QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION:	*State of Queensland (Department of Community Safety - Queensland Fire and Emergency Services) v United Firefighters' Union of Australia, Union of Employees, Queensland and Queensland Fire and Rescue - Senior Officers Union of Employees* (No. 2) [2014] QIRC 224
PARTIES:	**State of Queensland (Department of Community Safety - Queensland Fire and Emergency Services)** (Applicant) **v** **United Firefighters' Union of Australia, Union of Employees, Queensland** (Respondent) **Queensland Fire and Rescue - Senior Officers Union of Employees** (Second Respondent)
CASE NO:	CA/2012/56
PROCEEDING:	s 149 Arbitration
DELIVERED ON:	23 December 2014
HEARING DATES:	1 February 2013 (Directions Hearing) 10 May 2013 (Mention) 19 June 2013 (Directions Hearing) 24 - 28 June 2013 26 - 29 August 2013 9 - 10 and 25 - 26 September 2013 28 October 2013 1 November 2013 3 December 2013 19 December 2014
MEMBERS:	Deputy President O'Connor Deputy President Bloomfield Industrial Commissioner Knight
ORDERS:	**1. That a new Determination known as the "Queensland Fire and Emergency Services - Determination 2013" (the 2013 Determination) be made, operative from 8 December 2013 and have a nominal expiry date of 1 October 2016.**

2. **That agreed provisions and matters in this Decision which are the subject of a clear decision are to operate from Sunday 15 February 2015.**
3. **The parties are directed to confer about finalising all provisions of the 2013 Determination and report back to the Full Bench, on a date to be advised, in mid-late February 2015.**

CATCHWORDS: INDUSTRIAL LAW - ARBITRATION IF CONCILIATION UNSUCCESSFUL - objects of the Act - relationship with s 149(5)(c) - relevance of State's financial position and fiscal strategy - impact of strategy upon Commission's decision - matters at issue - dispute resolution and consultative arrangements - wages - restrictions in present roster provisions - excessive use of sick leave - excessive overtime costs - need to reduce reliance on overtime - desire to reduce cost base and improve flexibility - part-time and casual employment options - reserve roster - aggregate wage rate - employer's claims substantially granted - claims for new pay points and allowances - such claims should be pressed on whole-of-service basis - new Determination to be made - parties to firstly confer about agreed provisions - duration of Determination to be 2 years 10 months.

CASES: *Industrial Relations Act 1999*, s 3, s 149, s 149(2)(a), s 149(4), s 149(5),

Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees AND Department of Community Safety (formerly the Department of Emergency Services) and Another (CA/2008/317) - Decision <http://www.qirc.qld.gov.au>
Origin Energy Electricity Ltd & Anor v Queensland Competition Authority & Anor [2012] QSC 414
R v Hunt; Ex parte Sean Investments Pty Ltd (1979) 180 CLR 322
State of Queensland (Department of Community Safety - Queensland Ambulance Service) v United Voice, Industrial Union of Employees, Queensland (No. 2) [2014] QIRC 093

APPEARANCES:

Mr A. Herbert, Counsel instructed Mr M. Moy and Ms L. Bain of McCullough Robertson Lawyers, for the Applicant.
Mr J. Spreckley with Mr J. Oliver and Mr G. Sottile, for United Firefighters' Union of Australia, Union of Employees, Queensland.
Mr A. Short and Mr D. Hermann for the Queensland Fire and Rescue - Senior Officers Union of Employees.

Decision

Background

[1] On 28 November 2012 a Member of the Queensland Industrial Relations Commission (Commission) reached a conclusion that further conciliation between the (then) Queensland Fire and Rescue Service (later renamed to be Queensland Fire and Emergency Services) (QFES), United Firefighters' Union of Australia, Union of Employees, Queensland (UFU), Queensland Fire and Rescue - Senior Officers Union of Employees (SOU) and a number of other Unions, in connection with their enterprise bargaining negotiations, was unlikely to result in those negotiations being settled within a reasonable time. Having reached that conclusion, the Member referred the matter for Arbitration pursuant to s 149(1)(b) of the *Industrial Relations Act 1999* (the IR Act).

[2] After thirteen hearing days over the period from late June 2013 up to and including 3 December 2013 the Full Bench as constituted released a Decision on 9 December 2013 granting all classifications, other than senior officers, covered by the *Queensland Fire and Rescue Service - Certified Agreement 2009* (CA/2009/129) (the 2009 Agreement) a first wage increase of 2.2% under this Determination operative from 8 December 2013.

[3] In the case of senior officers, the increase awarded was 0.5% - in recognition of the fact that the Member referring the matter for arbitration had Ordered, as an interlocutory Order pursuant to s 230 of the IR Act, that senior officers be paid an additional 1.7% from 15 November 2012. The reasons for that interlocutory Order are set out in the Member's Statement of 28 November 2012.

[4] This Decision deals with the fifty-one "matters at issue" between the parties to the failed enterprise bargaining negotiations as recorded in the document marked ID28 in the proceedings. In accordance with the provisions of s 831 of the IR Act, which came into effect two days prior to the day on which our Decision was reserved, we are required to determine the matter by reference to the provisions of s 149 of the IR Act as they stood prior to the amendment operative from 1 December 2013.

Requirements of s 149

[5] In arbitrating the matter the Commission has the arbitration powers it would have under s 230 if that section applied to certified agreement negotiations instead of industrial disputes: s 149(2)(a). Further, in exercising its arbitration powers the Commission is required to limit its consideration to matters at issue during negotiations for the proposed agreement: s 149(4).

[6] Section 149(5) provides the following directions to the Commission in considering the matters at issue:

> "(5) In considering the matters at issue, the commission must consider at least the following -
>
> (a) the merits of the case;
>
> (b) the likely effects of the commission's proposed determination, and any matters agreed before arbitration, on employees and employers who will be bound by the proposed determination;
>
> (c) the public interest, and to that end the commission must consider -
>
> (i) the objects of this Act; and
>
> (ii) either -
>
> (A) for a matter involving a public sector entity - the State's financial position and fiscal strategy, and the financial position of the public sector entity; or
>
> (B) for any other matter - the employer's financial position;
>
> and the likely effects of the commission's determination on those things; and
>
> (iii) the likely effects of the commission's determination on the economy and the community;
>
> (d) the extent to which the negotiating parties have negotiated in good faith."

[7] Importantly, in terms of the Commission's consideration of the matters before it, the provisions of s 149(5)(c)(ii) were amended, to that recorded above, with effect from 12 June 2012. At the same time as those amendments were made, the Objects of the IR Act as set out in s 3 were also amended to include the following provision:

> "(p) ensuring that, when wages and employment conditions are determined by arbitration, the following are taken into account -
>
> (i) for a matter involving the public sector - the financial position of the State and the relevant public sector entity, and the State's fiscal strategy;
>
> (ii) for another matter - the employer's financial position."

The debate around s 149

[8] The nature of the 2012 amendments to s 149 of the IR Act and their impact on the Commission's approach to arbitrating matters was the subject of considerable debate between QFES and UFU. In summary (the written and oral submissions record the full extent of the debate), the position adopted by each of these parties is set out below.

QFES

[9] The gravamen of the amendments to s 149 is that the IR Act explicitly equates the "public interest" with:

- the objects of the Act; **and**
- the State's financial position and fiscal strategy; **and**
- the financial position of the public sector entity concerned.

[10] In determining a matter under s 149 by arbitration the Commission is required to consider, or take into account, a number of matters. In so doing, it must balance the competing considerations implicit in the listed matters by reference to the evidence and submissions presented in the proceedings. Depending upon the facts and evidence, particular matters which the Commission is required to consider will inevitably be attributed a far greater practical significance in the proceedings than other matters. Whilst all relevant matters must be considered, each of those matters will not always have an equal bearing or impact on the outcome of the proceedings.

[11] Where, as here, a particular consideration (concerning the financial position of the State and the public sector entity, and the fiscal strategy of the State) is added to the list of stated mandatory considerations in both s 149(5) and in the objects of the IR Act itself, that suite of considerations, must, by its very nature, be accorded very significant weight in the overall assessment and outcome of the arbitration proceedings. In addition, where the State has:

- developed and implemented strict wages policies as part of a package of fiscal repair measures intended to effect significant changes to the economic structure of Queensland; and
- announced those measures and included them as part of the Government's plan to restore the State's finances to the desired parameters within a stated timeframe; and
- amended the governing legislation to ensure that such matters are required to be considered by the Commission in arbitrating wages and conditions for public sector employees,

it is plain that such considerations must be placed at the forefront of the Commission's deliberations in these proceedings.

[12] The amendment of s 149(5) of the IR Act, by consciously equating the "public interest" with the financial position of the State and its agencies and the fiscal strategy of the State, and explicitly requiring consideration of those matters, is a clear recognition by Parliament that any untoward or unbudgeted disruption to the financial position or fiscal strategy of the State would have a direct and indirect effect on the interests of the general public at large, being the whole population of Queensland.

[13] The "direct" affect will be a reduction in the funds available to provide other services to the wider community. The "indirect" affect will be the potential undermining of the Government's wages policy, with the consequences as outlined immediately above, and also the undermining of enterprise bargaining itself, by raising the precedential expectations that arbitration (rather than agreement) is a possible means of overcoming the adherence by the State to the terms of the wages policy implemented for the benefit of the general community[1].

[14] As a consequence, the Commission has a critical role to play in deciding the "big issue" as to whether or not the State may continue to implement its fiscal strategy in accordance with its declared terms *or* whether the UFU/SOU have established a merit case for QFES employees to be exempted from the constraints of that strategy, and for those employees to have access to a more substantial proportion of the revenues of the State than the State itself considers sound or appropriate in light of the existing financial position of the State and its financial position and fiscal strategies.

UFU

[15] The amendments to s 149 should not take the focus of the Commission anywhere else than may have been the case under previous arbitrations. The Commission has statutory obligations to discharge and threats by the Government to terminate staff, close services and the like, fall outside the statutory parameters which guide the Commission's deliberations. The situation has not changed from previous arbitrations: the Commission makes its determination, based upon the merits of the case, after which it is up to the Government to prioritise its expenditure.

