submitted to the Union for review". The FBEU is capable at any

time of identifying a concern in respect of an existing agreement or policy and seeking to have it varied.

333 The proposed clauses may proceed from a starting point that existing MOUs, agreements and policies were not ever “agreed to” by the FBEU. If so, they proceed from a false basis. There is no requirement for FRNSW to obtain such agreement. The obligation to consult over change is not a requirement to obtain agreement. Even though it would be regrettable if in the past there had been MOUs, agreements, or policies that affect the work of firefighters that were introduced without appropriate consultation, this does not mean that they all must be put aside and the processes started afresh. Such an approach would be highly inefficient, particularly in the absence of any evidence that as a result of such a failure to consult they were not fair or appropriate. Further, the notion that a FRNSW policy cannot be made or amended without the agreement of the union is simply wrong. FRNSW has an obligation to consult, but ultimately the Commissioner has a duty to implement necessary policies. It is always open to the FBEU to seek to elevate any dispute about such a policy to the Commission if it can identify a proper basis to do so.

334 The Secretary’s submissions as to each of these proposed new “consultation” clauses otherwise have real force.

335 We reject each of these claims.

Secretary’s claims

336 The Secretary’s application sought a series of changes to provisions of the awards dealing with consultation.

337 As became clear in the cross-examination of Mr Baldi, the key change being sought by the Secretary – namely, the removal of the Joint Consultative Committee (JCC) arrangements in Schedule 5 of the Award – was not a change supported by FRNSW itself.

338 Mr Baldi gave evidence that the JCC process in Schedule 5, which was introduced into the award in 2022, has been beneficial to both parties. In his evidence in chief, he said:

“In my view, the JCC has been a welcome addition to improving consultation, communication and workplace relations between the parties. The JCC is still evolving, moving from local level issues and concerns, to organisational issues.”

339 In his oral evidence he said:

“The approach to consultation since the last award has been beneficial to the organisation and to the union, we’ve both derived benefits from it. It’s had a number of improvements in communication and outcomes and resolution of matters and less disputation, which we’ve touched on. We want to go out and roll out awareness of consultation across the organisation and starting to put some principles and guidelines together about that, and that forms the basis of how those appeared in the affidavit.”

340 It was clear that neither he, nor FRNSW, wanted to remove the existing system altogether. Specifically, he gave the following answers in cross-examination on day 6 of the hearing:

“Q. [The JCC] was a consent clause in the 2023 awards?

A. Yes. But given the benefit of hindsight, we'd like to make a few subtle amendments to it just to clarify the obligations of both parties.

Q. Have you put those subtle amendments to the union?

A. No, we haven't.

Q. Of course, those subtle amendments are very different to what the Industrial Relations Secretary claim is?

A. Correct.

Q. You've been saying, 'We'd like to make some subtle amendments.' If those discussions could happen, would it then be Fire and Rescue's desire to keep the slightly-amended joint consultative committee in the award?

A. Yes.

Q. So the Industrial Relations Secretary's claim is the Industrial Relations Secretary's decision?

A. Correct."

341 As noted, while Mr Baldi for FRNSW said the consultation processes in place since 2022 have been working well, he did think they could be improved by some minor changes. As to how they could be improved, Mr Baldi gave the following evidence in chief:

"It is my view that the basic principles that should be considered in order to make the current consultative arrangements between the parties more effective include:

a. The FBEU being recognised as the legitimate representative of firefighters and the channel for negotiation with employees.

b. The provision of timely, relevant and appropriate information to the FBEU, which is necessary to enable them to make informed contributions to matters raised.

c. Communication, information sharing, consultation and negotiation, as the keys to developing cooperation and trust between management, firefighters and the FBEU.

d. A joint understanding of common objectives as an essential element of effective consultative arrangements.

e. Consultation and participation being recognised as a dynamic process. Organisational change and reform require management and the FBEU to acknowledge the need for a long-term perspective and commitment.

f. The existence of a formal consultative arrangement should not replace regular consultation and information sharing between management and firefighters in the workplace.

g. Recognising that consultative arrangements do not necessarily eliminate dispute, and that the development of a consultative and cooperative approach to issues mitigates the level and risk of potential conflict.

h. Consultation should not be regarded as a broad solution. Its effectiveness depends on management and the FBEU working together to understand and achieve common aims and objectives.

i. Consultation does not require agreement and does not abrogate the right of management to make the final decision on matters discussed through the consultative process, even where the FBEU does not agree, or has otherwise not addressed

matters in a timely way, having been given sufficient time to respond to the matter in question. In summary, the FBEU does not have the right of veto over the Commissioner's decision making."

- 342 We agree with Mr Baldi's summary of the principles that underpin successful consultation.
- 343 In particular, we reinforce three points which we do not think need to be expressly set out in the award, but ought to inform the way it applies in practice.
- 344 First, consultation done effectively involves a process where the union and FRNSW genuinely work together to determine the optimal outcome. This involves FRNSW approaching the union in advance of a change to provide relevant information that explains the nature and need for the change, followed by a reasonable opportunity to respond and a commitment to not finalise and implement the change without having taken that response into account, provided the response is provided as promptly as the exigencies of the issue demand.
- 345 Second, the extent of consultation and information provided will vary based on the significance of the change and its urgency. There is no need for consultation if a change has no significance to employees. A small change that has a minor impact on one or two firefighters will require a lower level of consultation than a change that will have a significant impact on a small group or a moderate impact on a large group, each of which would necessitate full consultation.
- 346 Third, consultation does not mean agreement. Provided there has been consultation and the response of the union has been genuinely considered, the Commissioner can proceed to implement a change, including to introduce a new policy. If the union does not agree and it has a proper basis to do so it can escalate a dispute to the Commission, but other than to the extent expressly provided by the Award the union does not have a right of veto over workplace change.
- 347 Evidence given by witnesses from FRNSW was to the effect that the motivation for many of the changes to remove express reference to consultation before making a particular change is because the union behaves as if its agreement is necessary before the Commissioner can implement such a new policy or other reform. Given the union's capacity to put a new policy or change into dispute and insist on the status quo being maintained for a period, it might appear, even to the union itself, that it has an effective right of veto. That is not the case. First, the union ought not to put a matter into dispute unless it genuinely considers that the Commissioner has failed to consult or have adequate regard to legitimate concerns about the proposed reform or policy. Placing matters into dispute reflexively will reduce trust and make it less likely that genuine concerns, when raised, will be given credence by the Commissioner or for that matter this Commission. Second, this Commission will be watchful for inappropriate use of the power to place a matter into dispute and will quickly move to "lift" the status quo by making a direction or order where it is satisfied that the consultation process was conducted properly pursuant to current clause 9.8. To be clear, the Commission may do

so quickly and without needing to conduct a full traditional arbitration hearing, upon being satisfied that there was adequate consultation and proper consideration of the FBEU's position.

- 348 Notwithstanding those comments, given the generally uncontested evidence as to how successful the current consultation processes have been, we are reluctant to change them, particularly without the enthusiastic support of FRNSW itself.
- 349 Further, in the absence of evidence demonstrating that the existing system is not working, we are loath to remove clauses that were inserted due to past agreement between the parties. Against that background, we turn to the particular changes sought.
- 350 The Secretary's primary case was to make changes to cl 9, including deleting the whole of Schedule 5 which sets out the existing consultative mechanism. Witnesses called by FRNSW gave evidence going to specific consultation obligations, but none gave evidence to support the changes sought to cl 9 and the removal of Schedule 5. Rather, as noted, Mr Baldi's evidence supported the retention of the existing approach. We reject the Secretary's claim in that regard.
- 351 Further to that finding, we wish to deal with one aspect of the Secretary's proposed change – namely, to amend an existing obligation that states that “no change pertaining to the employment relationship ... will be implemented prior to full consultation” to one that would provide that “any significant change affecting employees covered by this award” would require consultation. While we do not accept the need for the proposed change, we want to make clear that the existing clause ought not to be read literally in a manner that means that no change, however minor, can be introduced without “full consultation”. Consistent with the principles set out above, the extent of consultation needs to vary with the nature of the change. A change to alter the rostered start time for a group of workers going forward would require full consultation with the provision of reasons and one or more meetings. However, a one-off change to the start time for a small work group for a single day to accommodate a need for a briefing would require much less by way of consultation – probably no more than a notification of the event and its purpose and the opportunity to seek more information if required. There was no evidence led by the Secretary to the effect that the existing obligation to consult was being applied in a manner different to that which we have identified as the practical approach. If in fact the FBEU was insisting on slowing or preventing straightforward

changes of minor or no significance by requiring the Commissioner to engage in full consultation first, we may reconsider our view as to the need for a change of the sort sought.

352 We turn next to the large number of changes to specific clauses that contain existing consultation obligations.

353 In closing submissions, the Secretary did not seek to address any of these changes specifically and merely put a general submission that the consultation provisions in the current awards are unnecessarily prescriptive and complex and should be replaced with an overarching consultation obligation.

354 A large number of the proposed changes can be dealt with together. They are changes that seek to remove a reference to a particular obligation to consult on the basis that it is unnecessary in light of the overarching obligation to consult, namely:

- (1) amending clauses 7 and 43.1 of the Permanent Award concerning the training competencies developed by FRNSW in relation to the skills required to undertake the work for each classification, by removing an obligation to consult about such changes;
- (2) removing cl 10 "Climate" of the Permanent Award and cl 9 of the Retained Award, which contains an obligation to consult regarding research, planning and preparing for changes in respect of changes to climate, that was introduced into the award by consent;
- (3) removing from cl 38.15 "Lactation Policy" of the Permanent Award the requirement that the parties' negotiation and agreement to a Lactation and Work Policy will be conducted via the consultation process in cl 9;
- (4) removing from clauses 44.6, 44.7, 44.8, 44.9, 44.10 and 44.11 of the Permanent Award the words "following consultation between the Department and the Union" in respect of the determination of the merit selection process to be specified by the Commissioner to gain promotion;
- (5) deletion of clauses 44.14.3, 44.14.5 and 44.14.6 of the Permanent Award, which provide that the development and implementation of the new promotional pathways will only occur according to the Award's consultative arrangements,

that those pathways would be recommended to the JCC by no later than three months of the making of the Award, and be included by consent in the 2024 Award in the event that they are endorsed by the JCC.

- (6) removing from cl 46.4.4 of the Permanent Award an obligation to consult on the position descriptions for non-station based roles;
- (7) removing from cl 46.5 of the Permanent Award an obligation to consult on the viability of establishing a team of certain non-station based positions;
- (8) removing from cl 47.1 of the Permanent Award and cl 42.1 of the Retained Award the obligation to consult as to the content of appropriate training specified by the Commissioner;
- (9) removing from clauses 59.3 and 59.4 of the Permanent Award and clauses 53.3 and 53.4 of the Retained Award an obligation to consult regarding changes to PPE/PPC and consultation about consequential changes to training;
- (10) removing from cl 65 of the Permanent Award and cl 59 of the Retained Award obligations to consult regarding changes to station/work location and/or renovation, including the deletion of a specific clause detailing how such consultation is to occur;
- (11) removing from clauses 68, 71, 75 and 80 of the Permanent Award an obligation to consult about safe staffing numbers in respect of particular units; and
- (12) removing from cl 71 of the Permanent Award an obligation to consult regarding safe staffing numbers in the Fire Investigation and Research Unit.

355 If the introduction of the above identified clauses was in issue in an arbitral proceeding we may not have introduced some or all of the above specific consultation requirements into the award in those terms, noting the existence of the current overall consultation requirement, and a statutory obligation to consult pursuant to s 47 of the *Work Health and Safety Act 2011* (NSW) as referenced in clauses 59.3 and 59.4 of the Permanent Award and clauses 53.3 and 53.4 of the Retained Award. However, given that the clauses are currently in the awards, we turn to consider if they ought to be removed.

356 The Secretary did not lead evidence as to the genesis of those provisions. The FBEU led evidence that a number that were included by consent. While we have no evidence as to the genesis of the others, it is likely they too came into the Awards by consent. Where parties have consented to a clause the Commission will be slow to remove that clause by arbitration, absent consent and evidence that is appropriate to do so, lest it undoes in a one-sided manner a compromise deal made at an earlier time.

357 Had there been evidence that one or more of the specific clauses were causing a major impediment to the Commissioner's capacity to manage FRNSW, we might have been minded to accede to the application. However, no such evidence was led. The evidence as to those clauses in large part went no higher than an assertion that the existing

obligations are “duplicative, unnecessary and onerous”. That the obligation could be both duplicative (because the same consultation is required in any event under clause 9) and onerous is an oxymoron and unpersuasive.

358 It follows that we are unable to identify a reason, and certainly no special case, why we should accede to the amendments sought in respect of those clauses. If the Commissioner indeed agrees with the Secretary that one or more of the specific obligations do impede productivity or unnecessarily add to the length of the award without altering its effect, that is something FRNSW can take up in bargaining with the FBEU in respect of a future award.

359 We next turn to the balance of the changes sought by the Secretary that deal with changes to consultation obligations resting on evidence that went beyond merely establishing that they were unnecessary due to duplication. While in many cases these changes were the subject of evidence that was more extensive than the clauses noted above, the Secretary in closing submissions did not seek to address them specifically and relied on the same broad submissions that there ought not to be “disparate consultation obligations” in addition to the overarching obligation. Nor were the Secretary’s primary submissions more illuminating. They noted only that FRNSW had filed evidence going to the need to amend the existing “skewed consultation clauses” and then said:

“These submissions do not endeavour to detail or summarise that evidence, but rather, will let it speak for itself.”

360 That unhelpful submission has left the Commission with the task of having to wade through the large amounts of evidence to attempt to find relevant evidence and identify if it establishes a case for the change in text.

Review into models of relief duty – Clause 25.22 of the Permanent Award

361 The Secretary seeks to remove from cl 25.22 the requirement that a review into models of relief duty be conducted in accordance with cl 9 Consultation. It also seeks to delete the words: “No changes in relation to the operation of this clause or relieving will be introduced without agreement of the employer and the Union”. Mr Baldi’s evidence is that “relieving provisions historically have not and are not the subject of agreement with the FBEU” while acknowledging that “this clause is in the current Awards” without providing any evidence as to why that is so.

362 Mr Drury, in reply, noted the clause was inserted into the award by agreement in the most recent award negotiations only a year or so ago and the parties have not had the opportunity since then to complete the work prescribed by the clause. Mr Drury noted that the clause had been inserted because both parties agreed to work cooperatively to address the significant expenditure by FRNSW on overtime, with the development of better relieving models as one of the potential key solutions to this problem.

363 We have some concern with any clause that requires the FBEU’s agreement before a change can be introduced. Nonetheless, in circumstances where the particular clause has only just been introduced by consent, as part of a package of agreed changes, and

in the absence of any evidence that it has to date caused any difficulties, we are not inclined to remove it. Having said that, if the need for the FBEU's agreement proves in fact to be an impediment to the introduction of necessary reforms to address FRNSW's significant spend on overtime, FRNSW would have a good case for the removal of at least that requirement. While not formally placing this in a leave reserved clause, we determine that such an amendment could be sought and if a substantial case were made out take effect during the life of the new Award, consistent with principle 9.4 of the AMPs.

Transfer procedures – Clause 29.3 of the Permanent Award

- 364 Clause 29 deals with entitlements that arise where an employee is given notice of transfer to work in a new location. Subclause 29.3 gives effect to the transfer procedures in the Standing Orders at the time of the making of the Award. The Secretary seeks to remove the next sentence which provides that any change to those procedures requires the agreement of the FBEU. The evidence relied upon was limited to a statement by Mr Baldi that a change “should not be subject to FBEU veto”.
- 365 Mr Drury gave evidence that the clause has been in the current form since 2001 and he was not aware of any issues or disputes raised by FRNSW in relation to it. He added: “Having certainty about transfer procedures is of course a matter that is very important to our members.”
- 366 On the evidence it is not clear if the procedures have in fact been changed since 2001. If they have, the existing sentence arguably has no effect, since agreement is required only in respect of a change to the procedures as they were in 2001.
- 367 This clause is not a recent consent change, as was the case in respect of cl 25.22 discussed above. There is no evidence this requirement has caused a significant difficulty, nor is there evidence to justify the continuing need for what is currently a right of veto over change. On the other hand, there is no reason why there should not be an obligation on FRNSW to consult with FBEU over any change to transfer procedures. On balance we determine to vary the second sentence of clause 29.3 to read: “Any variation to the transfer procedures shall occur only after consultation between the Department and the Union in accordance with clause 9.”

Disputes procedure – Clause 11 of the Permanent Award, clause 10 of the Retained Award

- 368 The Secretary seeks three changes to clause 11 of the Permanent Award and clause 10 of the Retained Award, which are in identical terms.
- 369 The first change is to delete the current status quo clause during the period of the dispute procedure and replace it with a different clause. This entails the removal of the current requirement to maintain the “status quo ... in accordance with the existing situation or practice that existed immediately prior to the subject matter of the dispute

occurring or arising” and insertion of a clause providing that “normal work and the conditions under which work is performed, prior to the notification of the dispute, will continue unless otherwise agreed between the parties”.

370 The second change is to remove an obligation at the end of every step to provide a “progress report before the close of ordinary business on the next working day”.

371 The third change is to add to clause 9 of the Permanent Award (and clause 8 of the Retained Award), allowing the FBEU to use the dispute resolution clause, commencing at step 4 if, following consultation, the parties remain in dispute.

372 The Secretary put no submissions in support of the proposed changes to this clause.

373 The evidence in support of the first and last of these changes was limited to a single paragraph from a statement of Mr Baldi that simply described the nature of the changes. Mr Drury in response raised a concern that the change would not only prejudice the FBEU’s capacity to prevent unilateral change but lead to some uncertainty as to what is “normal work”.

374 The evidence in support of the second change was limited to a further paragraph providing Mr Baldi’s opinion that the requirement to provide a progress report is “inconsistent with the approach taken across the public sector”, “inefficient, adds additional administrative requirements and may unnecessarily prolong FRNSW’s ability to promptly resolve matters in dispute”. Mr Baldi provided no evidence to support his statement of opinion.