[16] UFU disagrees with the submissions of QFES to the effect that the amendments to s 149, which explicitly require the Commission to consider the State's fiscal strategy and the State's financial position and the financial position of the public sector entity, now require the Commission to place those matters at the very forefront of its consideration. While those matters are mandatory considerations, they have no more weight than any of the other mandatory considerations and no more weight than any other consideration not explicitly set out but which the Commission finds to be relevant.

[17] The State's financial position and fiscal strategy and the financial position of QFES have no more weight than the other matters identified, and not necessarily more weight than any other relevant matter that the Commission might consider. In this regard, the authorities clearly indicate that in the absence of a requirement that specified matters are to be accorded more weight or significance than others, the weight to be given to each specified matter is to be decided by the decision maker[2] [3].

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[1] Taken from attachment AB1 to Affidavit of Byron Beavers, Exhibit 24.

[2] *R v Hunt; Ex parte Sean Investments Pty Ltd* (1979) 180 CLR 322 at [334] (ID 18 in the proceedings).

[3] *Origin Energy Electricity Ltd & Anor v Queensland Competition Authority & Anor* [2012] QSC 414 (ID17).

[18] Having regard to the authorities and the terms of s 149(5) of the IR Act, UFU submits that:

- there is no requirement in s 149 that any one of the matters mentioned is to be accorded more weight or significance by the Commission than any of the other mentioned matters; and

- the weight to be given by the Commission to each of the matters mentioned is to be determined by the Commission itself in light of its consideration of the evidence and the submissions made by the parties.

Our conclusions in relation to the debate around s 149

[19] Any consideration of the provisions of s 149 cannot be undertaken in isolation from a consideration of the relevant objects of the IR Act at s 3. This section sets out 17 objects of which the following are most relevant to our determination of the matters at issue:

> "The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by -
>
> (a) providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers; and
>
> (b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved standards, low inflation and national and international competitiveness; and
>
> …
>
> (d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and
>
> (e) helping balance work and family life; and
>
> (f) promoting the effective and efficient operation of enterprises and industries; and
>
> (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
>
> …
>
> (p) <u>ensuring that, when wages and employment conditions are determined by arbitration, the following are taken into account</u> -
>
> (i) <u>for a matter involving the public sector - the financial position of the State and the relevant public sector entity, and the State's fiscal strategy</u>;
>
> (ii) for another matter - the employer's financial position."
> **(<u>our emphasis</u>)**

[20] After considering the above objects we agree with the observations of the Full Bench[4] in *State of Queensland (Department of Community Safety - Queensland Ambulance Service v United Voice, Industrial Union of Employees, Queensland)* (No. 2) [2014] QIRC 093 at [68] where the Full Bench observed "… In our view, the objects of the Act have a tension between economic considerations and fair standards of wages and conditions for employees. No one object has a primacy over the other."

[21] We also agree with the observations of the Full Bench in the following paragraph where they stated "… While the setting of fair wages is an important consideration, the combination of object (p) and s 149(5)(c)(ii) may be considered to give greater weight to economic considerations when determining the wages component of a s 149 arbitration", but would extend the Full Bench's reference to "fair wages" and "wages", respectively, to include "and employment conditions" in each case.

[22] Given these observations, we have come to the conclusion that in arbitrating the matters at issue between the parties we are required to consider the particular objects of the Act mentioned in paragraph [19] but, in doing so, are required to give special attention and consideration to the issue of how our decision can be accommodated within the State's financial position and fiscal strategy, and the financial position of QFES.

The State's financial position and fiscal strategy

[23] Extensive evidence about the State's financial position and fiscal strategy was given by Mr Alex Beavers, Deputy Under Treasurer - Fiscal, Queensland Treasury and Trade, in the course of which he highlighted a number of findings of the Queensland Commission of Audit which were contained in its interim report of June 2012. Mr Beavers said that the Commission's interim report (a copy of which was attached to his affidavit) made a number of important findings and recommendations which included the following:

- Queensland was forecast to record a fiscal deficit of $9.5 billion in 2012-13, with deficits expected to continue across the forward estimates to 2015-16;

- the State's financial position was a result of a lack of fiscal discipline. Since 2005-06 Queensland had been living beyond its means, with expenses growth significantly outstripping revenue;

- Queensland Government debt, which had grown to $64 billion in 2011-12 was projected to rise to $92 billion in 2015-16, reaching $100 billion by 2018-19, unless immediate corrective action was taken;

- Queensland's credit rating was downgraded in 2009-10, from AAA to AA, after a continued increase in borrowing. This followed Queensland's ratio of debt (net financial liabilities) to revenue rising from below 20% in 2005-06 to a figure projected to reach 100% in 2011-12 and 132% in 2012-13.

- Queensland's financial position by 2011-12 was unsustainable. The State was locked into a debilitating cycle of over-expenditure, ever-increasing

[4] *State of Queensland (Department of Community Safety - Queensland Ambulance Service) v United Voice, Industrial Union of Employees, Queensland* (No. 2) [2014] QIRC 093.

levels of debt and crippling increases in debt servicing costs. A major task of fiscal repair was imperative to prevent further damage to the future prosperity of the State.

- in order to return Queensland to a position of financial strength, the Commission of Audit recommended a two stage approach, *viz*:

  - stabilise the growth in debt and return the budget to General Government fiscal surplus by 2014-15; and

  - reduce the accumulated total government debt to restore a AAA credit rating and provide a buffer to keep that credit rating by reducing the ratio of debt to revenue by 60% by 2017-18.

- in its response to the Audit Commission's interim report tabled in Parliament on 11 July 2012, the Queensland Government announced its commitment to achieve a fiscal balance by 2014-15 by achieving $4 billion or more in savings over 3 years and ensuring debt stabilised at around $85 billion in 2014-15. In order to achieve these targets, the Government outlined four fiscal principals, as follows:

  - Principal 1 - Stabilise, then significantly reduce, State debt

  - Principal 2 - Achieve and maintain a General Government sector fiscal balance by 2014-15

  - Principal 3 - Maintain a competitive tax environment for business

  - Principal 4 - Target full funding of long term liabilities such as superannuation in accordance with actuarial advice.

- Mr Beavers then went onto say:

  "8. In framing the 2012-13 Budget, the Government had regard for the recommendations of the Independent Commission of Audit and made savings by exiting activities that are not the domain of the Queensland Government, reduced waste and made efficiencies in Government activity as well as introduced specifically targeted revenue options. The total net value of Budget measures between 2012-13 and 2015-16 is $7.766 billion consisting of:

     - $5.277 billion in expense measures

     - $0.812 billion in revenue measures

     - $1.677 billion in capital measures.

  9. With employee expenses accounting for nearly half of Queensland Government expenditure, reductions in employee expenses were necessary to reduce the fiscal deficit and stabilise debt. All departments were requested to make employee expenditure savings,

totalling $4.5 billion across 2012-13 to 2015-16, with Ministers and Directors-General to determine the specific areas of the departments in which savings would be made.

…

11. Reflecting the Government's fiscal repair efforts, employee expenses were expected to grow on average 2.5% per annum between 2011-12 and 2015-16, in line with the Government's election commitment. It was expected that there would be around 10,600 redundancies in 2012-13. The total reduction in FTE positions attributable to the fiscal repair measures contained in the 2012-13 Budget was expected to be around 14,000. The difference is attributable to discontinuing temporary positions and not filling vacant positions."

- The expected employee expenses growth of an average of 2.5% per annum mentioned in paragraph 11 of Mr Beavers' statement is to be compared with that recorded in the findings of the Commission of Audit, which was to the effect that over the period 2000-01 to 2010-11 employee expenses increased by an average 8.7% per annum, comprising growth in employee numbers of around 3.5% per annum and wages growth (including classification creep) of around 5.2% per annum.

[24] Mr Beavers also said that ratings agencies take a very keen interest in enterprise bargaining outcomes and management of employee expenses. They see this as a key test of a Government's resolve to manage its budgets and achieve its fiscal principals. As such, it is critical that the Government continues to demonstrate fiscal discipline by ensuring that expenses are tightly controlled across all public sector functions. Wages outcomes that exceed budgeted levels in any part of the public sector may cause rating agencies and financial markets to question the capacity of the Government to apply the level of expenditure control required to fully implement the State's fiscal strategy. Mr Beavers also said that economic conditions were softer than expected when the 2012-13 Budget was prepared and that expenditure had also increased beyond that budgeted for because of the need of the State to respond to various natural disasters.

[25] In concluding his evidence, Mr Beaver's stated:

"38. Any increases in excess of the wages policy will place pressure on the general applicability of the wages policy itself. Through undermining the credibility of the wages policy this would similarly undermine the Government's fiscal strategy and ability to stabilise Queensland's financial position unless consequential reductions in employee numbers can offset the increase in remuneration."

[26] Evidence about the State's financial position and fiscal strategy was also provided by Professor John Quiggin an economist currently employed as a Research Fellow at the University of Queensland. He had been commissioned by a number of public sector unions to prepare a report in response to certain questions posed to him which he titled "Wage and Fiscal Issues in relation to the Queensland Public Service". He also tabled a self-authored article "Queensland Commission of Audit Interim Report - June 2012: A Critical Review".

[27] Part of the Brief of Evidence given to Professor Quiggin by those who commissioned the report was a request for him to analyse, *inter alia*:

- the overall state of the Australian economy;
- the overall state of the Queensland economy;
- projected movements in the cost of living over the next three years;
- a comparison of movements in the Wage Price Index in both the private and public sectors in Australia and Queensland, respectively;
- an analysis of the Queensland Government's fiscal position and policies taking into account a range of matters including the Commission of Audit Report; and
- undertake a variety of investigations, and provide comment in relation to, the current fire service levy.

[28] In the course of the conclusions contained in the first Report mentioned above, Professor Quiggin stated:

- contrary to claims made in the Commission of Audit interim report Queensland does not face a fiscal crisis;
- fiscal difficulties in the current budget arise from the fact that the Government has adopted logically inconsistent goals of maintaining service standards while cutting taxes and reducing debt;
- on balance, the fiscal position in Queensland is similar to that in other States. The global financial crisis and natural disasters have had some impact on the State's balance sheet, but net worth remains strongly positive;
- the absence of a AAA credit rating has only had a modest impact on borrowing costs;
- the Government's desire to improve its fiscal position by reducing wages below the level that would be expected on the basis of ordinary wage-setting processes is no different from that of any other employer seeking to finance mutually inconsistent objectives at the expense of its employees.