375 We noted that a number of the FBEU claims ought not to have been progressed to final hearing, given the absence of apparent industrial merit. In respect of a number of claims of the Secretary, including this one, the claim ought not to have been pressed once the Secretary assessed that he would not put submissions in support of the claim nor lead any evidence beyond a short statement describing the nature of the change. We reject this claim.

No extra claims – Clause 12 in Permanent Award, clause 11 in Retained Award

376 The Secretary sought that both Awards contain a No Extra Claims clause, and proposed it be in the following terms:

xx. No Extra Claims

xx.1 Other than as provided for in the *Industrial Relations Act 1996*, there will be no further claims/demands or proceedings instituted before the NSW Industrial Relations Commission for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the Employees covered by this Award that take effect prior to the nominal expiry of the Award unilaterally made by a party to this Award unless otherwise agreed by the parties.

xx.2 This clause does not prevent the parties from continuing collaborative discussions during the life of the Award to deliver additional enhancements to remuneration and/or conditions of employment, and to achieve additional industry wide and systemic efficiencies and productivity improvements to the delivery of Government services to the public. Changes to conditions or salaries may be jointly progressed and, if agreed, an application to vary the Award may be made by consent prior to the nominal expiry of the Award.

xx.3 The terms of subclause 12.1 do not prevent the parties from taking any proceedings with respect to the interpretation, application or enforcement of existing Award provisions.

377 Such an approach is at odds with principle 9.4 of the AMPs, which provides:

9. Arbitrated Case

...

9.4 Following determination of an Arbitrated Case the Commission will not include a no extra claims clause in the settled award, but may identify in the decision the extent to which it is open to parties to the award to make further claims that would take effect during the life of the resultant award.

378 In *State Wage Case 2024 (No 3)* the Full Bench explained the rationale for principle 9.4:

“While no extra claim commitments are an important aspect of consent award applications, there is no reason to insert such a clause into an award as a consequence of an arbitration. The integrity of the outcome is preserved without such a clause, noting the Commission’s long-held disinclination to entertain any claim to vary an award during its nominal term that unsettles the outcome achieved by arbitration. Where the arbitration is intended to settle terms and conditions for the duration of its nominal term, that intention will be clear from the decision. The Commission would not lightly allow an award settled in that manner to be varied by a further application. On the other hand, an arbitration directed to a specific matter (eg, a new allowance) is not one that would necessarily lead the Commission to conclude that other claims could not be pursued during the life of the award. We consider this ought to be reflected in a new subprinciple 9.4, which provides that after the Commission has determined an Arbitrated Case, it will not include a no extra claims clause in the settled award but may identify in the decision the extent to which it is open to parties to the award to make further claims that would take effect during the life of the resultant award.”^[46]

379 Consistent with principle 9.4 we reject the Secretary’s claim for a no extra claims clause.

380 In this decision we identify in the context of specific claims the extent to which it is open to the parties to the Awards to make further claims that would take effect during the life of the Award, consistent with principle 9.4.

Safe staffing and systems of work – Clause 32 of the Permanent Award, clause 27 of the Retained Award

381 The Secretary seeks to make changes to clause 32 to reduce the need for consultation and agreement concerning the advertisement for recruitment or promotion of permanent firefighters; the total minimum established numbers of Permanent Firefighters, Permanent Station Officers and Permanent Inspectors for Station Based

positions; and the deployment of any additional employees and/or positions. Further, the Secretary seeks to remove the need to obtain the agreement of the FBEU before changing the existing response protocols.

382 The evidence led was limited to a description of the changes sought by Mr Etienne and a statement of his opinion that “the Commissioner should not be required to consult with the FBEU on how it allocates its resources and workload”, as well as broad assertions by Mr Baldi that the obligations are “not necessary or reasonable”, are in respect of “managerial decisions” and “may result in ... delays”.

383 Mr Drury’s evidence was that these clauses were introduced into the current Awards following “significant consultation and concession by the FBEU in relation to other matters”, such as an increase to the time period that firefighters could perform higher duties and changes to the transfer procedures to allow roster changes for training purposes.

384 The existing clauses were the subject of a consent agreement. The obligation to consult over changes to safe staffing are not, in our view, onerous or inappropriate. Clause 32.5.1 currently mandates that the “response protocols currently in place at the time of making of this Award” cannot be changed “unless specifically provided for in this Award or following consultation between the parties in accordance with clause 9 and agreement”. Properly understood, those words are not a barrier to change but are facilitative of change. Absent those words, the Commissioner could not alter the response protocols without amending the award. Mindful of Mr Drury’s evidence, which was to the effect that this clause was one inserted by consent in respect of a highly contentious subject matter, we are not inclined on the basis of the statements of opinion of Mr Baldi to alter it.

385 If in the future the Commissioner’s attempts to alter response protocols in a sensible manner are unreasonably rebuffed by the FBEU, the Commissioner can come to the Commission and seek to amend this clause. Such an amendment could be sought and if a substantial case were made out take effect during the life of the new Award, consistent with principle 9.4 of the AMPs.

Medical First Responder Program – Clause 33 of the Permanent Award

386 Clause 33 of the Award addresses the steps to be taken before firefighters can be given the task of medical response work. It sets out a series of steps that need to be taken, including the creation of a working group and the engagement of relevant subject matter experts. Clause 33.8 provides that the implementation of a Medical First Response (MFR) program “will be by agreement only” following consideration of the recommendations of the working party.

387 The Secretary seeks to retain clause 33 but remove clause 33.8. The evidence in support was limited to a statement of opinion by Mr Baldi that whether a MFR program ought to be implemented “should be a decision for FRNSW only. The decision to

implement or not implement a program is a management decision and FRNSW has the right to manage its business.”

388 Mr Drury explained the genesis of the clause. The clause was inserted into the current award following a significant dispute in previous years including arbitration before the Commission. The clause was introduced by consent, involving a compromise position. That position would be undone if clause 33.8 were removed. Removing it would not resolve any dispute. The current clause provides the FBEU with some assurance that a MFR program will only be introduced after the working party has made recommendations either on agreed terms, or as a result of a successful application to the Commission.

389 To undo this clause, agreed only recently to resolve a serious dispute, at the initiative of one party is something that the Commission would only do based on evidence that a MFR program could be safely introduced in a manner that ensured fair terms and conditions of employment and that the need to obtain the FBEU's agreement was preventing the introduction of such a program. On the basis of the material filed we are not persuaded to alter the current clause in the manner sought and reject the claim. However such an amendment could be sought and if a substantial case were made out take effect during the life of the new Award, consistent with principle 9.4 of the AMPs.

Progression and promotion general provisions – Clause 44.12 of the Permanent Award

390 The Secretary seeks to amend clause 44.12 of the Permanent Award to:

- (1) remove the requirement that FRNSW agree with the FBEU in relation to minimum periods of service for each rank (clause 44.12.1);
- (2) have the Commissioner determine variations to the qualifications, training and/or training competencies, rather than having the variations reviewed by the Training Subcommittee who would in turn recommend it to the JCC (clause 44.12.2); and
- (3) have FRNSW determine, with the advice of the Training Subcommittee, the extent of any reduction in minimum period of service applied for by an employee in relation to their progression, rather than having the Training Subcommittee Commissioner make that determination (clause 44.12.3).

391 In his evidence, Mr Baldi stated that the amendment to cl 44.12.1 would not interfere with FRNSW's obligation to consult with the FBEU in relation to minimum periods of service for each rank, but that FRNSW ought to have decision-making power on this topic. He stated that clauses 44.12.2 and 44.12.3 were “duplicative, unnecessary and onerous” as they currently referred to a number of specific consultation requirements

under the Award. The amendment to those clauses would “streamline the operation of recommendations” by having the Training Subcommittee make recommendations directly to FRNSW.

392 Mr Drury gave evidence that changes to cl 44.12 were agreed in the last round of award negotiations and that the requirement to consult and agree on minimum periods of service was particularly significant to the FBEU. That is because minimum periods required to be spent at each rank impact firefighters’ career progression and promotion and accordingly their wages, skills and qualifications, and ensure that firefighters spend enough time at each rank prior to progression.

393 Mr Baldi’s evidence concluded: “FRNSW is open and willing to provide a commitment to FBEU outside of the award in respect of these general provisions.”

394 There is force in the position advanced by Mr Baldi, which is that while the FBEU has a great interest in such matters, such matters ought to be set by the employer unless otherwise determined by the Commission. However, in the absence of more detailed submissions and given the limited evidence we are not persuaded that we ought to amend clauses that were inserted by agreement.

395 We do think that these clauses ought to be the subject of careful review in the context of negotiations over the next award. Absent sensible changes, the Commission may be minded on the next occasion to remove the effective right of veto over such changes that the Award currently provides. Further, if there was a sufficient case that the existing clause was creating a real impediment to necessary change, it would be open to the Secretary to seek to vary this clause during the life of the new Award. Such an amendment could be sought and if a substantial case were made out take effect during the life of the new Award, consistent with principle 9.4 of the AMPs.

Deletion of the word “initially” – Clause 46.4.11.2 of the Permanent Award

396 The Secretary’s application included a claim that the word “initially” be deleted from the following subclause (strikethrough to indicate FRNSW’s proposed amendment):

46. Station Based and Non-Station Based Positions

...

46.4.11 Non-Station Based Position Promotion Pathways

...

46.4.11.2 A Non-Station Based (Team Leader) position advertised in accordance with subclause 46.4.1 and 46.4.2 can be advertised ~~initially~~ offering a promotional pathway for applicants from the rank of Leading Station Officer and Station Officer (with a minimum of 24 months service at the rank of Station Officer as of the closing date for applications) as follows:

...

397 No evidence or submissions were advanced in support of this claim. As a result, we are not persuaded and reject the claim.

Training and staff development – Clause 43.4 of the Permanent Award

398 In his statement, Mr Etienne described the nature of the change sought to clause 43.4 of the Permanent Award:

“FRNSW seeks the removal of the clause that requires the parties to develop an agreed framework for including in a future award which specifies the qualifications and competencies required for each rank.”

399 Mr Etienne said FRNSW did not consider it necessary for the parties to develop an agreed framework which specified what qualifications and competencies were needed for each rank.

400 On the limited evidence provided, it appears that the existing approach of having such matters addressed by the Training Committee is working. The complaint appears to be more ideological than based on practical difficulty. We have no evidence to establish why the clause was inserted and whether it was done by consent, nor any evidence that the clause is an impediment to productivity or being unreasonably applied by the FBEU. We are not persuaded to make the changes sought and reject those claims.

Establishing a Country Relief model – Clause 57 of the Permanent Award

401 FRNSW seeks the deletion of clause 57, which sets up a JCC subcommittee for the purpose of establishing a financially sustainable and effective Country Relief model to be implemented and trialled during the life of the Award, with the view to including that model in the Award in the future.

402 In his reply evidence, Mr Drury stated that the subcommittee assists in resolving the issue of country relief, and that the clause was intended to direct the parties towards completing this task by creating an award obligation. Mr Arnott also gave reply evidence that country relief entitlements are an ongoing industrial issue between the parties and that the clauses should be retained to ensure its resolution.

403 We accept the force of the evidence from Mr Drury and Mr Arnott. However, we see no reason to retain in the award a clause that requires the parties to create a subcommittee that has not been created to date to address an issue that the parties have not addressed over a long period of time. If FRNSW wishes to create a model for country relief it will need to consult about that, which it can do through the JCC. At that point the parties can determine the most effective way to address the issue, which may well be by way of a subcommittee. This claim is accepted and the clause should be deleted.

Station design, infrastructure and amenities – Clause 64 of the Permanent Award, clause 56 of the Retained Award

- 404 This clause was inserted into the Awards when they were last made by agreement. It creates a process whereby the parties are to work towards developing a guideline for standardised amenities in all Fire Stations. The Secretary seeks the removal of the clauses from the Awards.
- 405 Mr Baldi gave evidence that pursuant to this clause an Infrastructure Subcommittee, made up of representatives of both parties, has been established and will be meeting monthly to discuss current and future station renovations. FRNSW intend to maintain this subcommittee.
- 406 Mr Drury gave evidence that the subcommittee has an agreed focus on producing a guideline to standardise amenities, reduce the potential for disputes and maximise the utility and safety of station design.
- 407 Firefighters have an obvious interest in the fit out of stations, given that they not only work, but live in them when on duty.
- 408 The Secretary led no evidence to support the proposition that this agreed clause, which appears to be working as intended, should be removed. We reject the claim.

Leave Claims*Compassionate leave*

- 409 The FBEU seeks to increase compassionate leave in the Permanent and Retained Awards from 2 days to 4 days.
- 410 It is put on the basis that the existing entitlement is inadequate and is less than the leave that is granted to administrative staff employed by FRNSW, who are covered by the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 (Conditions Award). The claim relied upon the evidence of firefighter Mr Tim Anderson, who was given two shifts off work when his father died.
- 411 Those covered by the Conditions Award are entitled to family and community service (FACS) leave, which differs in nature to compassionate leave in the Permanent and Retained Awards. FACS leave is granted to employees for unplanned and emergency family situations or other emergencies that may include, but are not limited to, a family member's death or illness, emergency or weather conditions, attending to unplanned or

unforeseen family responsibilities etc. It accrues such that employees are entitled to two and a half days in the employee's first year, two and a half more days in their second year, and one day per year thereafter.

- 412 The FBEU does not make a claim to reflect the approach of the Conditions Award and so recast access to leave generally. It seeks only to increase the entitlement to leave on compassionate grounds, which is one situation which would entitle somebody to FACS leave.
- 413 We reject the claim. The current entitlement is in accordance with the federal standard set by the National Employment Standards in the *Fair Work Act 2009* (Cth).^[47] The FBEU have not made out an evidentiary case that firefighters ought to receive a higher entitlement.
- 414 We also note that there is no evidence that the Commissioner has unreasonably refused requests for unpaid or annual leave following the death of a close relative. We would expect the Commissioner to not unreasonably refuse such requests, and to refuse only where for operational reasons a request cannot be accommodated.

Special leave for union activities

- 415 Clauses 42 and 37 of the current Permanent and Retained Awards respectively entitle employees who are FBEU members and accredited by the FBEU as a delegate, and/or members of the State Committee of Management, to be paid leave to attend some union activities, including conferences and meetings of the FBEU, United Firefighters Union of Australia, Unions NSW and the Australian Council of Trade Unions.
- 416 This claim seeks to expand that list of union activities to also provide paid leave to attend interstate firefighters' union conferences, May Day marches and events, and Regional Trades Hall meetings and conferences. The justification for this claim is that there are "difficulties in taking annual leave to attend these events" and that firefighters acquire "beneficial knowledge ... when in attendance that can be used for the benefit [of] FRNSW".
- 417 Paid leave entitlements to attend such events – which go beyond training related to the role of union delegate and seek to extend the otherwise generous leave provisions for union activities – can be included in an award made by the Commission by consent. The Commission will not include them without consent. We reject this claim.

Councillors leave

- 418 This claim seeks to have included in the Awards an entitlement to paid leave for employees who are elected to Local Government as Councillors for their attendance at meetings, conferences, and other activities associated with their duties as a Councillor.

Mr Arnott gave evidence that there is a FRNSW In-Order titled "Councillor's Leave" which permits the Commission to grant leave to employees who are Councillors. This is not an entitlement in any existing award.

419 The FBEU submits that the claim has merit because firefighters can advance the interests of FRNSW in their local councils. However, it is no part of FRNSW's statutory role to have councillors elected, nor should any firefighter elected as a councillor understand that they are authorised or obliged to speak on behalf of FRNSW in such a forum. Otherwise, it is a claim put forward, it appears, on the limited basis that it would turn the existing policy into an enforceable entitlement.

420 There is no industrial merit to this claim. That the Commissioner currently permits councillors leave to attend to their duties as a matter of policy does not add to the merit of the claim. If anything, the absence of any existing dispute or difficulty with access to necessary leave serves to remove any vestige of the claim's merit. It is an example of the FBEU failing to give sufficient critical thought to the claims it sought to advance at final hearing.

Therapeutic medical donation leave

421 The FBEU seeks to have inserted in the Permanent and Retained Awards an entitlement to paid leave for employees to donate blood and bone marrow.

422 The claim for leave to donate bone marrow is derived from FRNSW's current Standing Orders, which permit a grant of up to five days' special leave at full pay to administrative and trades staff and firefighters ranked superintendent and above, and a grant of up to 48 hours' special leave at full pay for firefighters. Grant of leave is subject to the employee being listed on the Australian Bone Marrow Donor Registry (ABMDR) register, providing prompt notice of any proposed absence following the AMBDR's

advising to the employee the date of a proposed donation, and providing a medical certificate from a registered medical practitioner covering the period of absence.

Firefighters who donate blood do so on their own time.

423 Blood donation and bone marrow donation are to be encouraged, and we commend those firefighters who give up their time to provide such an important community service. However, their obvious worth to society do not of themselves justify the creation of new award entitlements to paid leave.

424 The claimed justification for the new entitlement is limited to two grounds: first, that the existing policy would be better converted into an enforceable entitlement, and second, that the standing orders "are less well known".

425 As to the first reason, there was no evidence that the absence of an enforceable entitlement has in fact led to any industrial unfairness or prevented donations. As to the second reason, there was no evidence to suggest that firefighters are unaware of standing orders, or that award conditions are "better known".

426 We accept the Secretary's submissions that the claim as drafted would oblige FRNSW to grant leave regardless of operational needs, which we do not accept to be appropriate. We also accept that the FBEU did not explain how these clauses would operate in respect of retained firefighters, who are ordinarily only paid for the performance of work that they are required to do.

427 We are not aware of an entitlement to paid leave for blood and blood marrow donation in any existing public sector award in NSW. The evidentiary case as presented does not establish a proper basis to create a new paid leave entitlement. If a fresh category of paid leave is to be created, in addition to existing personal leave entitlements, it ought to be done by way of an application for a test case that applies generally, given that there is no reason to limit its application to any particular group of workers.