[29] Professor Quiggin also filed a further affidavit in which he commented on the evidence given by Mr Beavers, during the course of which he made the following points:

- the "fiscal balance" measure proposed by the Commission of Audit is not a standard measure of budget balance. It mixes current and capital expenditure and takes no account of the value of capital assets;

- the standard measure of current budget balance is the operating surplus or deficit, not the "fiscal balance" as adopted by the State Government;

- the Government's focus on gross debt is inappropriate since it is worsened by the acquisition of assets, even when the value of those assets exceeds their cost. In any event, the ratio of debt to revenue was projected to peak in 2012 under existing policy settings and was projected by the Audit Commission to decline from 2012-13.

[30] As interesting as Professor Quiggin's evidence might have been, it was only marginally relevant in informing us about the financial position of the State and totally irrelevant in assisting us to identify the State's fiscal strategy. For example, it is not relevant that Professor Quiggin might not agree with the Government's acceptance of the Audit Commission's finding that the State's level of debt is too high and that steps should be taken to stabilise and then reduce it. Equally, it is not relevant that he advocates a different approach to that chosen by the Government to focus on gross debt levels and achieving a fiscal balance.

[31] What *is* relevant is that the Government has decided that the level of debt, and the cost of servicing it, had reached unacceptable levels and, as a result, has chosen to adopt the recommendation of the Audit Commission that it should, firstly, stabilise the growth in debt and return the budget to General Government fiscal surplus by 2014-15 and, secondly, reduce accumulated total Government debt to restore a AAA rating. To achieve that result it has committed to four fiscal principles (its fiscal strategy) as identified above in Mr Beaver's evidence. In addition it has established, as an integral part of its fiscal strategy, a wages policy which requires agencies to fund any wages outcome above 2.2% per annum from internal sources, even if this means staff reductions or reductions in service delivery.

[32] In terms of a summary of our views in relation to the State's financial position and fiscal strategy and Professor Quiggin's evidence in relation thereto, we adopt the reply submissions of QFES, as follows:

> "127 Professor Quiggin did not contest that there is a very substantial State debt which, at some indeterminate time in the future, must be repaid by the present and future generations. Whether or not the Audit Report can be characterised as presenting State debt in its worst case scenario (and it is submitted that it did not) the relevant fact for the purposes of these proceedings is that the State has accepted the advice that the current level of debt is too high to be carried by the Queensland economy, and ought to be consolidated and reduced as quickly as is feasible.
>
> 128 Having adopted that particular fiscal strategy and the operational steps needed to implement that strategy, the Commission is required by the Act to then consider the implications of its decision upon that strategy. It is not required to consider what Professor Quiggin might think to be a better or alternative strategy, or to consider the effect of its decision on a strategy that does not exist.
>
> …

> 130 … the submissions to the effect that Professor Quiggin thinks that the economy is not in poor shape are of no consequence whatever in these proceedings, so long as the State has accepted that the levels of debt which do exist are well in excess of safe or acceptable levels and so long as the State is actually implementing a definite fiscal strategy to reduce that debt.
>
> 131 It is not contended by any party or witness that the reduction of State debt is a bad thing or that it is an unacceptable strategy that should be given short shrift by the Commission. The speed at which that debt might be reduced is a matter for political debate, but that debate has been settled by the decision of the State, and that decision is the factor which must be considered by the Commission as to its propriety or rationality."

The financial position of QFES

[33] Ms Fiona Burbidge, Acting Chief Finance Officer, Department of Community Safety, gave evidence about the financial position of QFES. She said that funding for QFES came from three sources, as follows:

- approximately 70% from fire levies collected by local government councils through rate notices and remitted to QFES;
- approximately 19% from the State's Consolidated Fund; and
- the remainder from user-pays charges (approximately 10%), grants, contributions and other revenues.

[34] Average annual growth in QFES operating revenues are forecast to be 3.6% per year over each of the 2012-13 to 2014-15 budget periods. During this period QFES will be required to contain its operating expenses, including capital expenditure, within its estimated funding limits.

[35] The forward estimates for QFES include an increase of 2.2% per annum in wage costs, including costs directly associated with the aggregation of pay rates and costs associated with the introduction of a Technical Rescue stream. In light of the Government's wages policy the above costs will have to be funded internally. There was no capacity for QFES to seek additional funding to cover any employee-related costs above the 2.2% mentioned above. Any such costs above those budgeted for would necessitate QFES having to fund such costs by taking funds presently allocated to other items of expenditure, which could lead to: additional reductions in employee numbers; reductions in the capital expenditure program; placing restrictions on the capital expenditure program; placing restrictions on the purchase of operational equipment; and, service delivery closures.

[36] In a supplementary affidavit Ms Burbidge addressed the funding of QFES following an announcement in the 2013-14 Queensland State Budget to recast the Urban Fire Levy as the Emergency Management, Fire and Rescue Levy. This new levy was proposed to apply to those areas of Queensland that were previously outside an urban fire levy district, within income gained to be utilised to help offset the cost of provision of emergency services. Ms Burbidge said that while this change would deliver more income from non-government sources, it would also have to be utilised to fund the operational cost of providing emergency management, fire and rescue services, which included

QFES, within the Department of Community Services. Importantly, it would not lead to a greater level of available income - merely an alteration in the proportions mentioned in paragraph [33].

The likely effects of the Commission's determination on QFES, its employees, the economy and the community

[37] In a supplementary affidavit, Mr Beavers referred to a Cabinet Budget Review Committee (CBRC) Minute, "Fiscal Strategy Relevant to Public Sector Arbitration Proceedings", which was made known to Queensland Treasury and Trade on 3 May 2013. Because of the way it impacts the environment in which the Full Bench is required to make this Determination it is necessary to record the full content of the CBRC Minute, as below:

"Fiscal Strategy Relevant to Public Sector Arbitration Proceedings

1 This Minute has been prepared at the direction of the Cabinet Budget Review Committee (CBRC) for the purposes of arbitration proceedings being conducted (and to be conducted) in 2013 and 2014 in accordance with the Industrial Relations Act 1999 (the Act).

2 Section 149(5)(c)(ii) of the Act relevantly provides that for the purposes of arbitrations under section 149 the Queensland Industrial Relations Commission (QIRC) must consider inter alia the following:

> "… for a matter involving a public sector entity - the State's financial position and fiscal strategy and the financial position of the public sector entity; … and the likely effects of the Commission's determination on those things; …"

3 This Minute describes those elements of the fiscal strategy of the State which are considered by CBRC to be relevant to the QIRC arbitrations scheduled for hearing in 2013 and potentially 2014, and which therefore must be considered by the QIRC under section 149(5)(c)(ii)(A) of the Act.

4 This Minute is intended to inform the QIRC, and each of the parties to the arbitration proceedings, of the content of the State's fiscal strategy for the purpose of assisting the QIRC (and the parties) to comply with section 149(5)(c)(ii) of the Act.

5 Queensland's fiscal circumstances have required that the State formulate a fiscal strategy which includes the adoption of a new set of fiscal principles aimed at improving the sustainability of the State's finances. With employee-related expenses accounting for almost half of all General Government expenses, wages outcomes are critical in the achievement of three of the four new principles. These are:

a. stabilise, then significantly reduce, State debt;

b. achieve and maintain a General Government sector fiscal balance by 2014-15; and

c. target full funding of long term liabilities such as superannuation in accordance with actuarial advice.

6 Accordingly, as a critical part of the fiscal strategy, the State has adopted the CBRC-approved wages policy for the Queensland public sector, for the purpose of exercising restraint over employment expenditure. That policy provides that budget supplementation from the Consolidated Fund to agencies, for the purpose of meeting the cost of increases to employment related expenses, is limited to the amount necessary to meet the cost associated with an increase of 2.2% per annum to existing employment expenditure as at the date of a determination (excluding the effect of any interim pay increase agreed to or awarded in association with the arbitration process), which increase may consist of:

a. the costs directly associated with the aggregation of existing wages and allowances, and/or the creation of an aggregated allowance, howsoever called, in the form proposed by the agency in the arbitration; and/or

b. increased wage rates to assist in offsetting cost-of-living pressures for employees; and/or

c. the costs of implementing such other changes to the employment arrangements and structures in the agency as are expressly authorised by the CBRC or the Public Service Commission ("PSC") before the commencement of the arbitration hearings.

7 Any additional employment cost which exceeds 2.2% per annum, and which is imposed upon the agency by or as a consequence of any determination by the QIRC, will be borne by individual agencies from within their budget allocation (supplemented by the amount referred to in paragraph 6), and the agency concerned will be required to otherwise reduce expenditure to meet any such additional employment cost.

8 The only exception permitted will be in a case where the authorisation by the CBRC or the PSC given under paragraph 6(c) above, exempts such expenditure from the operation of paragraph 6 and 7 of this Minute. Supplementation may be granted for any such expenditure where it causes the employment costs of the agency to exceed 2.2%.

9 As part of the fiscal strategy, an agency will not be permitted by the State to increase any charges that it may levy or collect for services it provides to the public, for the purpose of meeting or offsetting any such additional employment costs.

10 The State is resolute in strictly implementing this CBRC policy as a key part of its fiscal strategy. It should be assumed by the QIRC and any party to the arbitrations that, if employment costs are increased by more than the amounts described in this Minute, no further supplementation to affected agencies will

be provided by the State to offset that cost. This action is in accordance with the overall State fiscal strategy which requires the imposition of strict fiscal discipline upon all public sector entities.

11 It is also an element of the State's fiscal strategy that savings in employment or operating costs which are generated by efficiency initiatives, whether through enterprise bargaining processes, determinations of the QIRC or general budgetary considerations, are to be directed to reducing overall State debt, and will not be available as additional supplementation of the budget allocation to the agency concerned, so as to permit the agency to exceed the fixed supplementation amounts referred to herein. All such potential savings have been taken into account by CBRC in formulating its wages policy and determining the permitted level of supplementation. The only exception to this position is if, in the context of enterprise bargaining, approval is given to an entity to offer up to an additional 0.3% wage increase, which amount is offset by real cashable savings. That circumstance does not apply to QIRC determinations.