Union leave

- 428 The Commissioner's Standing Orders currently provide that an employee of FRNSW who is elected to a full-time office of the FBEU can be granted unpaid leave and resume their duty with FRNSW once their term ends.
- 429 Such an approach is sensible and consistent with how other public sector employers operate. Such arrangements are not matters ordinarily regulated by award, unless as a result of a consent position.
- 430 The FBEU seeks to reproduce this entitlement from the Standing Orders as a clause in the Permanent Award.
- 431 The Secretary submitted that, notwithstanding the longstanding agreement between the parties to grant unpaid leave to firefighters who are elected to a full-time office of the FBEU, the practice should not be enshrined in a binding term or condition of employment for firefighters.
- 432 In circumstances where there is no evidence that the current arrangements have caused any industrial difficulties, we see no basis to introduce the claimed provisions in the absence of consent.

Pressing necessity leave

- 433 The FBEU seeks to have inserted in the Permanent and Retained Awards a clause which entitles an employee to be granted a leave of absence for four shifts (or four days for employees not on shift) on full pay where, in FRNSW's opinion, special circumstances exist to warrant the granting of such leave.
- 434 The justification for this claim is that it will provide an entitlement for employees to request leave in unplanned circumstances that are not currently covered by other categories of leave. The FBEU also submits that the proposal is "cost neutral" as it is at FRNSW's discretion to award this leave.
- 435 We are not minded to introduce into the award an "entitlement" to a form of paid leave that is entirely discretionary and to be applied in circumstances that are undefined.
- 436 As matters stand, FRNSW has a discretion to grant such leave. Nothing is added by making the existence of such a discretion a matter addressed by the Award. As the Secretary submits, doing so is likely to lead to disputation.

Cultural and ceremonial leave

- 437 The FBEU proposed that the following clauses be inserted into both the Permanent and Retained Awards:

"58.1 The parties to this Award recognise and value the cultural diversity of all Employees and therefore shall provide the opportunity to participate in activities of cultural, ceremonial, or religious significance for Employees who are required to observe such days.

58.2 Where attendance requires time away from work, Employees may apply for any accrued leave to which they may be entitled and shall have reasonable access to time in lieu.”

- 438 As these clauses are not opposed, we are content to include them in both awards. We note that they do not entitle employees to additional paid leave but rather place an obligation on FRNSW to facilitate employees' access to leave in order to participate in activities of cultural, ceremonial or religious significance to them.
- 439 FRNSW did oppose the inclusion of a further subclause into each Award, which would create an additional entitlement allowing employees who identify as Aboriginal or Torres Strait Islander to apply for special paid leave to attend National Aborigines and Islanders Day Observance Committee (NAIDOC) events.
- 440 The FBEU's evidence in support of this claim was limited to the evidence given by Mr Drury to the effect that, in his opinion, the claim would be a positive step towards the inclusion of diverse groups within FRNSW, at a minimal cost to the organisation. An evidentiary case to create a new entitlement to paid leave was not established.
- 441 However, we accept it is appropriate for those who identify as Aboriginal or Torres Strait Islander to be able to participate in NAIDOC events.
- 442 The agreed clauses will allow for that to occur. To avoid any uncertainty as to that, we determine that the agreed clauses 58.1 and 52.1 be amended to read as follows:

“The parties to this Award recognise and value the cultural diversity of all Employees and therefore shall provide the opportunity to participate in activities of cultural, ceremonial, or religious significance for Employees who are required to observe such days. *This includes the opportunity for those employees who identify as Aboriginal or a Torres Strait Islander to attend National Aborigines and Islanders Day Observance Committee events.*” (emphasis added.)

Study leave

- 443 The FBEU seeks to have inserted into the Permanent Award a clause which would give study leave with pay to employees undertaking courses of study approved by the employer, as well as course material reimbursement upon successful completion of a course. The leave is discretionarily granted; proposed clause 59.5 stipulates that leave is subject to work requirements and determined on that basis, but that once granted it cannot be revoked.
- 444 The justification for this claim is that granting study leave will benefit FRNSW because it will enable firefighters to attain a greater understanding of subject matters relevant to their work. The FBEU submitted that “[more] courses of education are relevant than might be immediately obvious”, including language courses and international security courses, which might be relevant to FRNSW's community education and international deployment functions.
- 445 The FBEU led evidence from two firefighters who had relied upon a “Study Assistance Policy” on FRNSW's intranet to apply for study leave, which was granted in respect of some courses between 2018 and 2022. The statement of Station Officer John Casey included an attachment from Marion Lovell, HR Advisory Officer at FRNSW, which explained that in October 2022 the FBEU filed a dispute in the Commission about

FRNSW's refusal of study leave. The outcome of the conciliation was that FRNSW would not revoke the study leave it had granted to the employee, but that it would not approve any more, and that Commissioner Webster rejected the FBEU's claim that firefighters are entitled to study leave due to the Study Assistance Policy. That Policy only applies to staff who are employed under the *Public Sector Management Act 1988* (NSW).

446 Clause 47.2 of the current Permanent Award provides:

"Upon request by an employee, the Department will consider an application by an employee to attend a course which is appropriate, relevant and recognised by the Department but is not essential for promotion. If approval is granted by the Department for the employee to attend such a course, the employee shall be entitled to the provisions of clause 48 of this Award."

447 Clause 48 provides several training course attendance entitlements, including accommodation, meals, incidentals, and compensation for travel costs.

448 We accept that if FRNSW requires a firefighter to undertake a course of study, then appropriate paid time ought to be granted to complete that course, and there ought to be reimbursement of expenses including travelling expenses, to undertake that course. We do not accept, however, that there ought to be an award entitlement to paid leave to study for a course that the firefighter decides to undertake themselves, even if that course is of potential relevance to their work.

449 As drafted the clause would appear to create an obligation on FRNSW to determine courses that are "approved" for firefighters to undertake, and having done so to provide paid leave and reimbursement of expenses to firefighters who decide for themselves to undertake such a course. We can see no basis to create such an entitlement. To the extent the proposed clause permits FRNSW at its discretion to grant paid (or unpaid) leave to undertake an approved course, it is unnecessary, as FRNSW can do that in any event. To the extent the clause seeks to do more than that and requires FRNSW to provide paid leave to a firefighter who chooses to undertake a course that the firefighter is not obliged to undertake, it is inappropriate, as it is a matter for firefighters themselves to decide to undertake further study to advance their career.

450 There is no evidence to suggest that FRNSW does not grant paid leave or reimburse expenses when it requires firefighters to complete a particular training course. If there had been such evidence, then we might have been minded to include an obligation to make clear that a firefighter who is required to undertake a particular course ought to be granted paid leave to do so and have their study expenses reimbursed. In the absence of that evidence, we do not see a need to include such an obligation.

451 We accept that a forward-thinking employer might want to encourage employees to undertake certain additional training in their own time. To that end, such an employer might develop policies reimbursing employees' training costs, or, as a matter of policy, approve leave for employees to attend lectures or complete exams. We are not satisfied, however, that a case was presented to us to justify creating an award

obligation on FRNSW to take such steps. In that regard we note the evidence led was limited to two firefighters whose study was self-selected and which included units which were not directly relevant to or necessary for the performance of their firefighting work.

Anzac Day leave

452 The FBEU proposed that the following clause be inserted into both the Permanent and Retained Awards:

“Every employee who is a current or former service person and participates in an ANZAC March/Service or similar event will be granted leave of absence on ANZAC Day without deduction from the employee’s pay or allowances.”

453 The justification for this clause is that it would provide an enforceable entitlement to ANZAC Day leave and provide “parity” with retained firefighters, who currently enjoy an entitlement to military leave.

454 The Commissioner’s Orders 2024/05, which were issued on 13 March 2024, approved leave “for all ex-services personnel and current serving Australian Defence Force Reserve personnel who [were] rostered for duty on ANZAC Day and who [marched] with the FRNSW Contingent in the Sydney ANZAC Day March” in 2024.

455 Clause 38 of the current Retained Award entitles employees who are volunteer part-time members of the Defence Forces Reserves to special leave without pay for the purpose of annual training and attending a school, class or course of instruction.

456 There was no evidence that there have been any disputes regarding the ability of firefighters who are current or former service personnel to attend ANZAC Day events. Had there been, we may have considered whether to adopt some variation of the claim.

457 However, in these circumstances we have determined not to include such an entitlement for the reasons given by the Secretary, namely that FRNSW’s ability to grant ANZAC Day leave should be subject to operational requirements and determined on a year-by-year basis, and that it is not clear how the clause (as drafted) would operate in respect of retained firefighters.

Leave for official FRNSW events

458 The FBEU seeks to insert in the Permanent Award a clause entitling “[all] employees who are participating in official FRNSW events including competitions, awards ceremonies and graduations [to] be released from duty to attend such events (including reasonable travel time) without any loss of pay or entitlements”.

459 The clause, as drafted, applies to employees who “participate” in official FRNSW events. However, Mr Drury during cross-examination explained that the FBEU only intends for the clause to apply to employees who are *invited* to attend FRNSW events. The proposed clause is thus ambiguous in its scope.

460 The Secretary contends that it should be a matter for the Commissioner to determine if employees should be released from duty and paid to attend official events. There are no doubt events which firefighters are invited to, but not necessarily expected to attend.

In respect of such events, the Commissioner should not be under an obligation to pay those who choose to attend, but it would be appropriate that the firefighters who choose to attend be entitled to be rostered off duty to allow them to attend.

461 The FBEU's evidence, which was limited to Mr Drury's opinion evidence, was to the effect that there had been "some issues" with employees being able to be released from duty to attend events like graduation ceremonies for promotions or award ceremonies. In our opinion, that is not sufficient evidence to persuade us to adopt some variation of the claim that would balance the operational needs of FRNSW with the ability of firefighters to take unpaid leave to be able to attend.

462 Given the state of the evidence, we accept that the current position, where FRNSW has a discretion to determine whether a firefighter may be given permission to attend and a discretion as to whether they ought to be paid for doing so, should continue.

Other Claims (FBEU)

Overtime

463 Permanent employees are currently entitled to payment for at least 15 minutes of overtime on each occasion that they work overtime, at a rate of time and a half for the first two hours and at the rate of double time thereafter. The FBEU seeks to increase the minimum overtime payment from 15 minutes to 4 hours and for all overtime to be paid at double time. It submits that this addresses ongoing disputes regarding the interpretation of different recall types in the current overtime clause, namely, a "recall to incident" and a "recall to maintain minimum staffing levels". A recall to incident provides for a 2-hour minimum payment whereas a recall to maintain minimum staffing levels provides for a 4-hour minimum payment. The FBEU thus submits that its amendment ensures a consistent minimum overtime payment for employees.

464 We reject the claim. We accept the proposition by the Secretary that to the extent there are disputes that arise in respect of the payment of overtime, they ought to be addressed by clearer drafting in the Award, rather than changes to the existing entitlements. The FBEU has not given any further rationale or evidence to justify why there should be such a significant increase in the minimum payment, particularly in circumstances where a firefighter is required to perform no more than a short period of overtime work, like finishing a shift 15 minutes late.

Deletion of Clause 3.5

465 Clause 83 of the current Permanent Award provides that Superintendents and Chief Superintendents, being "Executive Officers" under the Award, are to work an average of forty ordinary hours per week "on a flexible basis according to the needs of the organisation on any day of the week or at any time of the day on a self-directed

- rostering basis". They are excluded under cl 3.5, from overtime pay payable under cl 24. Instead, they are entitled under cl 83.2 to record and accrue additional hours worked as time off in lieu (TOIL), which is granted at the Commissioner's discretion.
- 466 The FBEU seeks to delete clause 3.5, so entitling Executive Officers to a range of monetary entitlements, including overtime. The FBEU justifies this claim on the basis that wage rates do not currently adequately compensate executive officers for their level of skill and responsibility and demands on their time outside of ordinary hours. It was also submitted that TOIL is an impractical panacea for these employees since, without backfill, they have to attend to a backlog of work once they return to work.
- 467 The FBEU relied on the evidence of Zone Commander Rod Chetwynd and Chief Superintendent Stephen Hirst.
- 468 Mr Chetwynd gave evidence that as Zone Commander, he was responsible for the overall strategic command of the 19 fire stations in his Zone, including the supervision and mentoring of deputy commanders and station commanders. Executive Officers can work additional hours during major emergencies, when they are deployed into specific roles (eg, Deputy Incident Controllers, Liaison Officers) and then transition back into their substantive role, which are often not backfilled in their absence. Mr Chetwynd gave evidence that it can be difficult for Executive Officers both to find time to take TOIL and to find somebody to fill their position so that work does not accumulate while they are away. For example, Mr Chetwynd gave evidence that he worked over 200 additional hours over two to three weeks during the 2021 North Coast Floods, and that he was not able to access his TOIL until a few months after the incident.
- 469 Stephen Hirst, as a Chief Superintendent, is responsible for the coordination of FRNSW's operations in the Regional South Area. He gave evidence that he frequently works additional hours outside of his regular work hours from 7.30am to 3.30pm, as he is contacted by staff who finish work after 3.30pm, participates in afternoon meetings, and attends to critical incidents. He is not paid for working those additional hours. Similarly to Mr Chetwynd, he said that it was not practicable to take TOIL because he eventually has to work additional hours to attend to the work that has accumulated during TOIL. He also gave evidence that he was often contacted while on leave including when taking TOIL.
- 470 Both Mr Chetwynd and Mr Hirst noted that the Commissioner can allow discretionary overtime payments for Executive Officers where they cannot allow an employee to take TOIL, but that this only tended to happen during major emergency events.
- 471 Executive Officers are paid at higher levels by salaries which are "all incidence rates of pay" and include compensation for the non-payment of an annual leave loading. The nature of the work of Executive Officers commonly requires them to work beyond the hours of a standard day to get the work done. While that work has to be done, as that

additional time is largely self-directed they retain some level of control over when they work those additional hours. They account for the additional hours and seek and obtain approval to take TOIL to compensate them for those hours.

472 If Executive Officers were able instead to claim overtime pay for that additional self-directed time, then inevitably pressure would be brought to bear to reduce or justify such overtime, reducing the control those officers have over how they self-manage their work.

473 Any change to introduce overtime pay at these senior levels for such additional hours would create a significant precedent that may flow on to other like positions. We accept that overtime is generally not granted to executive employees in awards made by the Commission or in federal awards or agreements.

474 For those reasons we are not inclined to grant the claim as drafted. Nor are we minded to remove the exclusion to the application of other clauses under clause 3.5, namely, clause 18 Meal and Refreshments, clause 25 Relieving Provisions, clause 48 Training Course Attendance Entitlements, clause 36 Examination and Assessment Leave, clause 50 Court Attendance Entitlements, clause 27 Notice of Transfer and clause 28 Transfers Outside of the GSA.

475 However, while we are not minded to grant a claim that would see Executive Officers entitled to be paid for additional hours worked, we take a different view in respect of hours worked outside the ordinary span of hours that Executive Officers are directed or required to work as a result of a particular incident. In that regard we have in mind the emergency situations like those identified in the evidence of Mr Chetwynd.

476 To be clear, we do not have in mind situations where an Executive Officer works additional hours to complete their usual work duties (which ought to continue to be addressed by the current entitlement to TOIL), nor a situation where an Executive Officer is contacted out of hours and as a result does some work from home. Rather, we have in mind the limited circumstance where an Executive Officer attends work (including an incident location) on a weekend or public holiday, or attends or remains at work after 6pm on an ordinary work day, in circumstances where he or she is directed (as in Mr Chetwynd's second example) or required (as in his first example) to do so. While there is evidence that in such cases the Commissioner from time to time exercises a *discretion* to pay overtime for such hours and does so at the employee's usual hourly rate of pay, in our view there ought to be an *entitlement* for Executive Officers to be paid for such work, not at overtime rates, but at their ordinary rate of pay with a minimum payment of 2 hours. Ordinarily an Executive Officer would need to seek and obtain verbal or written approval from their manager in advance of attending work to qualify for payment rather than pay in lieu. In an emergency situation an Executive

Officer may not be able to get approval in advance. In such a case they would be entitled to be paid rather than take TOIL if FRNSW determines after the event that in the circumstances their presence was required.

477 We leave to the parties the exercise of drafting an appropriate amendment to the current clause 83 that reflects our decision. The parties should also address clause 3.5, as it commences with the words "The only exceptions to subclause 3.4", despite there being no subclause 3.4.

Licence reimbursement (Permanent) and Heavy Rigid Licence reimbursement (Retained)

478 The FBEU claims a new entitlement for all firefighters "to be provided with" a Heavy Rigid Licence to be used in the course of their work or reimbursement for the costs of obtaining such licence. The claim extends to the provision or reimbursement of any other type of licence required to be held by the employee for the purpose of carrying out their roles and responsibilities.

479 Under the current award, firefighters are not entitled to any reimbursements for obtaining any such licences.

480 FBEU notes that at some point, most firefighters will need to go to a station which has a heavy rigid appliance and therefore require the Heavy Rigid Licence. It provided evidence that in light of new machinery upgrades to several stations, about 50 to 60 staff would need to obtain this licence in the next two years in order to perform their duties and operate these appliances.

481 FRNSW submitted that this entitlement, if granted, would require them to reimburse firefighters for all licences held that are required during the course work which would also include their ordinary driver's licence and regardless of when they obtained such licences.

482 FRNSW accepts that if a firefighter is required to obtain a Heavy Rigid Licence to perform their role, they would be given the opportunity to obtain that licence at FRNSW's expense. FRNSW noted that the current clause goes well beyond such an entitlement and is not fair or reasonable.

483 Following submissions the FBEU accepted that in light of the drafting issues identified, it would be better for the claim not to be determined by these proceedings and rather should be the subject of further consideration by the proposed 'Remuneration Taskforce'. We agree that more thought needs to be given to these matters.

484 There is no evidence that firefighters who are required to obtain a Heavy Vehicle Licence or a Heavy Rigid Licence are not reimbursed for any relevant expenses associated with obtaining that licence. If that were disputed, there may be a need to consider a clause to address such a situation. Such an amendment could be sought and, if a case were made out, take effect during the life of the new Award, consistent with principle 9.4 of the AMPs.