12 CBRC authorises Queensland Treasury and Trade and the Public Service Commission to convey to the QIRC and other relevant parties, the information contained within this Minute."

[38] In summary the Minute makes the following points:

- because employee-related expenses account for almost half of all General Government expenses, wages outcomes are critical in the achievement of three of the four principals underpinning the State's fiscal strategy;

- as a critical part of the fiscal strategy, the State has adopted the CBRC - approved wages policy which provides that budget supplementation from the Consolidated Fund to agencies for the purpose of meeting the cost of increases to employment-related expenses is limited to 2.2% per annum on existing employment expenditure as at the date of a Determination;

- any additional employment costs which exceed 2.2% per annum, by or as a consequence of any determination by the QIRC, will be borne by individual agencies from within their budget allocation;

- as part of the fiscal strategy, an agency will not be permitted to increase any charges that it may levy or collect or services it provides to the public for the purpose of meeting or offsetting any such additional employment costs;

- savings in employment or operating costs which are generated by determinations of the QIRC are to be directed toward reducing overall State debt and will not be available as additional supplementation of the budget allocation to the agency concerned so as to permit the agency to exceed the 2.2% per annum referred to above.

[39] Consequently, the effect of the above Minute is that while s 149(5)(c)(ii) of the IR Act does not compel the Commission to apply the Government's position on wages and employment conditions, the reality is that any increases in wages and employment-

related costs which exceed the figure set out in the Minute will (not might) lead to reductions in employee numbers in the agency concerned and/or reductions in areas of service delivery and/or reductions in capital expenditure, and the like. Such outcome is confirmed in the evidence of Ms Burbidge, Mr Beavers and Mr Shane Donovan, Director of Employee Relations, Department of Community Safety.

[40] As such, not only will the employer and employees directly concerned suffer a detriment, any job losses and/or reductions in services and/or reductions in capital expenditure will have a flow-on effect across the economy and the community. Indeed, the impact on the economy and community generally as a result of Government decisions to reduce employee numbers and expenditure levels, of the type referred to by Mr Beavers in his evidence, was the subject of strong criticism by Professor Quiggin.

[41] It is against the background of the practical realities mentioned above that we proceed to decide the 51 matters at issue between the parties and which we are required to arbitrate.

[42] The numbering system we have adopted to record our decision in respect of each item in dispute reflects the order in which matters were dealt with in the QFES arbitration submissions (ID 41) with the addition of two items dealt with in the submissions of the parties which are recorded in ID 28 at QFES clauses 4.12 and 4.14, respectively. These have been numbered as items 18 and 20, with item 19 dealing with clause 4.13 - Leading firefighters.

[43] However, before turning to the items to be arbitrated it is necessary to address a particular issue raised by UFU which requires decision.

Extent of the matters at issue

[44] In the course of its submissions UFU raised its concerns that QFES, by canvassing the Government's wages policy of 2.2%, was attempting to broaden the matters at issue by requesting the Commission to take notice of the Government's wages policy in circumstances where it had never been raised during the course of the parties' attempts to negotiate a new certified agreement. Further, UFU argued that the employer's last wages offer had been 2.7% and, on that basis, the Commission could not consider the current wages policy which "was concocted long after the negotiations for the proposed agreement had ceased and the matters at issue between the parties were referred to arbitration". In UFU's view consideration of the wages policy would be impermissible. "A Government agency could alter, or raise, totally new bargaining claims during arbitration, which were never at issue during proceedings, on the basis that they purportedly form part of, or relate in some way to, the State's 'fiscal strategy'.".

[45] In its reply submissions QFES rejected UFU's contentions on two primary grounds:

> "40. …Firstly, as the current wages policy is a part, and an essential part, of the fiscal strategy as described by the CBRC, it is a matter which must be considered under section 149(5), irrespective of whether it was ever the subject of specific negotiations between the parties.
>
> 41. The specific requirement for that matter to be taken into account under section 149(5) displaces entirely the question as to whether it was ever mentioned in negotiations or formed any part of the discussions between the

parties. It is directly required to be taken into account and that requirement is not displaced by the terms of section 149(4).

42. Secondly, the submission is wrong as a matter of fact. The submission appears to come down to the suggestion that to the extent that here is "ambit" in these proceedings, in relation to wage increases, the base wage adjustment ambit range is said to be between 2.7% to 3.75% per annum.

43. This is a complete misunderstanding of the nature of the proposal put forward by the QFRS. The offer by the QFRS in the course of the negotiations, so far as the evidence disclosed it, was a proposal to pay 'up to' 2.7%. That was a maximum payment, not a minimum payment…".

[46] In support of its submission that the employer's offer was "up to" 2.7%, QFES referred to the evidence of Mr Donovan (at T8-9) to the effect that QFES had offered to pay up to 2.7% if UFU agreed to its claims. "In plain English terms, this means that if there was any lack of acceptance of any of the proposals on the part of the State, the amount which would be subsequently agreed would be less than 2.7%. This means that the ambit of the offer by the employer at that time was between 0% and 2.7%.".

[47] In the circumstances of this case we do not accept the submissions of UFU about the employer's last wage offer "of 2.7%" setting the "base" in terms of the lowest figure we can decide in arbitrating the matters at issue between the parties. Rather, we agree with QFES's reply submissions on this point, as follows:

"47. …the ambit in the proceedings, to the extent that it is necessary to ascertain, is between 0% and 3.75% per annum.

49. As submitted in transcript on 1 November 2013, the Industrial Court in the *Sun Metals case* decided that the matters in issue for the purpose of section 149(4) is a question of fact to be determined by the Commission. This requires an ascertainment of precisely what is meant by the 'matter'. In this case the 'matter' is the quantum of a wage increase in circumstances where one party was offering 'up to' 2.7% subject to the achievement of certain concessions, and the other party was offering to accept 3.75%.

50. In those circumstances, the matter in issue was the overall question as to:

(a) whether a wage increase should be granted with or without cost offsets; and

(b) what the extent of the wage increase should be; and

(c) what the extent of any offsets should be.

51. It is artificial and nonsensical to confine the concept of 'matter' in those circumstances as being confined to numerical offers being exchanged between the parties in circumstances where they were all subject to cost offsets and concessions that were never made. The only sensible way to characterise the 'matter' which was undoubtedly an issue, is the overall

> notion of the quantum and offsets necessary to meet the cost of wage increases generally, without artificially confining the identity of that 'matter' by numbers bandied around by the parties in the proceedings…".

[48] We also do not accept UFU's argument that we are not able to take notice of the Government's wages policy or to take it into consideration in deciding the matters at issue between the parties. As highlighted by QFES in its reply submissions (above), and by this Full Bench earlier in our Decision, the Commission is actually obliged to consider the State's financial position and fiscal strategy, an integral part of which is the CBRC – approved wages policy, in reaching its overall decision in these proceedings. That obligation is absolute and is not displaced, or otherwise diminished, by the terms of s 149(4).

Item 1 - Date and period of operation

[49] For reasons set out below we have decided to make a new Determination to apply to:

- QFES;
- employees employed by QFES for whom rates of pay, conditions of employment and entitlements are provided therein; and
- those Unions covered by Awards of this Commission identified at clause 1.3 of document ID 28.

[50] The Determination to be made as a result of this Decision will be known as "*Queensland Fire and Emergency Services - Determination 2013*" (the 2013 Determination). The date of operation for the 2013 Determination is 8 December 2013, which is the date from which the first wage increase was granted. A different operative date will apply to other matters dealt with in this Decision. The nominal date of expiry of the Determination will be Saturday 1 October 2016, as recorded below.

Item 2 - Relationship to awards

[51] The parties are unable to agree the full extent of the wording to be included in the Determination at clause 1.3. In the absence of any real argument on this point we have decided to adopt the general wording proposed by QFES, with some modification to the proposed clause 1.3.2 which will read as follows:

> "1.3.2 In the event of any inconsistency with any provision in an award listed in clause 1.3.1, the terms of this Determination will apply to the extent of the inconsistency."

[52] In addition, we note that the parties' reference to the *General Stores, Warehousing and Distribution Award - State 2003* is not relevant on the basis that this Award was made obsolete on 30 July 2013.

Item 3 - Closed Determination and no extra claims

[53] UFU seeks to include a clause (2.2.3) that allows for changes to be made to employees' rights and entitlements during the life of the Determination where those changes arise as a result of:

- general rulings, statements of policy and decisions issued by the Commission;
- any improvements in conditions that are determined on a whole-of-government basis; and
- reclassifications.

[54] QFES opposes the inclusion of any reference to "decisions" and improvements on a whole-of-government basis but otherwise agrees with the clause proposed by UFU.

[55] In the absence of any detailed debate on the issue, and noting that s 150(8) of the IR Act provides that a Determination cannot be amended during its life, we are prepared to include the clause proposed by UFU subject to:

- the deletion of the reference to "decisions" in the first point;
- the inclusion of a provision which clearly excludes wage increases arising from State Wage Case decisions; and
- the inclusion of the words "of employment" in the second point after the word "conditions".

[56] In terms of the disagreement about no extra claims we believe the clause proposed by QFES (2.2.1) to be more representative of the relevant legislative provisions and will incorporate it in the Determination.

Item 4 - Dispute resolution
Item 51 - Consultation and dispute resolution

[57] QFES seeks the inclusion of a provision in the Determination which is to apply to any dispute in relation to the operation or interpretation of the Determination. In proposing such clause, QFES makes it clear that it opposes the inclusion of compulsory consultative mechanisms on the basis that QFES and its employees have a long history of co-operating in matters of consultation and that it should be allowed the freedom to treat its staff accordingly without imposed and restrictive measures that have the appearance of being legally enforceable, even if they are no longer useful.

[58] On the other hand, UFU seeks the inclusion of more substantive provisions which are predicated on the parties adopting a co-operative and consultative approach to preventing and settling disputes at a state, local and individual level. In particular, UFU seeks the inclusion of provisions which would have the effect of requiring QFES to participate in regular "issues forums", which would discuss issues specific to particular employee groups or workplaces, as well as a requirement for QFES to consult with the relevant unions about "major issues or common issues affecting a major part of QFES".

[59] UFU submits that while QFES states that it is its intention to continue with existing consultative arrangements, its claim that such provisions should be removed from the Determination, as an administrative measure because they are not needed, does not sit comfortably with its stated intentions. As such, in UFU's view, there should be no controversy about including the modified consultative and dispute resolution provisions proposed by the Union. The inclusion of such provision would also act to maintain "sensible, mature, industrial processes" should QFES change its mind in the future.

[60] In terms of its claim for a specific consultative process to address establishment levels and staffing issues, UFU highlighted the evidence of Inspector/Area Commander Mark Gribble who provided evidence about the need to ensure that appropriate staffing numbers are applied in fire and rescue operations from both a health and safety perspective and a fire suppression perspective, respectively. In addition, the Union pointed to the evidence of Station Officer Cameron Corneal who highlighted his concerns about the lack of 24/7 coverage at the Airlie Beach Fire Station and his unsuccessful attempts to have the management of QFES address and resolve those concerns.

[61] Although QFES argued very strongly that the Determination should not contain any provisions which require it to consult with UFU about matters previously canvassed during the course of issues forums, or about establishment levels and staffing issues, its principle witness, Acting Deputy Commissioner Mark Roche, acknowledged there would be no prejudice (T 5-28), nor any problems (T 5-29), if consultative provisions were contained in the new Determination. Indeed, his commitment, on behalf of QFES, to the continuation of consultative arrangements extended to including such obligation in a Standing Order issued by the Fire Service Commissioner, or other document (T 5-29).

[62] The evidence of the employer and Union witnesses points to a long history of consultation between the parties in terms of managing their relationship and attempting to address both minor and major matters as they rise. For that reason we are loath to remove consultative provisions from the new form of industrial instrument which will regulate the parties' relationship and to, in effect, leave it to the good graces of QFES to do what it says it intends to do. In our view, employees to be covered by the Determination are entitled to be aware of their capacity to raise issues with their employer, through appropriate forums, as well as to know how any grievances or disputes they might have, either as individuals or as a group, can be raised and addressed.

[63] As such, we have decided that a "hybrid" consultation, complaints management and grievance procedure should be included in the Determination in a form which reflects the following aspects:

- the continuation of regular "issues forums" at a State level, where important issues in the parties' relationship can be raised and addressed;

- the establishment of appropriate processes to allow the parties to consult each other on matters affecting the implementation and future operation of this Determination (this does not necessarily require the creation of a separate consultative process to that referred to immediately above); and

- a disputes resolution process which records how any disputes in relation to the operation or interpretation of the Determination, as well as any dispute about any industrial matter, may be progressed.

[64] We envisage that the latter requirement can be accommodated through minimal changes to the dispute resolution provision proposed by QFES at clause 2.3 of ID 28.

Item 5 - Wages

[65] Each of UFU and SOU seeks wage increases of:

- 7.5% from 1 July 2013
- 3.75% from 1 July 2014.

[66] The first increase claimed contemplates 2 x 3.75% annual wage increases to cover the two year period from 1 July 2012 - 30 June 2014 and is said to reflect the fact that the last wage increase granted to employees to be covered by the proposed Determination covered the period 1 July 2011 until 30 June 2012. Each Union also argued that because of the fact that the last wage increase occurred on 1 July 2011, employees' wages and salaries had declined and no longer represented fair standards in relation to living standards prevailing in the community.

[67] In support of its claims UFU called evidence from Professor John Buchannan, Director of the Workplace Research Centre at the University of Sydney. Professor Buchannan provided a range of data dealing with movements in average weekly ordinary time earnings (AWOTE) and the wage price index (WPI), respectively. In relation to AWOTE, he said that "since 2008 public sector workers in Queensland have fallen behind their national peers, while earnings in the Queensland private sector continue to outpace the Australian private sector at large". After comparing both data sets (i.e. AWOTE and WPI) he opined that "public sector workers generally, and in particular those in Queensland, have experienced adverse changes relative to their peers in the last three years."

[68] Reliance was also had on Professor Quiggin's reports in which he said "an annual rate of wages growth of around 4.5% was justified" (P3 - Exhibit 44) and that "on standard wage-setting principles, a productivity-based increase is justified" (P37 - Exhibit 46). His evidence, as well as that given by Professor Buchannan, was relied upon by UFU to support its claim for a 3.75% per annum wage increase which it argued "is moderate and well within the wage movement trends in the community."

[69] In addition to pursuing the levels of wage increases mentioned above, SOU also sought an additional increase for senior officers based on work value grounds. In its submissions SOU said that the evidence it led during the proceedings showed that, since 2009, there has been a clear and substantial increase in senior officers' workloads accompanied by, and attributable to, increases in a variety of matters including: complexity of work; increased hours of work; additional skills, responsibilities, and accountabilities. There had also been a substantial decrease in staffing levels which further increased the workload and hours of work performed by senior officers. In addition to the above matters, amendments to the *Disaster Management Act 2003* in 2010 had seen senior officers of QFES take a leading role in preparing for, and coordinating responses to, disasters in Queensland, other States and internationally. In arguing for a wage increase

based upon work value grounds SOU relied upon a number of witness affidavits, details of which appear at the foot of pages 3, 4 and 5, respectively, of its written outline of submissions.

[70] The increases claimed by UFU and SOU were strongly opposed by QFES which argued that the Commission should not grant a wage increase which exceeded 2.2% per annum, at 12 monthly intervals, over the proposed 3 year life of the Determination. In doing so, QFES made extensive reference to the evidence of Mr Beavers and Ms Burbidge as it related to establishing the financial position of the State Government and of QFES, respectively, as well as the State's fiscal strategy. In particular, QFES highlighted the CBRC Minute and QFES's incapacity to fund any increase in employment costs above 2.2% if the Commission was minded to grant an increase above that level.

[71] In that respect, QFES said that if the Commission was considering whether to award a wage increase in excess of 2.2% per annum it was required to consider the financial position of the agency concerned and the effect of its decision on the agency. In particular the Commission was required to understand and accept that QFES would be required by strict Government policy to sacrifice other programs and/or employment numbers in order to provide the necessary supplementation of funding to meet any increase in wages which exceed the Government's wages policy.

[72] QFES also highlighted that the Government's wages policy was not targeted at QFES's employees. It was part of a wider fiscal strategy which had been decided by the Government in its role of the manager of the finances of the State in the interest of all Queenslanders. Such matters were all relevant facts, the impact of which the Commission was required to consider when determining the quantum of the increase in wages of employees in all public sector entities, including QFES.

[73] In the concluding parts of its submissions on this topic QFES said:

> "108 It is submitted that it would be an extraordinary step for the Commission in section 149 proceedings to impose an outcome on the State that is a measure that is directly contrary to the budget and fiscal repair strategies of the State in its management of the whole economy, and a measure that the State could not agree to in enterprise bargaining without breaching its own published policies.
>
> 109 There is no reason offered by UFU/SOU in these proceedings as to why QFRS employees should be spared conformity with the wages outcomes which are intended to assist the fiscal repair measures undertaken by the State of Queensland for the benefit of all, and which have been accepted by a wide range of other public sector employees.
>
> 110 In these circumstances, it is not productive to debate whether or not the State can 'afford' to pay higher wages than those on offer. Clearly on a whole of government basis the extra costs involved are not capable of placing the government of Queensland into financial default. However, that is not the issue, nor is it the question to be answered.
>
> 111 Section 149 of the Act requires the Commission to consider, and to take into account, the State's fiscal strategy as a whole, and also the impact of that

strategy on the State agency in question. The fiscal strategy of the State is, by definition, the strategy which the State adopts to manage the Treasury and the State economy as a whole. As approximately half of State expenditure is employment costs, the wages policy is an important tool in the management of the whole economy.

112 To compromise an important part of that strategy which is being implemented across the whole public sector, is to potentially damage the integrity of the whole of that strategy, which it is submitted would be an inappropriate outcome for the Commission to decide. To consider that strategy, and to then determine that it can be breached on this occasion without adverse consequences, or that the expected consequences for the State and QFRS are tolerable, is a decision within the jurisdiction and power of the Commission to make, but it is submitted that to accede to the UFU/SOU request would be to accept an invitation to error of significant proportions.

113 Further, the Commission must consider the objectives of that fiscal strategy, and the State-wide importance of it, together with the implications for that strategy of ordering a departure from it to advantage the employees of a relatively small agency such as QFRS.

114 As submitted, the Commission must consider whether the imposition of further cuts in programs and/or staff, as would be required to pay the higher wages of existing staff, where there is no capacity on the part of QFRS to absorb higher wages in its budget, is an appropriate and acceptable outcome of these proceedings."

[74] Given the content of the CBRC Minute, the persuasive argument of QFES as set out immediately above and the direct impact any decision we might make to go beyond the "limit" set out in the Government's wages policy will have on QFES and its workforce, we are not persuaded to award any increase beyond the 2.2% per annum figure proposed by QFES but have decided, for a combination of reasons including the operative dates and duration of the Determination made by another Full Bench in the Ambulance matter[5], that the wage increases that will apply during this Determination will be:

- 2.2% from Sunday 8 December 2013 (the commencement date of this Determination);
- 2.2% from Sunday 4 January 2015; and
- 2.2% from Sunday 25 October 2015.

[75] We have also decided that the 2013 Determination will nominally expire on Saturday 1 October 2016. This means that while the first "year" of the Determination will run for approximately 13 months, the second "year" will run for approximately 10 months, with the final "year" to run for 11 months.

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[5] *State of Queensland (Department of Community Safety - Queensland Ambulance Service) v United Voice, Industrial Union of Employees, Queensland* (No. 2) [2014] QIRC 093.

Item 6 - Superannuation

[76] UFU seeks the inclusion of a provision which would require QFES to include the 38 hour week allowance in its calculation of superannuation contributions. The Union submission is that because the 38 hour week allowance is paid to employees in lieu of reducing their ordinary working hours from 40 to 38 per week, and is paid on all leave, it should be regarded as part of each employee's ordinary wages and, for that reason, should be superannuable. The claim is primarily opposed by QFES on the basis it is not supported by any evidence or other relevant material but also on the basis it cannot be accommodated within the Government's wages policy. Further, QFES submits that the definition of ordinary time earnings is regulated by federal law and no case has been made out as to why those provisions should change in relation to employees of QFES.

[77] Given the lack of evidence or submissions in support of the claim, as well as the precedent it would create if granted, we have decided to reject UFU's claim.