Childcare reimbursement

- 485 The FBEU proposed a new clause in the Permanent Award directed at reimbursing firefighters who, as a result of being recalled to work overtime or otherwise being required to work outside of their normal hours, would incur childcare costs. There is currently no such entitlement available to firefighters.
- 486 The FBEU contended that this was a fair and reasonable claim that was directed at encouraging the maintenance of appropriate staffing levels and removing barriers to entry and retention of female firefighters, noting also that the claim would not extend to circumstances where an employee elected to work overtime.
- 487 FRNSW submitted that if a firefighter who was asked to work outside their normal hours could not do so due to childcare commitments, they were entitled to resist such work so that no additional childcare costs would be incurred. It also relied on the fact that childcare expenses were not categorised as work expenses such that the allowance could attract fringe benefits tax.
- 488 Following the filing of submissions, the FBEU accepted that in light of the issues identified, it was a matter best left to be dealt with by the proposed 'Remuneration Taskforce' in line with its amended claim.
- 489 Access to appropriate childcare and the funding of such childcare is a significant policy issue that is addressed by federal legislation and federally funded subsidies. Any introduction of an entitlement to payment of childcare allowances, even in the limited circumstances identified, would entail major changes that would not only have obvious flow-on risks, but would need to be carefully considered in light of the way it would affect access to childcare for employees generally.
- 490 The evidence relied upon by FBEU did not extend beyond the opinion of the Secretary, Mr Drury, that it would provide cost of living relief to working parents.
- 491 The evidence did not seek to come to terms with the complexity of the subject matter. Like other claims, it had the hallmarks of something that was added to a 'wish list' rather than being given the full and proper consideration that it should have received.
- 492 While we accept the importance of steps directed at removing barriers to entry and retention of female firefighters, on the material presented we are not satisfied that this major change is one that has been sufficiently thought through and justified with cogent evidence to be granted. We reject this claim.

Travelling compensation

- 493 The FBEU seeks to change the method by which permanent firefighters are reimbursed for their travel costs.
- 494 Clause 20.7 of the current Permanent Award sets out how an employee is reimbursed for their travel cost. An employee is entitled to the option of using public transport or reimbursement for use of the employee's private vehicle, except where an official vehicle is provided. Where an official motor vehicle is unavailable and public transport

is “reasonably available” for the journey, an employee who elects to use a private vehicle is reimbursed at the “specific journey rate” or the cost of the journey by public transport, whichever is the lesser amount. Where an official motor vehicle is unavailable and public transport is not reasonably available for the journey, an employee who agrees to use their private vehicle is reimbursed at the “official business rate”.

495 The FBEU contend that this method of reimbursing travel costs should be entirely revised as follows. The FBEU’s proposed new clause sets out a presumption that an employee will be provided with an official motor vehicle to travel to and from a temporary work location or to attend a training course or conference. If an official vehicle is unavailable, and the employee agrees to use their private vehicle, they will be reimbursed at the official business rate, whereas if an official vehicle is available but the employee elects to use their private vehicle, they will be reimbursed at the lower specified journey rate. In other situations, an employer and employee may agree for the employee to undertake alternative private and/or public means of transport, for which the employer will reimburse and ordinarily organise the travel arrangements. The proposed clause does not use public transport costs as the standard by which a person who uses their private vehicle is to be reimbursed.

496 The FBEU’s redraft of the claim is said to be justified on the basis that there is ongoing disputation as to whether public transport is “reasonably available”, particularly when firefighters are required to undertake regional travel. Mr Anderson gave evidence that firefighters from the GSA come to Dubbo each year to provide Country Relief. He was not aware of a circumstance where a firefighter has taken public transport for Country Relief, as it takes about 5 hours to drive from the GSA to Dubbo, compared to about 8 hours on public transport. He also said that firefighters prefer to use their own vehicle so that they can use it when they are off duty as well as to transport their PPE, uniform and clothing. He gave evidence that disputes often arose when firefighters claimed for travel reimbursement after the travel has occurred as to whether they should be reimbursed at the higher official business rate or lower specified journey rate, an issue

which turns on whether public transport is “reasonably available”. The FBEU submits that its proposed clause would avoid disputation arising from differing views as to whether public transport is “reasonably available”.

497 The Secretary contended that, as FRNSW does not have enough official motor vehicles to provide to employees traveling to a temporary work location, training or conference, the effect of the FBEU’s proposed claim is to allow nearly all employees to access the higher official business rate for using their personal vehicle.

498 We agree with the Secretary that the existence of occasional disputes about whether public transport is “reasonably available” does not form a proper basis to abandon the existing clause entirely, in favour of an entitlement in every case to reimbursement for all travel at the full official business rate.

499 In light of the evidence, however, we accept that the current clause is giving rise to situations where firefighters are required to use their private car in practice because public transport is impractical, but only being reimbursed at the cost of public transport because, while impractical, it is available.

500 This proposition seems to be accepted by the parties. They have been consulting on guidelines as to when public transport will be reasonable for this kind of travel, and when it will not. This is encouraging, which we think ought to be reflected in an amendment to the award clause.

501 To that end we have determined to make a more modest amendment to the clause which adds to the existing words “reasonably available” the additional words “and practicable”. The intention is to ensure that situations like those described by Mr Anderson are addressed.

502 The parties are to consider whether anything beyond the proposed change is required to ensure that firefighters are reimbursed whenever they need to use their private vehicle because public transport, while technically available, is impracticable and if there is any other textual amendment to assist to reduce disputation as to the circumstances in which the entitlement arises. Absent agreement, this issue will be the subject of conciliation by Commissioner McDonald.

Rest and recline

503 The FBEU seeks an entitlement permitting employees who are on duty between 10.00pm and 6.00am to recline and sleep where there is no emergency response work to be done and to not be unnecessarily disturbed during those hours. The drafted clauses in the Permanent and Retained Awards require the employer to provide a bed

and mattress for each firefighter on duty to allow them to rest and recline or otherwise to pay an accommodation allowance to each firefighter to whom those items are not provided. They also require employees to provide their own bedding items.

504 The Commissioner's Standing Orders currently permit, "at the discretion of the Commissioner", all permanent officers and firefighters to recline and sleep between 10.00pm and 6.00am, unless they are on rostered on "watchroom 'N' duty".

505 The FBEU submits that this entitlement should be included in the award to provide certainty as to its existence, since the Standing Orders currently stipulate that "sleeping must be regarded as a concession which may be revoked by the Commissioner at any time".

506 The Secretary contended that firefighters' entitlements to sleep while on shift should be a matter that is left to policy, since the Commissioner is required to have regard to work health and safety (WHS) considerations, operational requirements and FRNSW's obligations. The Commissioner's operational context and circumstances may differ between fire stations and even within one fire station depending on the day and the matters to which FRNSW need to respond.

507 Following the filing of submissions the FBEU sought that this claim should be contained in a leave reserved clause, on the basis that the Secretary misunderstood the proposed claim, which specified that the entitlement only applied "when there is no emergency response work to be done".

508 We agree with the Secretary that the clause, insofar as it applies to retained officers, seems misconceived, given that they do not sleep at the station.

509 We accept, as contended by the FBEU and recognised by the Commissioner, that it is not only appropriate but important that firefighters rostered on 24-hour shifts should be given the capacity to sleep, provided they remain ready to respond as and when required instantly to address calls. That requires beds to be provided to firefighters.

510 However, we agree with the Secretary that the clause as drafted is inappropriate. Setting designated rest hours and introducing the notion of "unnecessary" disturbance are both restrictions that may not be appropriate in every circumstance. The evidence in favour of the need for such a clause was limited to the opinion evidence of the FBEU's Secretary. Had the FBEU led any evidence that firefighters are in fact unable to sleep when they are not required for work, we might have taken a different view. However, for the reasons expressed by the Secretary, we are of the view that rest and recline should at this time remain a matter governed by policy.

Classifications

511 The FBEU's claim involves amending the Classifications clause to set out the qualifications that correspond to a firefighter at each classification level.

512 We note that the very limited justification for the claim submitted by the FBEU extended to recognising the benefit of structured training and ensuring that all leadership officers

had access to the courses and completed them.

513 FRNSW submitted that the evidence on which the FBEU relied was irrelevant to the claim and that no evidence had otherwise been led to support the claim and meet its onus.

514 We accept that it is appropriate in principle to upskill firefighters who move into higher level positions by providing them with further training to enhance their capacity to perform in new roles. However, we are not convinced that the FBEU has established a case to justify mandating qualifications for those positions, either generally or in respect of the ones specified in the proposed amendment.

Senior Firefighter to Station Officer promotional pathway

515 After the conclusion of the hearing, the parties reached a consent position on a clause (cl 63.6 of the FBEU's proposed new Permanent Award) to establish a procedure for the progression of a senior firefighter to station officer.

516 We are content to include that clause in the terms agreed to by the parties.

517 The parties have committed to reviewing the clause 12 months after its commencement.

Station Officer to Inspector promotional pathway

518 Mr Chetwynd gave evidence that consultation remained ongoing for the station officer to inspector pathway.

519 We note that the FBEU sought that there be a mandated pathway, but did not put forward a proposed clause. Nor was any evidence led on this point beyond Mr Chetwynd's evidence.

520 We encourage the parties to continue discussions on this subject. The making of the award will not prevent the parties from seeking the assistance of the Commission during the life of the award to progress those discussions. The outcome of those discussions can be included during the life of the award by consent.

521 We are not minded however to identify it as a claim that can be implemented by arbitration during the life of the Award under principle 9.4 of the AMPs. Unlike the previously discussed issue, there is no evidence that this issue was agreed in principle.

Conduct resolution, reports and charges

522 The FBEU proposed a new clause in both Awards to establish a procedure to apply to misconduct allegations and formal charges.

523 It was the position of the FBEU that the clause was the subject of ongoing discussions between the parties and that the parties were close to agreement. The FBEU submitted that the clause would provide certainty in respect of procedures which have historically been the subject of major disputation, especially in respect of the adequacy of

investigation processes.

524 We note that the FBEU has not supported the claim with any evidence. The Secretary's position was that the FBEU had thus failed to meet its onus.

525 In closing submissions, the FBEU proposed that this claim should be placed in a leave reserved clause.

526 We can accept in principle that there is merit in a clearly stated and agreed process for addressing conduct allegations. However, careful consideration should be given to any detailed mandatory step-by-step processes. While they might be designed to require absolute procedural fairness, such mandatory processes often do not have the flexibility to deal with the variety of circumstances that can arise, frequently cause unnecessary delay and, more importantly, tend to give rise to disputes about whether the process has been correctly followed that can cloud or even overtake the merits of the case. In many circumstances, a better process can be one that mandates certain minimum standards of procedural fairness, but allows for decisions to be made quickly where necessary.

527 In the absence of any evidence we are not minded to include this in a leave reserved clause. We take the same approach as we have for the Station Officer to Inspector promotional pathway claim. Like that matter, the Commission stands ready to assist the parties to come to an agreement by conciliation during the life of the award. Any arbitrated outcome would take effect after this new award comes to the end of its nominal term.

Merit Selection Process Disputes Panel

528 The FBEU seeks to insert a clause in both Awards which would require the Department and FBEU to establish a Merits Selection Process Disputes Panel to review and assess all disputes from unsuccessful candidates for any merit selection process.

529 The FBEU submitted that internal promotions are subject to a high level of internal disputation in respect of the merit selection process and that the Disputes Panel would be a mechanism to deal with these disputes before they escalate to litigation.

530 The only evidence which the FBEU provided in support of this submission was in Mr Chetwynd's witness statement, in which he stated that, following the abolition of the Government Related Employees Appeals Tribunal (GREAT), the only avenue currently

available to employees to resolve this matter is the Disputes Procedure at clause 11 of the Award. Mr Chetwynd gave opinion evidence that this process “is rarely the most effective” and “can create confusion and delays in appointments to positions”.

531 The Secretary submitted that the legislature, in abolishing the right to promotional appeals to the GREAT or the Commission, plainly intended to abolish promotional appeals, and that the establishment of the proposed Disputes Panel would create a quasi-tribunal.

532 Prior to making closing submissions, the FBEU proposed that this claim be placed in a leave reserved clause.

533 From time to time, unsuccessful applicants for merit selection may wish to raise a grievance. Currently one way for that to be done is for the union to raise the issue as a dispute under the dispute resolution procedure. We can readily accept that there would be a benefit in a bespoke procedure being created by agreement to deal with such disputes. That might include the capacity to seek a review of a decision by a more senior officer. However, we do not agree that the solution ought to be the creation of a de facto arbitral tribunal, or any mechanism that would see a person other than the Commissioner or his or her delegate determine the final outcome of merit selection matters.

534 The Commission is happy to assist the parties to reach an agreement as to a bespoke process to deal with such disputes which if agreed could be implemented as a matter of policy, or, if agreed, included in the award. We are not minded however to identify it as a claim that can be implemented by arbitration during the life of the Award under principle 9.4 of the AMPs.

535 We note that one aspect of the proposed clause that is meritorious is the ability of employees who are not selected to be able to obtain feedback as to the reasons they were not selected, so that they can identify how they might improve. We are not minded to create an award obligation to that effect, but we make a recommendation to the following effect:

The Commissioner should provide feedback to unsuccessful candidates for promotion as to the reasons they were not selected if requested.

Health and safety in the workplace

Election of health and safety representatives

536 The FBEU proposed a new clause in both Awards that would mandate how Health and Safety Representatives (HSRs) are elected, including having the union act as the returning officer.

537 Division 3 of Part 5 of the *Work Health and Safety Act* and Part 2.1, Division 2 of Chapter 2 of the *Work Health and Safety Regulation 2017* mandate how HSRs are elected. It is not the role of an award to address such matters.

538 The union did not put forward a positive case for this change, nor did it lead any

evidence to identify a need for it.

539 The claim is rejected.

Health and safety representatives' access to equipment

540 The FBEU proposed a new clause in both Awards that seeks to create an obligation on FRNSW to ensure that HSRs will have access, at a minimum, to computers, email, telephones, notice boards, and meeting rooms to perform their duties.

541 The FBEU submitted that HSRs regularly made use of such equipment. Its evidence in support of this claim was limited to the witness statement of HSR Rhett Russel. Mr Russel's evidence was to the effect that he was usually contacted about WHS issues via phone or email; that he used noticeboards to notify firefighters with updates to WHS policies, procedures and other documents; and that, in his opinion, it would be useful to access meeting rooms because firefighters want a private space to talk with their HSR.

542 The Commission accepts that, to do their job, HSRs will need to use equipment supplied by FRNSW, such as a computer and phone.

543 The clause as drafted would appear to create an obligation to provide additional equipment.

544 The evidence indicated that Mr Russel currently makes use of existing computers, phones, notice boards and meeting rooms. Where a station does not have a meeting room, he can use an office. There does not appear to be any issue as to access to equipment that requires an award obligation to be created.

Training of health and safety representatives

545 The FBEU proposed a new clause in both Awards that would have HSRs trained by their "chosen accredited training organisation", that is, an FBEU approved training organisation.

546 The evidence in support of this submission was the view of Mr Russel, that training run by an external third party organisation could "assist in avoiding any potential conflicts of interest by ensuring HSRs are fully informed of their rights without any agenda". That evidence provides an inadequate basis to create an award obligation on FRNSW to ensure that all training is provided by an external provider that is approved by the FBEU.

547 The FBEU also proposed a clause that would permit HSRs to attend FBEU training courses. The FBEU submits that the purpose of this clause is to ensure that firefighters receive training that has content which is relevant to their experience and is industry specific. There is nothing currently preventing the FBEU from providing information and training to its members who are HSRs.

548 Both claims are rejected.

Reporting systems

- 549 The FBEU proposed a new clause in both Awards that seeks to require FRNSW to maintain a register of all WHS issues reported and a separate register containing individual employee records relating to any injuries, illness, near miss or exposure to hazards reported to FRNSW.
- 550 The FBEU submitted that the Notification of Injury, Illness, Exposure or Near Miss (NIIENM) system, the current system for reporting injuries and near misses, was poorly understood and irregularly used by firefighters. The NIIENM system also does not record other WHS issues, like equipment or truck failure. Mr Russel's evidence on this point was to the effect that he is regularly notified about truck faults which are currently not recorded on a register, and that he believed that the implementation of a register would allow for such issues to be identified, communicated and rectified earlier.
- 551 The Secretary submitted that while it could be accepted that information sharing was valuable, that could be addressed by educating firefighters on the use of the existing NIIENM system. Moreover, the Secretary submitted that this was not a matter which related to terms and conditions of employment, and that the Awards should not regulate the operational sharing of information between employees and between employees and employers.
- 552 FRNSW has WHS obligations. Ordinarily it is not the role of the Commission to determine, by an award clause, how they are to be met. The Commission will not interfere with the rights of management unless those rights are exercised unjustly or unreasonably, or impose harsh, oppressive or unsafe demands on employees..^[48]
- 553 The evidence to suggest the existing systems are inadequate and to support the creation of an award obligation to create a new register was limited and insufficient.
- 554 We have no doubt that Mr Russel takes his role as an HSR seriously and, in his evidence, he has provided examples where FRNSW's systems have failed. However, that evidence is not sufficient to satisfy us that it is necessary that we impose an award obligation on FRNSW to create new reporting systems, in circumstances where there is an existing system.

Work Health and Safety Consultation Policy

- 555 The FBEU proposed a new clause in both Awards that would oblige the parties to jointly develop and implement a Work Health and Safety Communication Consultation and Engagement policy "within 6 months of the date of certification" (which we understand refers to the date the new Award is made). The evidence in support of this proposition

was limited to Mr Russel's opinion that the clause would ensure that the new reporting systems and registers proposed by the FBEU would be regulated by a policy and that there would be consultation in relation to each of these matters.

556 It was the Secretary's position that there was no demonstrated need for such a policy document, nor was it the Commission's role to require its creation.

557 We agree with the Secretary that the creation of policies is a matter for the Commissioner. It is not clear to us on the evidence that there is a need for a WHS communication policy. However, if such a policy is seen as useful, it ought to be developed in consultation with the FBEU.

558 We reject the claim that an obligation to create such a policy become an award term.

Rehabilitation and hygiene units

559 The FBEU proposed a new clause in the Permanent Award which would require FRNSW to implement rehabilitation and hygiene units, staffed by a minimum of two station based firefighters, which would include equipment such as an agreed appliance (ie, vehicle), a tent, cooling chairs, misting fans, drinks, hygiene items, portable toilet and shower facilities, spare clothing and portable heaters. These units would be set up on nearby fire grounds and incident sites, with the intention that firefighters could use these facilities to decontaminate before returning to the station.

560 The FBEU identified this claim as one that could be placed in a leave reserved clause, on the basis that Mr Lewis, during cross-examination, said that FRNSW is currently "taking steps" to improve decontamination procedures, which could include the provision of shower pods.

561 The evidence established that onsite decontamination, immediately after firefighting, is of real importance in addressing health and safety risks associated with exposure to toxic chemicals and materials, as it prevents the contamination of fire trucks, fire stations and firefighters' homes. The evidence shows that FRNSW's standard practices for incident ground rehabilitation involve extensive steps to address such risks, including by providing washing facilities, bottled water, refreshments, meals, means of providing cooling or heating, and shelter at the incident site, as well as bagging and tagging contaminated PPE before returning to the truck or hosing down their PPE if they are being re-deployed.

562 During a site visit to the FRNSW Emergency Services Academy on 14 April 2025, we were shown a unit of the sort that this clause would require, which provides high level decontamination at an incident site, including showering facilities. There is no doubt that if cost were no consideration, it would be ideal to have multiple units of that type

throughout the State. That the ACT fire service routinely uses units of that type when attending incidents does not provide a useful precedent to address the needs of a service spread across the length and breadth of NSW.

563 We agree with the Secretary that the FBEU made no endeavour to lead evidence as to the cost of providing these units, especially as Senior Firefighter Nathan Napper, during cross-examination, accepted that the clause as drafted would require a considerable number of these units to be deployed across NSW. Nor was there any evidence which established that such units were a necessity, however desirable they might be.

564 This claim is rejected.

Health of employees

565 The FBEU proposed new clauses in both Awards setting out an agreed list of illnesses, injuries, and occupational cancers from which firefighters have an increased risk of suffering, due to the nature of their work. The clauses seek to “commit” FRNSW to “supporting” firefighters suffering from such illnesses, injuries, occupational cancers and PTSD/I, including by agreeing “to continuously review scientific research in relation to occupational cancer and other illnesses”. In closing submissions the FBEU identified this as a claim that could be put into a leave reserved clause.

566 The FBEU described this claim as being “largely aspirational” but critical to reflect a clear statement of the full list of occupational cancers that firefighters are at higher risk of and to impose an obligation on FRNSW to work towards the stated commitment.

567 The Secretary, in its written submissions, acknowledged the “noble” intent of the claim. It further submitted that FRNSW was already committed to supporting firefighters who have suffered injuries or illness of any kind and that it did keep up to date with research concerning occupational injuries and illnesses that affect firefighters.

568 There is legislative recognition that firefighters are prone to certain diseases due to their occupation. Schedule 4 of the *Workers Compensation Act 1987* (NSW), “Firefighters’ diseases”, recognises

Schedule 4 Firefighters’ diseases

Column 1

Disease

Primary site brain cancer
Primary leukaemia
Primary site breast cancer
Primary site testicular cancer
Primary site bladder cancer
Primary site kidney cancer
Primary non-Hodgkin lymphoma
Multiple myeloma
Primary site prostate cancer
Primary site ureter cancer

Primary site colorectal cancer

Primary site oesophageal cancer

569 Firefighters suffering from these conditions will be presumed, for the purposes of workers compensation claims, to have contracted the condition due to their employment as a firefighter.

570 The FBEU seeks to obtain support for “presumptive legislation” to expand the list of diseases that are recognised by legislation to include the following:

Brain cancer

Bladder cancer

Chronic obstructive pulmonary disease

Colorectal cancer

Kidney cancer

Non-Hodgkins lymphoma

Leukemias

Lung Cancer

Breast cancer

Testicular cancer

Multiple myeloma

Prostate cancer

Skin cancer (melanoma)

Sudden cardiac event or stroke while, or not later than 24 hours after a rostered shift

Ureter cancer

Oesophageal cancer

Mesothelioma

Thyroid cancer

Laryngeal cancer

Ovarian cancer

Pancreatic cancer

Cervical cancer

Penile cancer

Stomach cancer

- 571 The FBEU contends that as medical research advances, firefighters exposed to toxic chemicals are being shown to be more likely to suffer from different types of cancers, heart conditions, dementia, reproductive issues, Motor Neuron Disease, and Parkinson's Disease.
- 572 We have no difficulty accepting the contention that the legislature ought to carefully consider evidence of an expanding list of diseases to which firefighters are exposed in the course of their work.
- 573 The Commission is not in a position to be able to conclude whether that ought to include some or all of those illnesses sought to be identified by the FBEU.
- 574 Ultimately, however well intentioned, this is a subject matter that is to be addressed not by the Awards, but by legislation. It is not the role of an Award to require the parties to support legislation.
- 575 We note that the Secretary accepts in its written submissions that neither the contents of the Award, nor Schedule 4 of the *Workers Compensation Act* affects the statutory obligation on FRNSW to support injured workers under Part 2 of Chapter 3 of the *Workplace Injury Management and Workers Compensation Act 1998* (NSW). Even if a firefighter suffers from an injury or illness which is not recognised as a "firefighter's disease", they are able to make a claim for workers' compensation entitlements.

Registry of attended calls and exposures

- 576 FRNSW currently has in place two systems which record incidents that might have health consequences for firefighters.
- 577 These are the Solv system, which hosts the NIIENM form, and the Electronic Australasian Incident Reporting System (eAirs) which maintains details of every incident attended by FRNSW.
- 578 An employee completes a NIIENM form when they experience an “exposure”, which is an event where a worker encounters a substance or situation that has a reasonable potential to cause harm or adverse health effect. They can access records that they have made about their exposure to hazards on the NIIENM Safety Portal.
- 579 An eAirs record is made by a Station Officer for every incident that FRNSW attends and includes information about the attending personnel, station and zone. It does not necessarily refer to the chemicals, hazardous materials or other agents that were on site at an incident.
- 580 The FBEU contends for a new obligation in both Awards that would oblige FRNSW to create a new register of employees’ exposure to any hazardous material, chemical or other hazards, along with a right of an employee to obtain a document listing every call they have attended, and any available record of any hazardous material, chemical or other hazard that they may have been exposed to.
- 581 The Secretary contended that the existing registers, in particular the eAirs and NIIENM forms, already store the relevant information and there was no need to create a new register. The Secretary further submitted that the recording of incidents was not a matter that needed to be regulated by the Awards, contending it was an operational matter and not a term or condition of employment.
- 582 The Secretary also identified privacy concerns, to the extent that the clause sought to create a register of incidents affecting firefighters that might be accessible by other firefighters. It noted that section 14 of the *Privacy and Personal Information Protection Act 1998* (NSW) and clause 7 of Schedule 1 of the *Health Records and Information Privacy Act 2002* (NSW) already require a public sector agency like FRNSW which holds personal health information about an individual to provide that information to that individual upon request.
- 583 The FBEU in closing submissions identified this clause as one that could be placed into a leave reserved clause, noting that the “primary objection is to do with minor matters of practicability which may be able to be resolved by discussions”. The FBEU contended that the issue was nevertheless “critical” and should return to the Commission if discussions did not quickly reach agreement.
- 584 The FBEU further contended that FRNSW ought to adopt best practices for information recording. It submitted that the current method of information collection and storage was inadequate, as information was currently stored across two systems, wherein the NIIENM’s data collection relied on voluntary self-reporting, and eAirs did not mandate

that data about hazardous materials or chemicals be collected. Overall, currently data is not collected for the number of times firefighters or appliances attend an incident or what sort of incident it is. The FBEU submitted that the current legislative and health investigative mechanisms set out in Schedule 4 of the *Workers Compensation Act* adopt “years of service” as a measure for an employee’s exposure to hazardous materials and chemicals and assumes that a firefighter will have greater exposure to toxic chemicals over time, when that is not necessarily the case. The exposure levels will also be affected by the number and nature of incidents, such that firefighters in some areas will have much greater exposure than others.

585 As already noted, we are not inclined to place matters in a leave reserved clause.

586 The Secretary contended that this matter did not need to be addressed in the Award and could be resolved outside of it.

587 It would be a matter of real concern if FRNSW was not maintaining an adequate record of every incident where a firefighter was exposed to a hazard, for its own operational and planning purposes and to meet its WHS obligations.

588 We accept that while this is an operational matter for FRNSW, it is a matter that goes to ensuring health and safety and is therefore something which this Commission would address if it were satisfied that FRNSW was not adequately addressing it.

589 The material before us does not allow us to conclude that we need to take that step at this time.

590 The parties ought to have discussions about this, including whether changes to the existing systems ought to be made to ensure that incidents are routinely recorded in a way that allows FRNSW and individual firefighters to know how often each firefighter has attended an incident which may have exposed them to a risk to their long-term health and safety.

591 FRNSW says that this occurs now. That may well be the case.

592 In short, the FBEU have not established a case for a new award obligation. However, there is no reason why the parties should not continue to discuss this subject, including through the JCC, to identify how existing systems can be improved. If those discussions are not fruitful this is a claim that can be reagitated, with any change to take effect after the end of the Award’s nominal term.

Health and fitness

593 The FBEU proposed a new clause for both Awards which would oblige FRNSW to either provide gym facilities at all work locations and premises with a list of mandated equipment, or, at premises which do not have those facilities, to reimburse employees based at those premises for the cost of a gym membership, on top of a sports voucher valued at \$250 yearly to purchase sports equipment and clothing. The clauses would further entitle permanent employees with a minimum of an hour whilst on duty during

each shift in which they may use the gym or exercise and retained employees with two hours of authorised duties per week for that purpose. The FBEU sought for this claim to be placed in a leave reserved clause.

594 It is no coincidence that firefighters feature in the public imagination as strong and fit – indeed notoriously as calendar models. They need to be strong and fit to do their job, which requires them to be able to don heavy equipment, including air tanks and fireproof PPE; work inside buildings where there is extreme heat to locate and carry unconscious persons; lift and use heavy handheld battery operated hydraulic equipment to effect RCR work; climb and abseil; crawl into spaces in collapsed buildings; or carry people in floodwaters. In those circumstances it is unsurprising that firefighters need to maintain a level of personal fitness.

595 Nonetheless, it does not follow that the Awards ought to contain a provision of the type sought.

596 We note that the evidence was that most permanent firefighter stations have some level of gym equipment and retained firefighters will commonly be members of gyms at their own cost.

597 As the Secretary rightly points out, no award for similar vocations which require employees to maintain their physical fitness has an equivalent entitlement. Although FRNSW does provide resources to firefighters to keep fit, it will not be possible for it to provide the mandatory equipment currently set out in the proposed new clauses, due to insufficient physical space, nor is the provision of that gym equipment the only way for firefighters to exercise. Finally, operational requirements may mean that it is not practicable for firefighters to be able to exercise during their shift.

598 While no doubt firefighters would appreciate the level of equipment that the clause would require, it is doubtful that they would want to give up an increase in pay to fund it. The clause does not have appropriate regard for the cost, quite apart from the fact that at many stations it would not be practicable to install such equipment.

599 We reject the claim.

Water for training

600 The FBEU seeks to insert into the Permanent and Retained Awards a requirement that all training and skills maintenance only be undertaken using potable standard water, unless otherwise agreed between the parties.

601 The FBEU sought to place this claim in a leave reserved clause.

602 It was asserted by the FBEU that there are risks associated with the use of non-potable water during training. No direct evidence of the nature of that risk was presented. The FBEU's evidence was limited to an assertion by Mr Drury to that effect, supported by

reference to a report that identified that the use of PFOS and PFOA chemicals has caused health and safety issues. That evidence, however, did not demonstrate the risks associated with the use of non-potable water.

603 To the extent there are risks, they are risks that the FRNSW must manage, consistent with its statutory duty to provide fire and rescue capability, including in locations where potable water is not available.

604 We accept the Secretary's evidence that in various parts of NSW, non-potable water does need to be used during training. We also accept his contention that the imposition of a requirement to obtain the FBEU's approval prior to using water from dams or other waterways for a training exercise would create unnecessary difficulties. We also accept the Secretary's contention that there are existing measures in place to mitigate the risks.

605 In the absence of evidence directed to the existence of actual risks that are incapable of being sufficiently mitigated, we reject the claim.

Health screening

606 FRNSW's Health Screening program is currently operating as a 36-month long trial which commenced on 1 November 2023. The program was the agreed outcome after several long-running disputes arising from the previous health checks system.

607 The FBEU seeks amendments to the Permanent and Retained Awards which would permanently implement the program at the end of the 36-month trial, unless otherwise agreed between the parties.

608 We accept that the program has been a success and note that it has reduced disputation to virtually zero.

609 However, we agree with the Secretary's submission that the trial should be completed before any final assessment is made as to what elements of the trial ought to be retained or dispensed with. Parties should have an opportunity at the end of the trial to discuss valid concerns, with the view of determining whether the health screening process could be improved.

610 In particular, we can understand concerns that might arise with a procedure that requires in all cases that a firefighter's GP is to undertake tests that they may not be capable of undertaking, and the risk that a GP may not identify and report health issues that would be picked up and reported by a specialist external health assessment. These are legitimate issues that the parties need to address as part of the trial.

611 In those circumstances we do not agree that it is appropriate to end the 36-month trial early and implement it on an ongoing basis, however successful it has been. The parties agreed to a 36-month trial and absent consent, they should be held to that agreement.

612 We reject the claim.

Clothes washing and drying facilities

- 613 The FBEU proposed new clauses in the Permanent and Retained Awards which would require all workplaces to have washing machines and drying machines.
- 614 The FBEU submitted that firefighters at workplaces which do not have washing machines have to wash their contaminated clothing at home, which can expose themselves and their families to contaminants.
- 615 We are not minded to grant this claim. We accept the Secretary's submissions made in opening that the current Awards already require contaminated PPE, duty wear and dress uniform to be cleaned at FRNSW's expense, which prevents the risk arising from firefighters washing their own clothes in a washing machine of contaminants being spread to other clothing washed in the same or other load. We also accept that not all fire stations will have the room or facilities to accommodate a washing machine.

Diploma of Training and Assessment

- 616 The FBEU proposed a new clause in the Permanent Award which would permit all employees appointed to an Instructor and/or Training Staff role to apply to study the Diploma of Training and Assessment, at the cost of FRNSW. It would also entitle employees who already hold this qualification to a reimbursement of the cost of obtaining it and a Diploma of Training and Assessment Allowance. The FBEU sought to place this claim in a leave reserved clause.
- 617 The Secretary opposed this claim on the basis that it was neither fair nor reasonable to oblige FRNSW to pay for firefighters to obtain a qualification which it did not require instructors or trainers to hold.
- 618 It is a matter for FRNSW to determine what training it offers and when it does so. It is not a matter that ought to be regulated by the Award.
- 619 We agree with the Secretary that the evidentiary case presented is not sufficient to establish that the mere holding of the qualification is of itself a proper indicator that the work being done is of a higher work value.
- 620 We otherwise repeat what we have said above regarding the FBEU's proposed clause for a Certificate IV allowance, as to the need to consider how non-station based roles are remunerated.

Toll reimbursement – Emergency Services Academy, Fire Investigation and Fire Safety

- 621 The FBEU proposed new clauses pursuant to which FRNSW would reimburse employees appointed to an Instructor and/or Training Staff role, a role in Fire Investigation, or a role in Fire Safety, for tolls during all work-related travel. FRNSW

would also be obliged to reimburse employees in an Instructor and/or Training Staff role for tolls during all travel to and from the Emergency Services Academy at Orchard Hills in Sydney.

622 The FBEU submitted that employees were broadly unable to avoid tolls during their work-related travel, and that it was accordingly fair and reasonable for employees to be reimbursed for the toll costs they incur to perform their role.

623 In closing the FBEU sought to place each of these claims in a leave reserved clause.

624 We accept the evidence that those firefighters who are required to work at the training facility at Orchard Hills will almost inevitably have to drive there and pay tolls to do so.

625 Toll roads are part of the nature of our transport system. While they come with a cost, they also enable those who use them to get to the destination more quickly than before they were built, and there are associated cost savings. Indeed, Station Officer Lucas Garden gave evidence under cross-examination that it was not only impractical but in fact sometimes more expensive to use public transport to travel to the Emergency Services Academy than to pay tolls.

626 We can accept in principle that firefighters who work at the Emergency Services Academy are aggrieved that they have to bear a cost to do so, since firefighters who work at other locations do not.

627 That is not a justification, however, to impose on the employer an obligation to reimburse the travel costs to get to work. Were we to accept that proposition, there would be no reason to stop at tolls – all costs associated with travel to one's usual place of work would have to be compensated.

628 As the Secretary notes, those who decide to take a role at Orchard Hills know when they do so that it comes with travel costs, as is the case with any role. We reject the proposition that there ought to be an award obligation to reimburse those costs, or any part of them, to travel to the usual place of work.

629 It is noted that in respect of Fire Investigation this proposal was put forward as part of a "suite of changes to better recognise these specialist groups of employees within FRNSW and address current staff shortages". There was no evidence before us of staff shortages, nor evidence that would satisfy us that the introduction of a significant new right to reimbursement of tolls would affect recruitment and retention. If there was in fact a case to improve conditions for certain specialist groups, there would be better ways to address such an issue.

630 We reject these claims.

Bachelor of Engineering

631 The FBEU proposed a new clause in the Permanent Award which would permit all employees appointed to a role in Fire Safety to apply to undertake further studies in a Bachelor of Engineering, at the cost of FRNSW. It would further entitle employees who

already hold a Bachelor of Engineering to a reimbursement of the cost of obtaining that qualification and a Bachelor of Engineering Allowance. The FBEU sought to place this claim in a leave reserved clause.

632 As the Secretary noted, the FBEU did not make any submissions or file any evidence to support this claim.

633 In those circumstances we reject this claim.

Fire Investigation vehicles and Executive Officer vehicles

634 The FBEU proposed a new clause in the Permanent Award which would create an award obligation on FRNSW to buy one new purpose-built vehicle for Fire Investigators and Canine Handlers, and to ensure that all Fire Investigators are issued with such a vehicle.

635 The FBEU also proposed creating an award obligation on FRNSW to provide all Executive Officers with an Emergency Response Vehicle that can be used for personal and work-related purposes.

636 The FBEU justifies the first of these claims based on evidence provided by Canine Handler Craig Gordon, to the effect that there are four employees in the Fire Investigation unit but only three vehicles. The FBEU subsequently sought to place the claim in a leave reserved clause.