Item 7 - Salary sacrifice

[78] Although the parties are in agreement that the existing clause 3.2 of the 2009 Agreement should be reflected in the Determination, we require that it be amended to delete the reference to employees being able to salary sacrifice "up to 100% of salary to superannuation". While that might have been the case at some point in the past, the amount an employee may salary sacrifice has been subject to numerous legislative changes since the 2009 Agreement was negotiated.

[79] The relevant provision to be included in the Determination should reflect that employees are permitted to salary sacrifice "up to the maximum amount permitted by Commonwealth superannuation guarantee legislation".

Item 8 - Hours of work and rosters

[80] Except for the process to be adopted for the setting of the pattern of working hours for employees other than continuous shift workers, these provisions are agreed. The point of difference between QFES and UFU is that while UFU seeks the inclusion of a provision which would permit the employer to set the pattern of working hours, that is to be after "having due regard to the work requirements and the wishes of the employee". QFES opposes the provision pressed by UFU on the basis it is capable of being misrepresented as a requirement to consult and in a manner which may give rise to an attempt by an employee to veto the employer's proposal.

[81] We agree with QFES that the existing provision is capable of being interpreted in the manner it suggests. Notwithstanding that situation, we are also concerned that adoption of the words proposed by QFES might lead to situations where working hours arrangements are changed by local management without consideration of the potential impact it might have on an individual employee or employees.

[82] In such circumstances, we propose to add the words "after consultation with the affected employee or employees and, where requested by the employee(s), their Union representative" after the words proposed by QFES at clause 4.1.4 of ID28.

Item 9 - Flexible work practices

[83] QFES seeks the inclusion of what can only be described as a statement of its intentions to adopt more flexible work practices in the future by availing itself of a number of additional provisions which it seeks to have included in the Determination. These new provisions include the capacity to engage casual employees and to utilise part-time, temporary and job share arrangements. The proposed provision is opposed by UFU on the basis it does not prescribe any rights or obligations and is confusing.

[84] We note UFU's submission that the proposed provision is not agreed and also note the fact that the proposed wording is, in essence, a statement of the employer's intentions to act in a particular way in the future. In our view, such a provision should not be included in an arbitrated outcome in the form of a Determination. QFES's proposal is refused.

Item 10 - Establishment levels and staffing issues

[85] UFU seeks the inclusion of a provision which would have the effect of:

- requiring QFES to meet with it to discuss staffing levels in all stations and functional areas with a view to optimising the allocation of resources based upon current conditions and predicted growth in population, industrial development and the like; and

- requiring QFES to meet with it at least annually to attempt to agree relative priorities for any changes in existing stations' staffing levels, method of operation (e.g. 5/7, 24/7), appliance types and the like.

[86] The provision is opposed by QFES on the basis, firstly, there should be no provision in the Determination which requires QFES to consult with UFU and employees about such matters and, secondly, there was no intention on the part of QFES to "diminish its current levels of consultation about resources and establishment levels (that) are a matter of management prerogative". QFES also submitted that the Full Bench was entitled to rely upon information within the knowledge of one of its members, from earlier conciliation proceedings, to inform itself of the current level of consultation that exists within QFES about establishment levels and staffing issues.

[87] Although one of the members of the Full Bench did recommend to the parties, in a dispute situation, that they adopt particular processes and procedures in the course of conciliating that dispute, we are not inclined to incorporate a provision in the Determination which would have the effect of requiring QFES to consult UFU about matters of the type pressed in its claim. To do so, we believe, would elevate the recommended steps to a new status, which could have the effect of causing particular firefighters to believe that UFU has an equal say, or some right of veto, in the allocation of resources. For example: after listening to the evidence of Mr Corneal we are somewhat apprehensive that the inclusion of such provision might actually lead to an increase in disputation about staffing and resourcing issues rather than helping to reduce them.

[88] In any event, the practical reality is that while QFES management might consult UFUQ and its members about staffing and resource issues, any recommendations it might make will always be subject to approval, and perhaps different prioritisation, by the Government of the day.

[89] Given all of the circumstances this particular claim is refused. However, it should be possible for the parties to have mature discussions about such matters in the course of their regular "issues forums", which we have decided should continue (see Item 4 above).

Item 11 - Reserve rosters
Item 13 - Part-time employment
Item 14 - Casual employment
Item 15 - Special flexibility allowance
Item 16 - Aggregate wage

[90] Because the evidence and submissions in relation to these five topics is so inextricably intertwined we have decided to deal with these items together rather than attempt to deal with them in a particular order. In summary (the exhibits and transcript (again) contain all of the relevant evidence and submissions), QFES seeks a raft of changes to the provisions of the 2009 Agreement, which are captured under three main headings, as follows:

- variations to the composition of the Aggregate wage rate presently paid to many of its employees;
- variations to existing certified agreement provisions to facilitate the implementation of a process for managing overtime costs; and
- the introduction of flexible and contemporary employment and work practices.

<u>The nature of, and rationale for, these claims</u>

Aggregate wage rate

[91] Mr Roche said that the proposed Aggregate wage rate would apply to all employees of QFES covered by the Determination and would incorporate, in a single wage rate, each staff member's entitlement to the following existing benefits:

- base salary;
- weekend shift penalties;
- night shift penalty;
- the 38-hour week allowance;
- where relevant, a 2.5% special flexibility allowance;
- an average of the existing public holiday penalty payments;
- an average of the existing travel allowance payments (where employees are required to travel to a different work location from that at which they are normally employed - including officers undertaking relief duties);

- an average of the existing meal allowance payments; and

- five overtime shifts per annum (totalling 60 hours and based on 5 x 12 hour shifts) paid at 150% of base salary.

[92] The 2.5% special flexibility allowance is only payable to certain, identified, employees and is deemed to "buy out" the first two hours of overtime which might be worked in any one week. Because the allowance does not apply to all employees there would, in fact, be a different Aggregate wage rate for employees entitled to receive the special flexibility allowance compared to those that are not. Generally speaking, however, all employees in the same classification, at the same paypoint level, would receive the same Aggregate wage rate.

[93] Mr Roche said (at paragraph [12] of Exhibit 9) that QFES sought this outcome "to improve the utilisation and efficiency of existing resources within current funding and staffing arrangements, and to provide a platform for the reduction in the current costs of administration of the Service by:-

(a) streamlining administrative processes; and

(b) implementing a process for managing overtime costs that:

(i) equitably distributes overtime across all staff; and

(ii) changes the current overtime culture to curb misuse of personal leave."

[94] Adoption of the proposed Aggregate wage rate structure would significantly assist QFES's plans to streamline administrative processes within the Service because it would remove the requirement for staff to submit timesheets to Queensland Shared Services (QSS). Currently there is a requirement for all staff, from a Recruit Firefighter to a Chief Superintendent, to submit timesheets. The processes required to complete, verify and process each timesheet was both significant and inefficient and had the potential for errors and discrepancies. In addition, having fewer matters to input would reduce the cost of using QSS and would reduce the cost of purchasing a proposed new payroll system.

Managing overtime costs

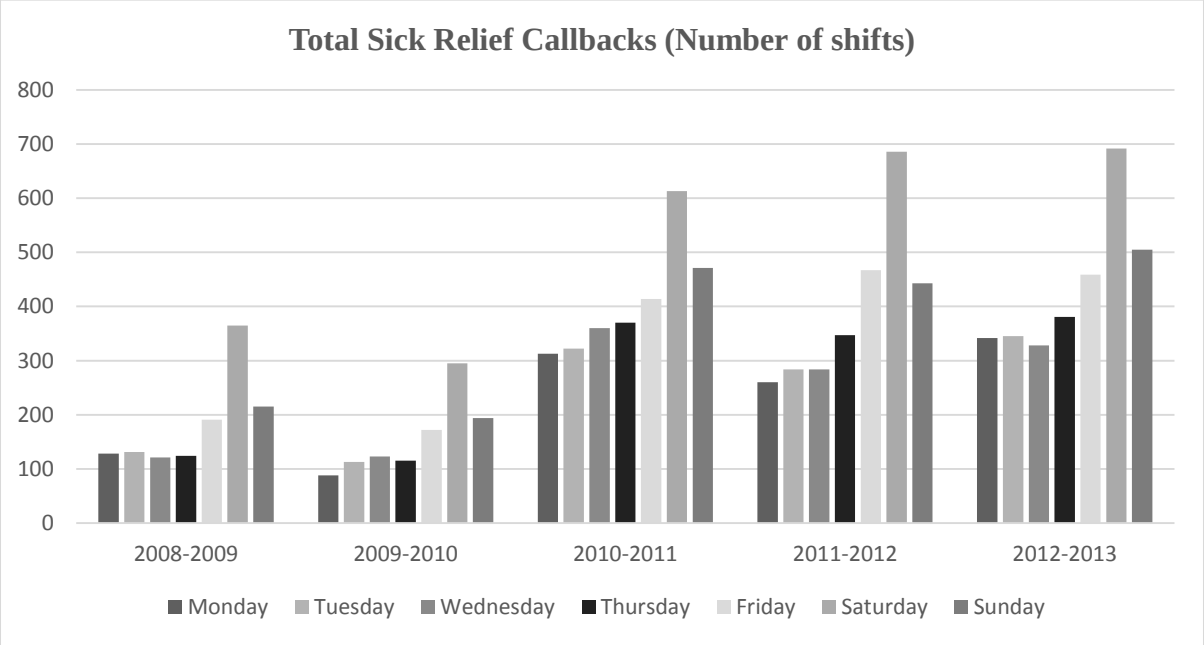
[95] Presently, QFES incurred significant costs through overtime payments for a variety of reasons including the misuse of sick leave entitlements which necessitated replacing an absent employee with another employee, who received overtime at the rate of double time.

[96] Mr Roche opined that there was an expectation within many employees in QFES's workforce that they would be provided with overtime shifts, as of right, as part of their regular income. This expectation had given rise to the circumstance that overtime shifts and personal leave entitlements had become the subject of misuse. For example, a firefighter who took personal leave was paid at ordinary time rates for the period of their absence but an employee called in to replace that employee was paid overtime at the rate

of double time. This was a win-win for the staff involved but was very costly for QFES, which was required to expend the equivalent of triple time to cover that shift. It meant, for example, that an employee called in to work a night shift of 14 hours "benefitted" to the extent of 28 hours pay.