637 Having seen the canine vehicles during the site visit, we are pleased to note that FRNSW will this year be replacing the two older canine vehicle models with new models that have much improved capacity, including air-conditioning for the specialist dogs, which will allow the car and dog to be used on days where the temperature exceeds 32 degrees.

638 While awards may well contain terms requiring the provision or reimbursement of certain tools of the trade, it does not follow that it is the role of the Commission to determine what type of vehicles must be purchased and on what date. That is a matter that falls squarely on the Commissioner, who understands FRNSW's operational needs and the competing demands for resources that he must carefully consider.

639 We note that all Executive Officers are currently issued with a vehicle. For the same reasons as expressed above, in our view it is for the Commissioner to determine what vehicles are provided to Executive Officers.

640 We reject the claims.

Galatea issuance

641 The galatea is FRNSW's dress uniform jacket that is worn for formal or ceremonial occasions. Schedule 4 of the Retained Award sets out all items of uniform and PPE with which employees are to be issued by FRNSW. The current award provides for the provision of a galatea to retained firefighters "as needed". The FBEU seeks to amend

- Schedule 4 to provide for the issuing of galatea to retained firefighters "on request".
- 642 The FBEU submitted that access to the full dress uniform is important to ensure that retained firefighters can participate fully in FRNSW's ceremonial events and its social culture. There is also a perceived inequity and, it is submitted, an apparent lack of rationale behind decisions to issue a galatea, such that some retained firefighters are issued a galatea whereas others are not.
- 643 The Secretary submitted that it would be costly to make galateas available to all retained firefighters upon demand, as personalised galatea cost up to \$400. Each zone has access to a certain number of galateas, which are provided on an "as needs" basis. The Secretary considered it impractical to obtain additional galateas, especially as they are worn infrequently.
- 644 We accept that retained firefighters, like their permanent colleagues, are proud of their role within FRNSW and would like to be able to dress appropriately when required to attend formal or ceremonial occasions.
- 645 The evidence from Mr Etienne was to the effect that a retained firefighter will, from time to time, turn up to an official FRNSW event dressed differently to permanent firefighters, all of whom are issued a galatea.
- 646 We are not minded to include the clause in the award. However, we do make a recommendation to the following effect:

The Commissioner should take steps to determine a practical means by which retained firefighters can on reasonable notice always obtain a suitable galatea that they can wear at formal or ceremonial events. Without limiting how the Commissioner might determine this could best be achieved, we recommend the Commissioner consider:

- (a) providing officers with more than 10 years continuous service who request one with their own galatea; and otherwise
- (b) having a store of such uniforms in one or more locations in a range of sizes that retained firefighters are entitled to use on request and return.

Other Claims (FRNSW)

- 647 There were a small number of amendments in the Secretary's application about which the Secretary made no submissions. The Secretary nevertheless stated in closing submissions that its entire application was pressed. That required us to seek to identify what evidence, if any, in the 9271 pages of the court book, went to these matters.

Meal allowance when working overtime as a result of a recall for the purpose of maintaining required staffing levels

- 648 The Secretary seeks to amend clause 18.3.1 of the Permanent Award by the addition of words, as set out below:

18. Meals and Refreshments

18.3 During Overtime

18.3.1 An employee who works overtime which:

...

18.3.1.2 does not involve attendance at an incident, *and is not a recall for the purpose of maintaining required staffing levels*, shall, if such overtime extends for more than two hours, be paid the Meal Allowance set out at Item 14 of Table 1 of Schedule 2. After every subsequent four hours of such overtime worked, the Refreshment Allowance set out at Item 15 of Table 1 of Schedule 2, shall be paid. (Emphasis added to indicate the proposed amendment.)

- 649 While the Secretary put submissions as to there being some disputation as to the entitlements that arise when working overtime depending on whether it is the result of a recall for the purpose of maintaining required staffing levels or not, the Secretary made no specific reference to this proposed change in his submissions, nor evidence. As a result, we are unable to determine the merit of this proposed change and so reject it.

Removal of limitations on the location of where higher duties can be required to be performed

- 650 Mr Baldi gave the following evidence concerning this change to clause 23.6 of the Permanent Award:

“FRNSW seeks to amend cl 23.6 to provide that Leading Firefighters and Leading Station Officers attached to a work location and/or fire station within or outside the Greater Sydney Area may be directed to perform higher duties in the circumstances described in subclauses 23.2, 23.3 and 23.4. Fire and Rescue removes the words ‘only’ from cl 23.6 so that the employees might also be directed to perform higher duties in other circumstances.”

- 651 No submission or other evidence was put forward to explain why the change ought to be made. Mr Drury noted this proposed change was strongly opposed, saying:

“The higher duties clause was part of the significant concessions made by the FBEU in the last round of Award negotiations and was key to achieving savings that were used to offset some of the costs of that Award.”

- 652 As we noted earlier, the Commission will be slow to undo a consent position that may well reflect a compromise position in the absence of cogent evidence as to why it should.

- 653 The claim is rejected.

Ad hoc ComSafe Duties

- 654 Clause 46.4.12 of the Permanent Award currently sets out how non-station based firefighters in ComSafe and who elect to perform ComSafe duties should be remunerated. We understand that ComSafe is a commercial training business unit of FRNSW.

- 655 Mr Baldi gave evidence that FRNSW seeks to remove this clause because permanent firefighters are no longer performing ComSafe duties. In his reply statement, Mr Drury opposed this change as the removal of the clause would impact ongoing discussions regarding the future of ComSafe.

- 656 In light of Mr Drury’s evidence and the absence of any submissions, we are not satisfied that the clause is in fact yet redundant. We make a recommendation to the following effect:

The parties are to address whether and how permanent firefighters are performing ComSafe duties as part of the negotiations for the next award.

Transfers

- 657 Clause 25 of the Retained Award sets out how requests from retained firefighters to transfer from one Retained Brigade to another Retained Brigade will be handled. Clause 25.2 currently states that in the event that the station to which the transfer is sought does not have a vacancy, FRNSW “will appoint such employee as a supernumerary, with a minimum of two supernumerary transferred employees, providing other vacancies exist within the destination Zone”. FRNSW seeks to amend “minimum” to “maximum” in that clause.
- 658 As the Secretary did not file submissions nor lead any evidence in support of the claim, we reject the claim.

Crown Employees (Fire and Rescue NSW Firefighting Death and Disability Award) 2024

- 659 Both parties have made applications to the Commission to remake this Award in slightly varied terms.
- 660 The D&D Award provides benefits which are payable to permanent and retained firefighters who have suffered an on duty or off duty injury which results in their permanent incapacitation, permanent partial incapacitation, or death. The benefits conferred on firefighters by the D&D Award are additional to benefits that might be paid under the First State Superannuation Scheme or workers compensation payments.

FBEU claim

- 661 The FBEU applies to the Commission to remake the D&D Award in the same terms, other than to amend clause 11.4 to address what it submitted was a recognised defect identified by the NSW Fire Brigades Superannuation Fund (the Fund) in a manner recommended by the Trustees.
- 662 Clause 11.4 prescribes the calculation method for the off duty benefit payable to retained firefighters in the case of death or total and permanent incapacity.
- 663 Mr Drury explained that during the negotiations for the 2023 Awards, the parties were jointly approached by the trustees of the Death and Disability Board which independently administers the fund seeking changes to the Award. As Mr Drury understood it, the trustees were seeking to stabilise the current benefits, which currently fluctuate depending on when the claim is made.
- 664 On 28 November 2022, the Fund’s Secretary wrote to the parties stating that the Fund had been corresponding with the parties during the course of the year on the issue. He wrote:

“The Trustee recommends that this test be replaced as it does not appear to be an effective mechanism to maintain the lump sum benefit amounts. It has resulted in the retained off duty benefits being varied in each of the last 5 years due to changes in prevailing interest rates including causing these benefits to be reduced by 25% on 1

January 2023. The Trustee has instead proposed that the off duty lump sum benefits for each of the retained and permanent cohorts are proportional to the contribution amount that members of each cohort makes.”

665 The letter does not set out proposed text for a new clause 11.4.

666 The letter went on to identify a series of other changes that the parties may wish to consider.

667 The Fund’s Secretary then said:

“The Trustee also wishes to advise that if the new Award provides changes that have an adverse impact on any member there are notification processes required under superannuation law. We are required to notify adverse changes at least 90 days before they take affect and an additional 3-4 weeks is generally required to enable preparation and issue of such notifications. It is therefore requested that if there are any such changes they not be implemented until the Trustee is given sufficient time to advise members before the changes take effect.”

668 When the Awards were last made the Secretary put the following on transcript:

“The parties agree that prior to 25 February 2024, when the Award is due to expire, the parties will, by consultation and agreement, develop a new formula pertaining to the benefits provided to retained firefighters covered by the Award in the circumstances of Off Duty Death and Total and Permanent Incapacity referred to in clause 11.4. The purpose of this new formula will be to provide stability and consistency in the benefit payable. Where agreement is reached between the parties, the Government and the Fund prior to 25 February 2024 the parties agree to seek a consent variation to this Award to insert those provisions into this Award.”

669 Mr Drury gave evidence in cross-examination that since the Commission was given that information there had been no resolution of the issue.

670 Given the position of the Trustees, it is unfortunate that the parties did not sufficiently engage with this issue. Mr Drury placed the blame at the feet of the Secretary, saying:

“It is our view that Treasury has now had sufficient time since the making of the current Awards to progress this matter and therefore should be included in the 2024 D&D Award.”

671 It emerged in the cross-examination of Mr Drury and Mr Arnott that the Fund’s Trustees had provided alternative forms of amending clause 11.4, and the FBEU had chosen one of them. While the relevant correspondence was called for and produced to the

- Secretary, neither party sought to tender it. Nor were we given any evidence as to whether the specific wording preferred by the union would be more or less likely to increase the amount of contributions that must be made to fund the resultant benefits.
- 672 That leaves us in a position where we are unable to determine this claim, even though it seems reasonably clear that clause 11.4 needs to be changed in some manner as the Fund's Trustees have recommended.
- 673 The issue presumably involves some complexity, but it should not be beyond the parties to be able to address and determine this issue. If they cannot do so, they should be able to provide the Commission with sufficient information for the Commission to determine it.
- 674 We note in that regard the position of the Secretary is that we make a recommendation that the parties continue (or commence) discussions on this topic, with leave reserved to vary the D&D Award by consent during the lifetime of the award.
- 675 We agree that the parties should have discussions. Given that was the agreed position two years ago, we are not satisfied that a recommendation in those terms is sufficient. Nor do we accept that any variation must be by consent. Rather we take the view that the FBEU's application be listed for active conciliation before Commissioner McDonald, who has the power to require the Trustee to attend.^[49] If conciliation fails to result in a consent position the applications will be listed for further hearing. The Commission may at that point require the Secretary to provide evidence.

Secretary Claim

- 676 The Secretary applied to the Commission to remake the Award in the same terms, other than to amend clause 4.3 by removing the requirement to consult in relation to the Health Screening Program. The evidence in support of that claim was limited to a short paragraph in the affidavit of Mr Baldi to the effect that there was no need for the obligation given that consultation is in fact occurring through a working party of the Joint Consultative Committee. To say the least, such evidence was not persuasive. We reject the claim.

Conclusion

- 677 For the foregoing reasons we have decided not to determine either parties' application to remake the D&D Award. Instead we order:
- (1) The hearing of these applications is adjourned to allow further conciliation before Commissioner McDonald.

ORDERS AND RECOMMENDATIONS

- 678 The Commission orders that:
- (1) The parties are to have discussions with a view to providing us with draft Awards

that reflect our decision by 4pm on 4 September 2025.

- (2) To the extent that any revised clauses are not agreed upon, the parties are to file a document by 4pm on 4 September 2025 setting out their competing draft clauses that: (a) reflect our decision; and (b) address the issues listed in Order 3.
- (3) These proceedings will be listed before Commissioner McDonald on 11 September 2025 at 10:00am for further directions and conciliation, including as to the following matters to the extent they have not by that time been resolved by agreement:
 - (a) the text and quanta of the accommodation and deployment allowances for firefighters who are sent on intrastate, interstate and international deployments;
 - (b) how firefighters who have Hazmat and Major/Minor Aerial skills and are employed in positions where it is expected that they will from time to time be required to utilise that skill are to be appropriately remunerated;
 - (c) how firefighters who are not full-time pilots are to be appropriately remunerated if they are requested to obtain skills to operate RPAS and on each occasion they are required to operate RPAS;
 - (d) as to the terms of the award clauses necessary to reflect our conclusion that allowances ought to be introduced for retained firefighters who hold additional rescue competencies, along with the quantum of new allowances; and
 - (e) whether anything beyond the insertion of the words “and practicable” after “reasonably available” in clause 20.7 of the Permanent Award is required to ensure that firefighters are reimbursed whenever they need to use their private vehicle because public transport, while technically available, is impracticable and if there is any other textual amendment to assist to reduce disputation as to the circumstances in which the entitlement arises.
- (4) Commissioner McDonald will provide a report to the Full Bench following conciliation, identifying what has been agreed and what remains to be determined by the Full Bench.
- (5) The hearing of the applications for the Crown Employees (Fire and Rescue NSW Firefighting Death and Disability Award) 2024 is adjourned to allow further conciliation before Commissioner McDonald on 11 September 2025 at 10:00am.

679 The Commission makes the following recommendations:

- (1) During the nominal term of this award the parties are to consult and seek to reach agreement on the work value and appropriate relativities for the various firefighter positions. Consideration should include the relative work value of the

various non-station based roles and senior officer roles.

- (2) The Commissioner should provide feedback to unsuccessful candidates for promotion as to the reasons they were not selected if requested.
- (3) The Commissioner should take steps to determine a practical means by which retained firefighters can on reasonable notice obtain a suitable galatea that they can wear at formal or ceremonial events. Without limiting how the Commissioner might determine this could best be achieved, we recommend the Commissioner consider:
 - (a) providing officers with more than 10 years continuous service who request one with their own galatea; and otherwise
 - (b) having a store of such uniforms in one or more locations in a range of sizes that retained firefighters are entitled to use on request and return.
- (4) The parties are to address whether and how permanent firefighters are performing ComSafe duties as part of the negotiations for the next award.

ANNEXURE A – AGREED STATEMENT OF FACTS

The parties agree, pursuant to s 191 of the *Evidence Act 1995* (Cth), that the following matters are not, for the purposes of the proceeding, to be disputed.

A. Parties

- 1 The Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2023 (**Permanent Award**) is an award made and approved under the Industrial Relations Act 1996 (NSW) (**IR Act**).
- 2 The Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023 (**Retained Award**) is an award made and approved under the IR Act.
- 3 The Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2023 (**Death and Disability Award**) is an award made and approved under the IR Act.
- 4 At all material times, the:
 - (a) Permanent Award covered the FBEU, FRNSW and the employees within the classifications contained in cl.43;
 - (b) Retained Award covered the FBEU, FRNSW and the employees within the classifications contained in cl.39; and
 - (c) Death and Disability Award covered the FBEU, FRNSW and the employees within the classifications contained in both the Permanent Award and the Retained Award.

B. FRNSW Workforce

- 5 The tables below show the numbers of established positions and headcount for Permanent Firefighters and Retained Firefighters in the period of 2014 to 2024:

PFF Established Positions and Headcount			
Report Date	Established Positions	Headcount	Variance
30/06/2024	3,495	3,548	53
30/06/2023	3,472	3,564	92
30/06/2022	3,469	3,539	70
30/06/2021	3,464	3,553	89
30/06/2020	3,463	3,512	49
21/06/2019	3,457	3,481	24
22/06/2018	3,459	3,511	52
22/06/2017	3,466	3,493	27
23/06/2016	3,471	3,478	7
25/06/2015	3,472	3,431	-41
26/06/2014	3,425	3,402	-23

Nb. Prior to 30/06/2019 data is unable to be verified by WPA as no EOFY reports were generated at the time.

RET FF Established Positions and Headcount			
Report Date	Established Positions	Headcount	Variance
30/06/2024	3,798	3,214	584
30/06/2023	3,798	3,212	-586

30/06/2022	3,798	3,243	0.555
30/06/2021	3,798	3,317	-481
'3/J/06/2020	3,798	3,297	501
30/06/2019	3,798	3,274	524
30/06/2018	3,801	3,293	508
30/06/2017	3,801	3,341	-460
30/06/2016	3,800	3,327	-473
30/06/2015	3,798	3,336	-462
30/06/2014	3,800	3,380	-420

Nb. Prior to 30/06/2019 data is unable to be verified by WPA as no EOFY reports were generated at the time. Also note 30/06/2014-30/06/2018, established positions are those reported at last pay of June each year rather than 30th.

- 6 The table below contains the number of Firefighters who have left their employment with FRNSW for each financial year in the period 2013/2014 to 2023/2024:

1C NUMBER OF PFF & RET FF LEFT FRNSW ON A YEAR BY YEAR BASIS (EITHER BY WAY OF TERMINATION [DISMISSAL] OR RESIGNATION)			
Financial Year	PFF	Ret FF	Grand Total
2013/2014	16	274	290
2014/2015	13	317	330
2015/2016	10	287	297
2016/2017	6	287	273
2017/2018	6	303	309
2018/2019	11	316	327

2019/2020	14	267	281
2020/2021	12	263	275
2021/2022	9	326	335
2022/2023	9	332	341
2023/2024	17	329	346

- 7 The table below contains the number of applicants for each permanent firefighter intake in the period of 2013 to 2023:

PFF Campaign	Job Reference	Applications
2023	492339 - PageUp	3923
2022	00008XUG - Taleo	4824
2022	00007TSY - Taleo	6915
2019	000076J5 - Taleo	5751
2018	00006JF8 - Taleo	6753
2017	00005OV6 - Taleo	6823
2016	00004FU6 - Taleo	7502
2015	00003857 - Taleo	7328
2014	00002CZ6 - Taleo	8560
2013	00001JTV - Taleo	6916

- 8 The table below contains the number of Permanent Firefighters who completed a recruit course for each financial year in the period of 2013/14 to 2023/24:

PFF FF SUBRANK BY FY	
Financial Year	No. FF Rank

2013-14	89
2014-15	122
2015-16	119
2016-17	107
2017-18	82
2018-19	73
2019-20	112
2020-21	106
2021-22	94
2022-23	118
2023-24	139

- 9 The table below contains the number of Firefighters who had their employment terminated on medical grounds for financial years 2013/14 to 2023/24:

1G NUMBER OF PFF & RET FF EMPLOYMENT TERMINATED ON MEDICAL GROUNDS (MEDICAL RETIREMENT)			
Financial Year	PFF	Ret FF	Grand Total
2013/2014	75	41	116
2014/2015	55	34	89
2015/2016	35	28	63
2016/2017	42	22	64
2017/2018	37	22	59

2018/2019	35	21	56
2019/2020	27	37	64
2020/2021	30	31	61
2021/2022	46	38	84
2022/2023	37	33	70
2023/2024	74	42	116

- 10 The table below details the overtime performed by Firefighters at the Station Officer and Firefighter ranks where overtime was requested due to a qualification shortage for Rescue and Hazmat stations for financial year 2013/2014 to financial year 2023/2024:

1K – SO & FF OT QUALS SHORTAGES	
FINANCIAL YEAR	OT HOURS
2013/2014	463.0833
2014/2015	1126.5834
2015/2016	745.8333
2016/2017	806.3334
2017/2018	1043.05
2018/2019	1137.4999
2019/2020	925.4832
2020/2021	950.5
2021/2022	3400.25
2022/2023	7941.6666
2023/2024	5804.6666

Grand Total	24344.9497
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11 The tables at Schedule 1 contain the following numbers for each calendar year since 2015:

- (a) the number of calls/turn outs at Hazmat and Rescue stations; and
- (b) the number of calls/turn outs requiring firefighters to report for duty to assist another emergency service agency.

12 The table below contains the average age of Firefighters for financial years 2013/14 to 2023/24:

PFF & RET FF AVERAGE AGE – FY 2014-2024		
FY	PFF	Ret FF
2013-14	44	41
2014-15	44	41
2015-16	44	41
2016-17	45	42
2017-18	45	42
2018-19	46	42
2019-20	46	42
2020-21	46	42
2021-22	47	42
2022-23	47	42
2023-24	47	42

**PFF includes Recruits to Chief Supt*

13 During the 2023/2024 financial year, Firefighters with a specialist minor or major aerial appliance qualification worked 109,316 hours of overtime (where that overtime is

worked for the purpose of filling a shortage of those qualifications).

- 14 The table below contains the number of compensation claims submitted by Firefighters diagnosed with cancer in the past 15 years, as recorded in the Solv system:

Primary Site	Firefighters with cancers prescribed in Schedule 4 who meet all qualifying provisions diagnosed after 01 January 2009
Brain cancer	10
Leukaemia cancer	8
Breast cancer	9
Testicular cancer	4
Bladder cancer	12
Kidney cancer	12
Non-Hodgkin Lymphoma cancer	16
Multiplemyeloma cancer	9
Prostate cancer	181
Ureter cancer	0
Colorectal cancer	27
Oesophageal cancer	3

- 15 In the last 15 years, FRNSW has identified 82 Firefighters who have been diagnosed with primary site cancers outside the scope of Schedule 4 of the WC Act (ie a cancer not listed).

C. Firefighter Requirements / Qualifications

On-call allowance (cl.32)

- 16 Permanent firefighters can be rostered on call from time to time, as required by the Commissioner.

Disturbance allowance (cl.33)

- 17 Clause 27 of the *Fire and Rescue NSW Regulation 2023*, states that a firefighter who is off duty, including a firefighter who is on leave, may be recalled to duty in an emergency unless the firefighter is on sick leave or is in court and subject to a subpoena to attend.

Certificate IV – Training & Assessment (cl.92)

- 18 Instructors are provided with the opportunity to obtain a Certificate IV in Training & Assessment to meet the Australian Standard of Quality Assessment requirements. Instructors are provided with the opportunity to obtain the Certificate IV in order to be able to sign off firefighters as having met the relevant competencies and to lead training sessions.
- 19 Firefighters undertake the Certificate IV qualification outside of work hours and in addition to their day-to-day firefighting duties.
- 20 Once Instructors have obtained a Certificate IV in Training and Assessment they can:
- (a) lead and deliver National Units of Competency without supervision; and
 - (b) sign off on firefighters having met National Units of Competency.

Rescue allowance (current) (current cl 15.2.8)

- 21 The existing cl 15.2.8 of the Permanent Award states that the Rescue Allowance is payable to Non-Officers and Officers “who are recognised as qualified rescue operators by the State Rescue Board and who are attached to a Primary and Secondary Rescue station.” The reference to Primary and Secondary rescue stations is recognised by the parties as referring to General Land Rescue and Road Crash Rescue stations, respectively but is now in effect redundant terminology.

Rescue units

- 22 Since the introduction of the *State Emergency and Rescue Management Act 1989* (NSW) (**SERM Act**), the Minister has been responsible for the accreditation of rescue units. Rescue units are units (comprising a group of persons) which carry out rescue

operations for the protection of the public or a section of the public. The SERM Act includes prohibitions on persons establishing, managing or controlling a rescue unit without being accredited, with exceptions.

23 Under the SERM Act, until 2018, Fire and Rescue NSW had rescue units which were designated as either primary or secondary rescue units based on dispatch protocol. These units performed road crash rescue and other rescue work.

24 Since 2018, FRNSW has a two-tiered system of land rescue capability in NSW (excluding Vertical Rescue Units). General Land Rescue Units are units which meet current SRB accreditation standards for Road Crash Rescue, Industrial/Domestic Rescue and USAR Category 1. Road Crash Rescue Units meet current SRB accreditation standards for Road Crash Rescue.

25 Since 1989, despite the designation of rescue units, firefighters within Fire and Rescue NSW who are not assigned to rescue units have continued to perform road crash rescue work when required to do so. (The circumstances in which this is required is not addressed here, but is addressed in the parties' evidence). The response to a road crash rescue incident required by the NSW State Rescue Policy is recorded at paragraph [2.17] of the NSW State Rescue Policy (Court Book 1, p 9108).

26 Since at least 2004, there has been training in a unit of competency on road crash rescue (previously called road accident rescue) as part of recruit firefighter training for permanent firefighters.

Road Crash Rescue (cl.20.4)

27 The NSW State Rescue Policy defines road crash rescue (**RCR**) to mean:

... the capability required to gain access to and free casualty(ies) from vehicles travelling on the road such as cars, motorcycles, buses, trucks and semi-trailers while minimising the potential for further injury and preserving the integrity of evidence.

Rescue operators are required to access entrapped casualty(ies) using a range of techniques and to operate specialist equipment to undertake the rescue. While RCR units are trained and equipped to respond to road crashes, they are not trained in competencies such as IRDR or Urban Search and Rescue.

- 28 Permanent firefighters receive training in RCR as part of the recruit program. Once this component of their training is complete, they hold the Unit of Competency (**UoC**) in RCR but are not a registered Rescue RCR Operators. Retained firefighters are trained in RCR prior to commencing work as a retained firefighter. Retained firefighters do not obtain a UoC in RCR as a part of their initial training.
- 29 To become a RCR operator, firefighters must be an operational member of an emergency services agency, hold a nationally recognised senior first aid certificate (or equivalent) and have met the requirements of the below training packages (or agency equivalent), which is set out at Attachment I of the NSW State Rescue Policy, namely:
- (a) protect and preserve incident scene;
 - (b) maintain safety at an incident scene;
 - (c) undertake road crash rescue;
 - (d) participate in rescue operation and
 - (e) drive vehicles under operational conditions and drive police vehicles.
- 30 Pursuant to s 57 of the SERM Act 1989, FRNSW maintains a register of personnel who comprise each accredited rescue unit (including each RCR unit).
- 31 The competencies provide a baseline of skills and performance standards that operators must meet and maintain. This is separate to General Land Rescue (**GLR**), which requires additional competencies to those outlined above to be completed to become GLR-qualified (see below).
- 32 Firefighters are required to undertake and complete ongoing skills maintenance through the Station Training Program to ensure they maintain their RCR skills. Schedule 2 of this document sets out the FRNSW stations that were, on or around 20 January 2025, either GLR or RCR accredited by the State Rescue Board.
- 33 The FRNSW stations that have a Major Aerial Appliance are Albury Central, Bateau Bay, City of Sydney, Coffs Harbour, Crows Nest, Darlinghurst, Glebe, Hornsby, Huntingwood, Kogarah, Manly, Mayfield West, Miranda, Newcastle, Parramatta, Penrith, Revesby, St Andrews, Turvey Park, Umina, Wollongong and Woollahra.
- 34 The table below contains the number of RCR incidents, being motor vehicle incidents that ultimately involved a RCR component as defined in the NSW State Rescue Policy that FRNSW attended during the period 1 January 2024 to 31 December 2024, and were first to attend:

- i. how many road crash rescue (**RCR**) incidents did FRNSW attend?

Number of records

1,480

ii. at how many RCR incidents was a GLR unit first to attend?

Number of records

879

iii. at how many RCR incidents was a RCR unit first to attend?

Number of records

204

iv. at how many RCR incidents was an unaccredited i.e. not GLR or RCR unit first to attend?

Number of records

397

35 Further to the above, during the period 1 January 2024 to 31 December 2024, 13,813 motor vehicle incidents were attended by FRNSW:

- (a) on 3,698 occasions a GLR unit was first to attend;
- (b) on 1,808 occasions a RCR unit was first to attend; and
- (c) on 8,307 occasions an unaccredited i.e. not GLR or RCR unit was first to attend.

36 The figure of 13,813 includes all incidents attended by FRNSW whether or not FRNSW performed a rescue activity.

General Land Rescue (cl.21.2.8)

37 The NSW State Rescue Policy defines general land rescue (**GLR**) to mean:

... the capability and capacity to undertake all rescue activities involving the safe removal of persons or domestic animals from actual or threatened danger of physical harm. A GLR unit has the skills and equipment required to undertake road crash rescue, agricultural, animal, domestic and industrial rescues and is trained in Urban Search and Rescue Category 1.

- 38 To become a GLR operator, firefighters must be an operational member of an emergency services agency, hold a nationally recognised senior first aid certificate (or equivalent) and have met the requirements of the below training packages (or agency equivalent), which is set out in Attachment H of the State Rescue Policy:
- (a) protect and preserve incident scene;
 - (b) maintain safety at an incident scene;
 - (c) undertake road crash rescue;
 - (d) participate in rescue operation;
 - (e) undertake industrial and domestic rescue;
 - (f) participate in an Urban Search and Rescue Category 1; and
 - (g) drive vehicles under operational conditions and drive police vehicles.
- 39 All FRNSW GLR stations have either 'in-water' or 'land-based' flood rescue equipment on their appliance to ensure that they can respond to an in-water or land-based flood incident, at any time.
- 40 There were, on or around 29 January 2025, 1588 Firefighters who are GLR qualified and are attached to an accredited GLR station.

In-water rescue (cl.20.2.11)

- 41 In water rescue is defined by the NSW State Rescue Policy as involving the operator entering flood waters to reach the person by swimming or using a raft or unpowered vessel to reach the victim.
- 42 The minimum training competencies required for an In Water Flood Rescue operator are the requirements of a Land Based Flood Rescue operator and the competency of 'Undertake Swiftwater and floodwater rescue and recovery' which is set out at Attachment L of the State Rescue Policy.
- 43 This competency is a three-day in-water course involving:
- (a) a swim test and assessment;
 - (b) understanding of river hydrology; and
 - (c) training in in-water hydraulic tools rescue training.
- 44 In December 2022, the NSW government announced an additional \$34.3 million in funding toward Fire and Rescue NSW's flood response capability. This led to increased funding for in-water rescue technicians, vehicles and equipment. As of 7 November

2024, there are currently 275 permanent firefighters and 52 retained firefighters qualified in In Water Flood Rescue and there are 79 permanent firefighters who are based at accredited Flood Rescue units.

45 In-water rescue operators are required to maintain their skills and are subject to ongoing '*fit-for-task*' evolutions which assess their swimming fitness.

46 The table below contains the number of water rescue incidents that FRNSW attended in the periods identified, except this does not include rescues performed by Strike Team deployment during natural disasters:

a. 1 October 2018 to 30 September 2019

Number of records
22

b. 1 October 2019 to 30 September 2020

Number of records
63

c. 1 October 2020 to 30 September 2021;

Number of records
60

d. 1 October 2021 to 30 September 2022; and

Number of records
126

e. 1 October 2022 to 30 September 2023

Number of records
60

Land based flood rescue (cl.20.2.12)

- 47 There are 84 stations within FRNSW that have trained staff to maintain a land-based flood rescue capacity from that station.
- 48 To become a Land Based Flood Operator, the minimum training competencies required for a Land Based Flood Rescue Operator are:
- (a) the Flood Rescue Awareness Packaging, which is a two-hour training course; and
 - (b) the competencies 'Participate in a rescue operation', 'Basic First Aid' and 'Perform land based swiftwater and floodwater rescue and recovery' which takes place over the course of one day.
- 49 Land Based Flood Rescue is not a stand-alone specialist accreditation.

Vertical rescue (cl.20.2.13)

- 50 Vertical rescue as defined by the NSW State Rescue Policy as any height or depth situation where a person(s) needs resources to gain access to, move within, and extricate from hazardous environments utilising rope based and/or mechanical

systems, in order to ensure the safety of a person(s) and/or animal(s). For example, vertical rescue could be performed where firefighters need to use these techniques to perform rescues at cliffs, caves and buildings.

51 Accreditation is required for vertical rescue. The accredited vertical rescue stations of FRNSW are:

- (a) Blacktown PFF
- (b) Braidwood RFF
- (c) Forster RFF
- (d) Gosford PFF
- (e) Laurieton RFF
- (f) Liverpool PFF
- (g) Narrabeen PFF
- (h) Lambton PFF
- (i) Perisher RFF
- (j) Salamander Bay RFF
- (k) South West Rocks RFF
- (l) Tea Gardens RFF
- (m) Thredbo RFF
- (n) Ulladulla RFF
- (o) Young RFF

52 To become a Vertical rescue operator, firefighters must be an operational member of an emergency services agency, hold a nationally recognised senior first aid certificate (or equivalent) and have met the requirements of the below training packages (or agency equivalent):

- (a) the five competencies listed at Attachment J to the State Rescue Policy namely;
 - (i) protect and preserve incident scene;
 - (ii) maintain safety at an incident scene;
 - (iii) participate in a rescue operation;
 - (iv) undertake vertical rescue; and
 - (v) drive vehicles under operational conditions or drive police

vehicles;

- (b) a six-day vertical rescue course;
- (c) a five-day vortex course; and
- (d) a two-day recertification course, which occurs every three years.

Urban Search and Rescue Category 2 (cl.21.2.14)

- 53 FRNSW is the designated combat agency for major structural collapse or similar emergencies where a Urban Search and Rescue (USAR) activity or response is required.
- 54 There are two categories of USAR technicians: USAR Category 1 and USAR Category 2.
- 55 USAR Category 1 as defined in the State Rescue Policy refers to the capability required to provide safe and effective rescue support to a USAR incident as a member of a first responder rescue team. It involves assisting with the rescue and removing surface (lightly trapped) casualties or deceased victims, applying basic search techniques such as carrying out limited debris removal and following safe work practices.
- 56 The types of incidents that may require the skills and knowledge of a USAR Category 2 technician working as a member of a USAR task force include earthquake, terrorist incident, aircraft crash, disaster or major structural collapse.
- 57 The USAR Rescue Technician (Category 2) training program is conducted over four weeks and culminates in a major exercise during the final week which includes a skills test which tests agility, abseiling, meeting dexterity attributes and working in confined spaces. The program focuses on the disciplines and skills necessary for USAR work such as preparing and planning to respond to USAR incidents, mobilising as part of a task force, assessing and work within USAR incidents, determining location and condition of casualties, gaining access to casualties, removing casualties, and demobilising as part of a USAR team. To be eligible to complete this training, firefighters must hold a GLR qualification or be Hazardous Materials technicians.
- 58 In addition to the initial training, USAR Operators are required to maintain their competence through ongoing skills maintenance as required.
- 59 USAR technicians are expected to make themselves available to deploy anywhere in the world to assist in a disaster if called upon.
- 60 USAR incidents are registered by FRNSW against the criteria of a rescue that are performed, and FRNSW does not record individual USAR incidents.

Trench rescue (cl.21.2.15)

- 61 Trench rescue is a rescue operation that involves shoring up the sides of a trench to dig

out the target (at least ordinarily, a worker).

62 It is a pre-requisite to obtaining a trench rescue qualification that firefighters will have completed the partial structure collapse training course.

63 To become qualified in trench rescue, firefighters must complete a course which covers the skills and knowledge required to undertake trench rescues as a member of a single organisation or as part of a multi-disciplinary team. It includes a range of trench rescue situations and includes training in the following skills:

- (a) how to cut, shore and fit the trench;
- (b) operating a technical rescue vehicle inventory to perform trench rescues; and
- (c) utilised timber and plywood sheets to stabilise the sides of a trench.

64 The training takes place over 6 days (10 hours per day).

65 To undertake this training, permanent firefighters must be part of a GLR accredited rescue unit and be based at a vertical rescue station.

66 The table below contains the number of trench rescue incidents that FRNSW attended in the periods identified:

a. 1 January 2019 to 31 December 2019;

Calendar Year	Type of Incident	Number of Records
2019	Trench rescue	3

b. 1 January 2020 to 31 December 2020;

Calendar Year	Type of Incident	Number of Records
2019	Trench rescue	2

c. 1 January 2021 to 31 December 2021;

Calendar Year	Type of Incident	Number of Records
2019	Trench rescue	3

d. 1 January 2022 to 31 December 2022; and

Calendar Year	Type of Incident	Number of Records
2019	Trench rescue	9

e. 1 January 2023 to 31 December 2023.

Calendar Year	Type of Incident	Number of Records
2019	Trench rescue	2

Partial structure collapse (cl.21.2.19)

- 67 Partial structure collapse covers the skills and knowledge required to provide a safe response to an incident involving compromised structural stability and partial collapse, and to gaining access to and extricating casualties. It requires the responder to stabilise the structure and where casualties are present, to remove them using a range of techniques relevant to the type of structure, collapse and nature of entrapment.
- 68 To be qualified in partial structure collapse, firefighters must complete a 4-day course.