[97] Currently, the average uptake of personal leave by operations staff was 73.75 hours per year out of a maximum annual entitlement of 80 hours. This situation occurred in circumstances where each operational staff member was rostered to attend work, because of the 10/14 shift roster system, on only 152 days per annum.

[98] The use of personal leave (i.e. sick leave) had increased significantly in recent years, with the level of absences being particularly bad on Fridays, Saturdays and Sundays, as shown in Attachment 1 to this Decision and in the table below (both of which have been prepared from information extracted from Mr Roche's evidence (Attachment MORI to Exhibit 11)).



	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
Monday	128	88	313	260	342
Tuesday	131	113	322	284	345
Wednesday	121	123	360	284	328
Thursday	124	115	370	347	381
Friday	191	172	414	467	459
Saturday	365	295	613	686	692
Sunday	215	194	471	443	505
Total	**1275**	**1100**	**2863**	**2771**	**3052**

[99] The data in Attachment 1 shows that the level of personal absences increases significantly over the Friday night shift, Saturday day shift, Saturday evening shift and Sunday day

shift compared to the rest of the week. Further, the data shows that the level of personal leave taken in 2012-13 was approaching three times the level of leave taken in 2009-10.

[100] In order to try to counter the (alleged) misuse of personal leave, as well as the inequitable working of overtime shifts across its workforce, QFES proposed that existing arrangements be modified so that the Aggregate wage rate payable to each of its employees would include payment for five overtime shifts (totalling 60 hours and payable at 150% as opposed to 200%), which would then be "owed" to the Service by each employee. This would mean that QFES was effectively "pre-purchasing" the ability to call upon staff to work up to 60 overtime hours before it incurred any additional liability to pay any further overtime payments. Staff who were not called upon to "re-pay" all of the 60 hours would not be required to re-pay any "overpayment". However, shift overruns and other incidental overtime could not be used to offset the pre-purchased 60 hours of overtime. Only time worked on whole shifts (i.e. a day shift of 10 hours or a night shift of 14 hours) would be counted towards re-payment of the 60 hours of pre-paid overtime.

[101] Introduction of such a system, according to Mr Roche, would:

- allow QFES to predict and manage its financial obligations in relation to overtime;
- spread the obligation to fill absences amongst the broader workforce; and
- deter the misuse of personal leave and resulting entitlements occurring within select groups of employees by:-
    - providing an incentive and requirement for management to spread the burden of managing personal leave absences across all staff (in that all staff would be required to fill vacancies created by the absence of other employees in order to re-pay the pre-purchased overtime); and
    - reducing the immediate financial incentive for employees to "exchange" personal leave (so as to access overtime shifts).

Contemporary employment and work practices

[102] Mr Roche said that the current 10/14 roster arrangement required staff to work a rolling eight day cycle of two day shifts (of 10 hours each) and two night shifts (of 14 hours each) followed by four days off. This arrangement did not allow QFES to introduce the following employment arrangements:

- casual employment agreements
- day shifts only
- night shifts only
- split shifts; or

- job sharing.

[103] Further, because of its rigidity, the current 10/14 rostering model made it difficult for the Service to accommodate instances where existing staff members required flexible work arrangements to cater for either short term or long term absences associated with such matters as: the birth of a child; parenting responsibilities; adjustment due to marital separations; the desire to reduce working hours leading into retirement; caring responsibilities for elderly relatives; and reduced hours through injury or illness. In addition to those matters, the current rostering model limited QFES's ability to manage staffing levels in cases of unexpected absences and long term absences (both planned and unplanned).

[104] In order to address some of these issues, which would not eliminate the need for overtime, QFES proposed a number of initiatives, to be contained in the Determination, which included:

- the introduction of a reserve roster (to be primarily staffed by part-time and casual employees);

- changes to existing part-time employment provisions, which presently limited such employees to no more than 32 hours per week;

- the introduction of provisions dealing with casual employment; and

- the introduction of time off in lieu of overtime (TOIL) provisions.

[105] In terms of the proposed part-time and casual employment arrangements, Mr Roche said that such employees would be trained to the required level to allow them to work as fully qualified firefighters. Their engagement under the arrangements proposed would provide increased flexibility in the way QFES was able to roster its workforce, cover absences, better manage fatigue, attract staff from a broader cross-section of the community and better manage staff retention by, for example, allowing staff who wished to do so to work on a part-time or casual basis either permanently or for a particular period to suit their individual needs.

[106] QFES also proposed the introduction of a reserve roster which would permit deployment of staff assigned to that roster to the main roster to meet operational requirements as determined by each region. New full-time staff to a region would be placed on the reserve roster in the first instance, as a training and orientation strategy, and would be placed into the main roster as vacancies became available. The primary reason for creation of the reserve roster was to allow QFES the flexibility to engage part-time and casual staff, and to utilise them into the main roster as required, in order to reduce the overtime and other pressures on permanent staff. Without a reserve roster it would be difficult for QFES to engage part-time and casual employees as such employees would also be required to work within the confines of the main roster, with its inherent restrictions.

[107] The proposed inclusion of provisions allowing for TOIL was designed to complement the other contemporary employment options mentioned above and would only work if those other provisions were included in the 2013 Determination. For example, in order to allow Station Officers and firefighters to access TOIL, QFES needed to be able to replace them by calling up firefighters from its reserve roster. Absent a reserve roster,

QFES would not be able to offer TOIL because replacement employees would have to be paid at the established overtime rate of double time.

The attitude of UFU towards the QFES claims

[108] UFU was strongly opposed to the degree, extent and content of all of the changes proposed by QFES, but most particularly:

- its claims in relation to the engagement of casual employees to create some form of reserve roster;
- the proposal to pre-purchase 5 overtime shifts (i.e. 60 hours of overtime); and
- the inclusion of travel time (by way of an average payment) in the calculation of the Aggregate wage.

[109] In support of its case opposing the employer's proposals UFU called evidence from a large group of witnesses, including Messrs Ryan, Guse, Andrews, Raverty, Shipp and Watts. Their evidence, as a group, traversed the whole spectrum of QFES's claims, although some witnesses only commented on one or two individual items within their particular knowledge.

[110] Evidence was also called from two female firefighters, Ms Louise Galloway and Ms Melinda Sharpe, both of whom expressed their particular satisfaction with the current 10/14 roster arrangements. They also expressed their concern about the employer's proposal to pre-purchase five overtime shifts which they could be required to re-pay with little or no notice and the difficulties such a situation would create.

[111] The UFU also called evidence from Dr Iain Campbell in connection with the proposed introduction of casual employees into the Fire Service and Mr John McGuiness, a Chartered Accountant, in relation to the employer's costings of its proposals.

[112] The Union was particularly critical of QFES's proposed changes to the structure of the Aggregate wage rate, describing the proposal as naïve. It also suggested that the evidence established that the employer had exaggerated the labour costs and processes involved in administering its current pay arrangements. For example, Mr Watts said that he was paid his usual fortnightly pay irrespective of whether he submitted timesheets or not and that this was the norm within QFES. He also said that the pay system could be simplified if it operated on an "exceptions" basis, which meant that employees would receive their usual wage rate unless they submitted a timesheet claiming overtime, meal payments or some other entitlement, or they were absent from work for some reason.

[113] However, irrespective of whether their evidence covered only one, some, or most of the employer's proposals in relation to the Aggregate wage rate, the employee witnesses, as a group, were most critical of:

- the proposed provisions which could see QFES pre-purchasing five overtime shifts, which staff would then be required to re-pay;
- the proposal to average out travel time and to pay that item of reimbursement uniformly across the workforce; and

- the proposal to average meal overtime payments and to pay those on a standard fortnightly basis across QFES.

[114] In addition to those matters, virtually every Union witness expressed serious reservations about the employer's proposal to engage firefighters on a casual basis. A significant reason for their opposition to such concept was their concern about the lack of training, skills and relevant experience of employees who might be called upon to work only a few hours or a few days in each pay period.

[115] However, foremost in their list of concerns was the fact that fire fighting is an inherently dangerous occupation and that each crew member on a fire unit needed to have total confidence that every other member of the crew knew what they were doing and how they should undertake their individual role in a given situation.

[116] Many witnesses expressed the view that such confidence generally only came about after a crew had worked together for some considerable time and, as a result, understood the level of each crew member's training and competency. The witnesses generally opined that they would feel uncomfortable being put into a fire fighting situation with a casual employee who they had not worked with before and whose level of training and experience they knew nothing about. Several examples of incidents where full-time firefighters had been required to work with inexperienced firefighters were provided to emphasise the point.

[117] In terms of particular components of QFES's proposed Aggregate wage rate, Mr Andrews, a Station Officer who undertook relief duties, gave evidence about the extent to which he would be disadvantaged if the employer's proposal to average travel time payments was introduced. Although "based" at Maroochydore he had been called upon to relieve in three other fire stations (Noosa, Nambour and Caloundra) for a period of 18 months, as a Station Officer and as a BAO, in the approximate two year period prior to the date on which he prepared his Affidavit. During this time he had been required to undertake significant travel.

[118] Evidence about the impact of the employer's proposal regarding the averaging of travel time was also given by Mr Shipp, another Station Officer. He gave evidence that in his role of undertaking holiday relief on the D Shift he had worked at seven different stations in the Brisbane region during the first half of 2013 and that during the second part of that year he was programmed to work at nine different stations in a relief capacity, as well as being programmed to attend five stations to facilitate training in his capacity as a First Aid Trainer. He said that in the 12 months prior to lodging his affidavit he had travelled over 2,000 claimable kilometres in the course of undertaking his relief and/or facilitator duties and had been paid an amount slightly in excess of $1500 in mileage payments. He opined that if he received only an average of the travel payments made across the whole of the Service he would be significantly financially disadvantaged across the course of a year.

Our conclusions in relation to the five Items

[119] Our consideration of the evidence and submission leads us to conclude that we should grant, in principal at this stage, many aspects of the employer's claims, and which are

recorded at clauses 4.3 to 4.10, inclusive, in ID 28. Aspects of the proposed provisions which we do not intend to grant are:

- the inclusion in the propose Aggregate wage rate of the averaged travel time payments and averaged meal allowance payments, respectively, which are to be paid on an "as-earned" basis;

- the proposed clause 4.10.8, which would have the effect of excluding, or at least limiting, the capacity of employees in receipt of the 2.5% flexibility allowance to pursue increases in work value based upon changes in their work, or the skills, knowledge and training required to undertake it, which might occur during the life of the Determination.