Large animal rescue (cl.20.2.20)

- 69 Large animal rescue involves the rescue of animals in distress, including horses, cattle and other large animals that may become trapped in mud, water, fences or grating.
- 70 Large animal rescue is work performed by stations that have a technical rescue vehicle (Blacktown, Wollongong, New Lambton and Liverpool) that can accommodate the animal rescue equipment and training.
- 71 To obtain a qualification in Large Animal rescue, a firefighter is required to participate in a two-day intensive program that focuses on large animal rescue techniques including real-life scenario training. The training covers topics such as hazards and risks, working with a veterinarian and basic and advanced techniques and equipment.

Hazmat servicing (cl.21.2.17)

- 72 A hazardous material (Hazmat) Firefighter is a firefighter who is qualified to use Hazmat Equipment. These firefighters respond to hazardous materials present in incidents (e.g. chemical spills).
- 73 There are two kinds of Hazmat operators: Intermediate Hazmat Operators (generally retained firefighters) and specialist hazmat operators (typically permanent firefighters). Specialist Hazmat operators are equipped and trained to respond to large and prolonged hazmat incidents and have larger appliances with more equipment.
- 74 Every FRNSW station can immediately respond to hazmat incidents, and deal with the incident or determine more specialised resources are required. All firefighters receive baseline hazmat training during recruit training and ongoing station training.
- 75 Intermediate Hazmat Stations are staffed by Hazmat Operators, who were previously referred to as Intermediate Hazmat Operators. As at 2 December 2024, there were 25 Intermediate Hazmat Stations located across regional NSW. These have increased abilities to identify Hazmat substances and manage Hazmat incidents.
- 76 There are 8 Hazmat Technician Stations located in Sydney, Newcastle, Wollongong and the Shellharbour areas. Hazmat Technicians work at these stations. To become a Hazmat Technician, a firefighter must undertake a three-week course, covering the following matters:
- (a) Identification of unknown solids and liquids;
 - (b) Gas detection systems and analysis of data;
 - (c) Assessing harm to people, property and environment;
 - (d) Personal protective clothing (PPC) selection and use;
 - (e) Confinement and containment strategies;
 - (f) Rendering safe chemical, biological and radiological (CBR) incidents;
 - (g) Joint agency response to clandestine drug labs, chemical self harm, suspicious substance incidents, major hazard facilities; and
 - (h) Specialised contamination techniques.
- 77 These Hazmat Technician stations offer specialised equipment and advanced technical skills, beyond that of Intermediate Hazmat Stations.
- 78 There are 3 Hazmat Service Centres which are located in Shellharbour, Chullora and Newcastle. The Shellharbour and Newcastle stations are responsible for servicing and maintaining Hazmat equipment, and also respond to incidents involving Hazmat. The Chullora station services and maintains Hazmat equipment, but does not respond to incidents.
- 79 The FBEU's claim for a Hazmat allowance in the Retained Award (cl 86.1.2) is intended

to extend to Hazmat Operators working at Intermediate Hazmat Stations.

- 80 The FBEU's claim for a Hazmat Servicing Allowance in the Permanent Award (cl 21.2.17) is designed to cover Hazmat Technicians working in Hazmat Servicing roles in Hazmat Service Centres.

Compressed Air Foam System Pumper

- 81 A CAFS pumper has a standard water pumping system, as well as an entry point where compressed air can be added to a foam solution to generate foam.
- 82 FRNSW has three types of fire engines (Class 1 Tankers, Class 2 Pumpers and Class 3 Pumper) within the FRNSW fleet, with each type having a CAFS pumper appliance variant.
- 83 Class 1 Tankers are a multi-purpose off road capable tanker which can carry more water than urban fire engines. Some have hazmat and primary rescue capability, and several tankers have been commissioned with a CAFS pumper.
- 84 Class 2 Pumpers (fire engines) are designed for both metropolitan and regional areas and can be configured as either primary rescue or hazmat vehicles with CAFS pumper appliances and are located in retained fire stations.
- 85 Class 3 Pumpers (heavy fire engines) are designed for both metropolitan and regional areas and can be configured as either primary rescue or hazmat vehicles with CAFS pumper appliances.
- 86 FRNSW introduced CAFS pumps to their fleet in 2015.
- 87 To operate a CAFS pumper, permanent and retained firefighters are required to attend a five-hour training program which involves both theory and practical components.
- 88 To be eligible to complete this training, firefighters need to be attached to a station with a CAFS appliance and have approval from the Duty or Zone Commander to undertake the training.

Remote Piloted Aircraft System (cl.20.2.22 – permanent; cl.21.9 – retained)

- 89 RPAS are uncrewed aircraft or drones that are remotely piloted by an operator on the ground.
- 90 There are five firefighters who are employed as full-time pilots. Those firefighters are in roles that are regarded as a 'non-station based' roles. The remaining firefighters qualified in RPAS are called upon to perform this duty, only as required, in addition to their other duties.
- 91 To become qualified as a pilot who can operate a RPAS, firefighters are required to undertake a seven-day training program which covers both the theoretical and practical components of operating an aircraft safely. The training is provided by the Civil Aviation Safety Australia (CASA).
- 92 In addition to training to obtain a licence to safely operate the RPAS, firefighters are also required to undertake training to obtain an Aviation Radio Operator Certificate (AROC), which provides firefighters with the capability to communicate with crewed aircraft.
- 93 FRNSW also requires pilots to do additional internal training which consists of an eight-hour day of training in flight management systems and platforms and a night flying session.
- 94 After obtaining their CASA certification, pilots are also required to:
- (a) complete a proficiency assessment every year;
 - (b) fly at least every 90 days to maintain their certification currency.
- 95 The five permanent firefighters who are employed as full-time pilots receive the weekly rate for their substantive rank with an additional 15-20% (of their substantive rank remuneration) as a weekly allowance given they are in a non-station based role. The entitlement to this weekly allowance is set out at clause 46.4.3.1 of the current Permanent Award.

Bushfire officer (cl.21.2.23)

- 96 A core part of the role of a Bushfire Officer involves planning and conducting prescribed burns. A prescribed burn is the application of fire in a deliberate way to burn a particular area. It can be conducted for a variety of purposes, including to achieve a fuel reduction or an ecological outcome.
- 97 To become a Bushfire Officer, firefighters are required to complete a:
- (a) three-day course in developing complex prescribed burn plans; and
 - (b) two-day course in conducting complex prescribed burns.
- 98 Bushfire Officers are in roles that are regarded as a 'non-station based' roles.
- 99 Bushfire Officers receive their substantive rank with an additional 15-20% (of their substantive rank remuneration) as a weekly allowance given they are in a non-station based role (Permanent Award; cl. 46.4.3.1).

Driving instructor (cl.94)

- 100 The appliance training unit (ATU) is a specialised technical unit that is currently comprised of approximately 10 employees, being one team leader and nine training officers.
- 101 Training for recruits at the ATU involves a:
- (a) three-day pumper training course;
 - (b) two-day course at the Emergency Services Academy; and
 - (c) two-day defensive driving course in Armidale.
- 102 Training officers delivering National Units of Competencies are required to hold a Certificate IV qualification in Training and Assessment in order to be able to award firefighters as having met the relevant competencies.
- 103 Training Officers are not qualified on all specialist appliances. Instead, the Training Officers specialise in either ladder platforms, CAFS appliances or aerial appliances. All Training Officers are qualified to train and assess on most, if not all, pumper and tanker appliances.
- 104 As at 3 December 2024, all 10 staff in Driving Training and Assessment within FRNSW held a Certificate IV in Heavy Vehicle Driving Instruction.
- 105 All Training Officers can conduct heavy vehicle licensing assessments (Driving Instructors), which comprises medium rigid (MR) and heavy rigid (HR) licences.
- 106 Driving Instructors receive their substantive rank with an additional 15 -20% (of their substantive rank remuneration) as a weekly allowance given they are in a non-station based role (Permanent Award; cl. 46.4.3.1).

Fire investigation (cl.99)

- 107 There are seven fire investigators (4 Fire Investigators and 3 Canine Handlers) across all of NSW who attend incident scenes and conduct fire investigation and analysis. Fire investigation work also involves:
- (a) delivering training as subject matter experts for the Station Officer Promotion Program, Leading Firefighter Program and Inspectors Promotional Program;
 - (b) each month, meeting with NSW Police, delivering a two-day structural advice training to NSW Police Crime Scene Investigators and the Australian Federal Police; and
 - (c) responsibility for the Safety of Alternative and Renewable and Emerging Technology (SARET) program.
- 108 Fire investigators are in roles that are regarded as 'non-station based' roles.
- 109 Fire investigators receive their substantive rank with an additional 15-20% (of their substantive rank remuneration) as a weekly allowance (Permanent Award; cl. 46.4.3.1).

Fire safety qualification (cl.105)

- 110 Employees appointed to a role in fire safety are required to complete one or both of the following:
- (a) UTS Advanced Building Regulation Course, which is a three-day course regarding building regulations, as well as satisfactory completion of various assignments which take around five days; and
 - (b) Council investigation Course, which is a one-week course regarding the relevant legal obligations under the environmental planning and assessment legislation and the Building Code of Australia (1988).
- 111 Fire safety engineers are only required to complete the UTS course, however, those working in compliance related fire safety roles are required to complete both courses.
- 112 There is also a separate requirement that all Fire and Safety staff complete a 6-month course on psychosocial hazards.
- 113 Fire safety officers are in roles that are regarded as 'non-station based' roles.
- 114 Fire safety officers receive their substantive rank with an additional 15-20% (of their substantive rank remuneration) as a weekly allowance (Permanent Award; cl. 46.4.3.1).

Communication Trainers / Instructors (cl.112)

- 115 Communication Officers are employees who are working within the FRNSW's two communication centres and who are responsible for taking emergency triple zero calls and dispatching the appropriate personnel within FRNSW to respond to the incident.
- 116 Communication Officers also provide additional radio support to crews on scene and

- provide other communications support as required.
- 117 Communication Trainers or Instructors are responsible for training Communications Officers.
- 118 Communication Trainers or Instructors are required to complete a six-week training course and are assessed twice during that course by Trainers / Instructors.
- 119 There are two communication centres in NSW as follows:
- (a) Sydney, which has two supervisors and eight operators; and
 - (b) Newcastle, which has one supervisor and six operators.
- 120 Instructors are required to have the same skills as the communication operators that they train.
- 121 Communication Trainers or Instructors are in roles that are regarded as 'non-station based' roles.
- 122 Communication Trainers or Instructors receive their substantive rank with an additional 15-20% (of their substantive rank remuneration) as a weekly allowance (Permanent Award; cl. 46.4.3.1).

D. Other Agreed Matters

- 123 As will be recorded in the consolidated master table to be filed on 21 March 2025, the parties have reached agreement on the wording of other claims in the proceedings.

Date: 19 March 2025

Endnotes

1. Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2023 – Award Variation [2025] NSWIRComm 1003.
2. Fire and Rescue NSW Act 1989 (NSW), s 69(3).
3. See State Wage Case 2024 (No 3) (2024) 337 IR 111; [2024] NSWIRComm 19 at [183]–[193]; State Wage Case 2024 (No 4) (2024) 337 IR 111; [2024] NSWIRComm 25 at [6]–[8].
4. Fire and Rescue NSW, Annual Report 2023–24, (October 2024) at 30.
5. Fire and Rescue NSW Act 1989 (NSW), s 5A(1)–(2).
6. Fire and Rescue NSW Act 1989 (NSW), s 5A(3).
7. Fire and Rescue NSW Act 1989 (NSW), s 8(a)–(b).
8. Fire and Rescue NSW, Annual Report 2023–24, (October 2024) at 38.
9. Fire and Rescue NSW Act 1989 (NSW), s 5A(4)(b); Fire and Rescue NSW, Annual Report 2023–24, (October 2024) at 39.
10. Fire and Rescue NSW, Annual Report 2023–24, (October 2024) at 14.
11. [2021] NSWIRComm 1062.
12. Fire and Rescue NSW Firefighting Staff Awards 2021 [2021] NSWIRComm 1062 at [113].
13. Fire and Rescue NSW Firefighting Staff Awards 2021 [2021] NSWIRComm 1062 at [46].
14. Superannuation Guarantee (Administration) Act 1992 (Cth), s 19(2).

15. NSW Treasury, Expert Report: Fiscal Evidence – Fire and Rescue NSW Award Proceedings, (28 November 2024) at [3.44].
16. A bond's yield is the return an investor expects to receive each year over its term to maturity. For the investor who has purchased the bond, the bond yield is a summary of the overall return that accounts for the remaining interest payments and principal they will receive, relative to the price of the bond (Reserve Bank of Australia nd).
17. NSW Government, NSW Budget 2024–25: Budget Paper No 1, (June 2024) at 18, Table 1.1.
18. “Remaining unsettled awards across the sector” included all awards covering the General Government sector, as defined by the Australian Bureau of Statistics (ABS) Standard Economic Sector Classifications of Australia (SESCA), plus Sydney Trains and NSW Trains, but excluding various cohorts of Government and Government agency employees whose conditions of employment for at least the following 12 month period had, at the time of the report, been settled.
19. The 2021 NSW IRG refers to the NSW Treasury 2021 Intergenerational Report, 2021.
20. Re Crown Employees (Administrative and Clerical Officers) (State) Award (No 2) (1993) 52 IR 243 at 377, cited in Re Operational Ambulance Officers (State) Award (2001) 113 IR 384; [2001] NSWIRComm 19 at [167]; Application for Crown Employees (Public Sector – Salaries 2020) Award (No 2) (2020) 301 IR 321; [2020] NSWIRComm 1066 at [31]; Fire and Rescue NSW Firefighting Staff Awards 2021 [2021] NSWIRComm 1062 at [57]; Crown Employees (NSW Police Force Special Constables) (Security) Award 2023 [2024] NSWIRComm 1034 at [30]. See, eg, Crown Employees (Police Officers – 2009) Award (2012) 220 IR 1; [2012] NSWIRComm 23 at [545].
21. [1962] AR (NSW) 250.
22. [1971] AR (NSW) 425.
23. State Wage Case 2024 (No 3) (2024) 337 IR 111; [2024] NSWIRComm 19 at [93].
24. Australian Government, Productivity Commission, PC Productivity Insights: Australia's Long Term Productivity Experience, (November 2020) at 9–12.
25. The household final consumption expenditure deflator (HFCE deflator) is an alternative measure of inflation to CPI produced by the ABS that is calculated by dividing the current price value of household consumption by real household consumption. Changes in the HFCE deflator reflect changes in price and in the composition of expenditure on goods and services by persons in a given period. Ms Wilkie's report also considered real remuneration over this period when deflated by the CPI or ELCI deflators. The real wages of firefighters decreased by 0.1% over this period between 2011 to 2023 using the CPI deflator and increased by 4.1% using the ELCI deflator.
26. This is recognised in cognitive science and behaviour economics as loss aversion, a cognitive bias where the same situation is perceived as worse if it is framed as a loss rather than a gain: D Kahneman and A Tversky, “Prospect Theory: An Analysis of Decision under Risk” (1979) 47(4) *Econometrica* 263. See also D Kahneman, *Thinking, Fast and Slow* (2011, Farrar, Straus and Giroux).
27. Application for Crown Employees (Public Sector – Salaries 2020) Award and Other Matters (No 3) [2020] NSWIRComm 1077.
28. Application for Crown Employees (Public Sector – Salaries 2020) Award and Other Matters (No 2) [2020] NSWIRComm 1066.
29. NSW Government, State Rescue Board of New South Wales, NSW State Rescue Policy, (5th ed, September 2024) at [1.46].
30. State Wage Case 2024 (No 3) (2024) 337 IR 111; [2024] NSWIRComm 19 at [161].
31. Re Operational Ambulance Officers (State) Award (2001) 113 IR 384; [2001] NSWIRComm 331 at [168].
32. Re Operational Ambulance Officers (State) Award (2001) 113 IR 384; [2001] NSWIRComm 331 at [168].
33. Re Crown Employees (NSW Police Force Special Constables) (Security) Award 2023 [2024] NSWIRComm 1034 at [192]; Re Crown Employees (Police Officers – 2009) Award (2012) 220 IR 1; [2012] NSWIRComm 23 at [91].
34. Re Equal Remuneration Principle (2000) 97 IR 177; [2000] NSWIRComm 133 at [144].
35. Re Crown Employees (Police Officers – 2009) Award (2012) 220 IR 1; [2012] NSWIRComm 23 at [650]–[673], [689]–[709].
36. Re Crown Employees (Police Officers – 2009) Award (2012) 220 IR 1; [2012] NSWIRComm 23 at [666], [706], [744].
37. State Emergency and Rescue Management Act 1989 (NSW), s 457.

- 38. State Wage Case 2024 (No 3) (2024) 337 IR 111; [2024] NSWIRComm 19 at [95]–[96].
 - 39. (2024) 337 IR 111; [2024] NSWIRComm 19 at [186].
 - 40. Fire and Rescue NSW Act 1989 (NSW), s 70.
 - 41. Crown Employees (NSW Fire Brigade Retained Firefighting Staff) Award 2008 (No 2) [2013] NSWIRComm 34.
 - 42. See Award Making Principles, principle 10.1.
 - 43. See Award Making Principles, principle 10.5.
 - 44. NSW Government, State Rescue Board of New South Wales, NSW State Rescue Policy, (5th ed, September 2024) at Attachment H.
 - 45. Fire Brigade Employees' Union of New South Wales v Industrial Relations Secretary in respect of Fire and Rescue NSW (Busby Temporary Relocation) (No 2) [2023] NSWIRComm 1070.
 - 46. (2024) 337 IR 111; [2024] NSWIRComm 19 at [186].
 - 47. Fair Work Act 2009 (Cth), s 104.
 - 48. Health Services Union and Ambulance Service of New South Wales re Changes to Demand Protocol [2008] NSWIRComm 1027, cited in Construction, Forestry, Mining and Energy Union (New South Wales Branch) v South Western Sydney Local Health District [2016] NSWIRComm 1047.
 - 49. See Industrial Relations Act 1996 (NSW), s 132(1).
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