[120] We also propose to only partially grant QFES's claim concerning its propose "pre-purchase" of overtime shifts and to limit such pre-purchase to a maximum of 42 hours - which equates to three 14 hour shifts. Further, we do not propose that the provisions in the 2013 Determination will actually reference any particular number of shifts but, rather, should only reference the 42 hours we have determined. In line with the employer's proposal, we do not envisage that such hours can be offset by shift over-runs and the like. The 42 hours should relate to complete shifts unless a particular firefighter becomes ill or is injured in the course of a particular shift, in which case his or her replacement can choose to have the hours they might be asked to work (as a replacement employee) offset against the 42 hour pre-purchase. In terms of its actual workability, because shift lengths are generally 10 or 14 hours, the situation might arise where an employee who has previously worked 3 x 10 hour shifts might be called upon to work a 14 hour shift. If that be the case, 12 of the 14 hours could be utilised to offset the number of hours still "owing" to the employer, with the remaining two hours paid at the usual overtime rate of double time.

[121] In relation to our decision to approve the inclusion of provisions in the 2013 Determination allowing QFES to engage casual employees in urban areas, as well as the existing rural locations, we query the proposed Aggregate wage rate calculation set out at clause 4.8.2 of ID 28. Notwithstanding QFES's desire to simplify its payroll system, we generally question the recorded calculation and ask the parties to discuss the relevant rate in the course of the discussions we have directed are to take place below, at paragraph [123].

[122] Our reasons for deciding to substantially grant the claims pressed by QFES are many and varied and include:

- the restrictive nature of the 10/14 roster system, which requires employees to be engaged for a 10 or 14 hour period;

- the present limitation on QFES's capacity to engage part-time employees such that the maximum hours restriction precludes the possibility that a part-time employee might be utilised to replace an absent employee on a typical roster of 2 x 10 and 2 x 14 hours (a total of 48 hours) unless the employee is paid 16 hours overtime at double rates;

- the total absence of any capacity to engage employees in an urban area on a casual basis – such that even "retired" firefighters who might wish to make

themselves available for work on one or two days or evenings each week cannot be employed;

- the present requirement to "back-fill" any vacancies by (usually, but not always), an existing full-time employee on overtime rates of double time;

- the commitment of QFES that all casual and part-time employees will be required to undertake the same training as that presently required of full-time firefighters coupled with its commitment to ensuring that such employees maintain competency to enable them to undertake the duties expected of (at least) a Recruit Firefighter;

- the benefits attached to simplifying the system of payment of fortnightly wage rates by, for example, the inclusion of new components representing average public holiday payments and the pre-purchased overtime amount of 42 hours;

- the unsatisfactory (and worsening) predilection of employees to take personal leave - especially on a Friday, Saturday or a Sunday - as shown in the table referred to above and in Attachment 1 to this Decision;

- the need to attempt to address that current unsatisfactory situation by reducing the incentive for employees to "shift swap" by availing themselves of personal leave which then provides an opportunity for a colleague to earn double time by replacing them;

- facilitating a reduction in that activity, and the resultant cost to QFES, by the establishment of a reserve roster which will enable the employer to replace an absent employee at single time rates, rather than at overtime rates;

- providing opportunities for employees to accumulate TOIL which they can later use to enable them to attend important personal events without the need to, or the pressure from other family members to, "call in sick" for that day or shift; and

- facilitating the employer's attempts to address the overtime and "sickie" culture that the data attached to exhibit 11 demonstrates, thereby reducing its cost structure;

- the general "opening up" of employment opportunities by expanding the options available to persons who might wish to become (or remain) firefighters but for whom the 10/14 roster system is not suitable; and

- our assessment that the proposed overtime rate of 150% seems reasonable and appropriate given the fact that all relevant employees will have 42 hours (at 150%) included in the Aggregate wage rate which they will have up-front use of and will not be required to re-pay if not called upon to work 42 hours in "overtime" shifts.

[123] We stress that our decision "in principal" does not mean that we have endorsed or approved every provision in QFES's claim. This is because we have generally only heard

evidence and argument about the overall claims without much evidence about the specific detail of the individual elements of each particular claim (an example being the notice period for a change of roster set out in QFES's claimed clause 4.4.2). As such, we propose to direct the parties to confer about the content of the proposed Determination, in light of our Decision and comments above, and attempt to agree the necessary provisions to give effect to our decisions.

[124] In this respect, we propose to list the matter for Report Back on a date to be set in mid-late February 2015 when the parties can report on progress towards finalising the terms of the Determination. Depending upon the parties' success in agreeing the terms of relevant provisions it might be that we list the matter for a further Report Back or, if it is clear that particular elements cannot be agreed, further arbitration in respect of those unresolved matters.

Item 12 - Time off in lieu of overtime (TOIL)

[125] QFES presses for the inclusion of a new clause 4.6 which would permit an employee to elect to take time off in lieu of overtime (TOIL) on a time for time basis within 8 weeks of its accrual. In giving evidence in support of this claim Mr Roche said that the option of accessing TOIL would be at an individual employee's election, subject to authorisation by their supervisor/manager, and was designed to provide increased flexibility in the way overtime might be dealt with.

[126] Mr Roche also said that the proposed provision would only be workable if QFES was able to engage an officer from its reserve roster to fill the vacancy created by the circumstance of another officer accessing TOIL. Absent the capacity to utilise someone from the reserve roster there would be no benefit whatsoever in offering TOIL because it would be necessary to replace an absent employee from within the full-time staff complement at the rate of double time.

[127] We have decided to grant QFES's claim for the introduction of a TOIL provision for several reasons, including:

- it will provide an additional option to all employees as to whether they would prefer time off in lieu or overtime payments. For example, an employee who has accrued 10 or 14 hours of TOIL might decide to utilise that time to attend a personal and/or family event that they might otherwise have to miss;

- it has the potential to reduce the number of sick day absences claimed by employees who have no other way of attending such personal events unless they "go sick";

- it has the capacity to make available additional employment opportunities for employees on the reserve roster we have decided to introduce; and

- it has the added benefit of reducing the cost structure of QFES.

[128] Importantly, no employee can be forced to take TOIL. Whether they access that option will be dependent upon their own circumstances and decisions. This fact has been significant in our consideration of this claim.

Item 13 - Part-time employment (see Item 11)

Item 14 - Casual employment (see Item 11)

Item 15 - Special flexibility allowance (see Item 11)

Item 16 - Aggregate wage (see Item 11)

Item 17 - Rescue technician's allowance

[129] The parties to the proposed Determination have agreed upon the creation of a Rescue Technician Stream which is designed to recognise the additional skills and qualifications held by firefighters and Station Officers trained in advanced rescue competencies. The agreed levels within the stream require an advanced level of training in technical rescue disciplines. Relevantly, trained technicians will receive a higher classification and rate of pay at all times they hold the requisite qualifications and are available to be deployed to undertake such work.

[130] However, in addition to the creation of the new stream, both UFU and SOU have sought the granting of a rescue technician's allowance to be paid to employees who hold Level 1 accreditation. The UFU claim is as follows:

> "Officers who hold the Level 1 rescue qualifications in trench, confined space, swift water, vertical rescue and urban search and rescue (USAR) will be paid an allowance of $10.00 per shift when performing such work."

[131] The claim by SOU is identical to that above but also seeks an additional provision as follows:

> "Senior officers who hold the Level 2 or 3 rescue qualification in urban search and rescue (USAR) will be paid an allowance of $20.00 per shift when they are performing such rescue work."

[132] The UFU claim is opposed by QFES which argues that all firefighters and Station Officers have been trained as Level 1 rescue technicians since 1999 and that their wage rates and salary levels, as well as those of senior officers, have been calculated since that date on the understanding that training and working as a Level 1 rescue technician forms part of the ordinary duties of a firefighter and Station Officer. Further, Mercer Human Resource Consulting undertook a job evaluation of operational firefighter classifications in 2007 as a consequence of the 2006 enterprise bargaining agreement. One of the key accountabilities of a firefighter recorded by Mercer was the need for all levels of firefighter to "respond to fire, road accident, rescue/entrapments, technical rescues, hazardous materials and other emergency incidents." Indeed, Mercer also recorded (at page 35 of its Report):

> "…The changed nature of the environment in which firefighters and Station Officers work has seen greater demand for road accident retrieval service (including Ambulance assists) and other forms of rescue which have become a recognised responsibility of the QFRS. These include, for example, urban search and rescue, vertical rescue and swift water rescue."

[133] Importantly, in the QFES submission, following a job evaluation of the positions to be covered by the Determination, Mercer undertook a remuneration analysis which ultimately resulted in significant pay increases for all ranks. As such, it was not permissible for UFU and SOU to attempt to separate out from the classifications evaluated by Mercer one of the constituent parts which was considered by them as part of the overall job evaluation and salary analysis and to try to claim additional remuneration for a single activity as and when it was performed.

[134] In respect of the SOU claim for a higher level allowance to be paid to senior officers holding a Level 2 or 3 USAR qualification when they were called upon to perform such work, QFES submitted that the evidence from Mr Cawcutt, a SOU witness, was to the effect that senior officers do not actually perform technical rescue Level 2 or 3 tasks, in that they are only called upon to supervise employees who were performing such duties. Further, QFES noted that Mr Cawcutt's evidence was to the effect that the claimed payment was not intended to be paid only when senior officers *performed* technical rescue Level 2 or 3 work but, rather, was intended to confer an *ongoing entitlement* to the allowance in recognition of the fact the senior officer might hold the requisite qualifications.

[135] After considering all of the evidence, including that given by UFU witnesses Paff, Watts and Cullen, we are not persuaded to grant the claim for the $10.00 per day allowance to be paid to firefighters, Station Officers and senior officers who hold the Level 1 technical rescue qualification. Not only would payment of such allowance involve a double counting of a matter already taken into consideration in the setting of appropriate wage rates for the various levels of officer, paying a particular allowance to officers who undertake additional training to add to, replace or update their suite of skills creates a bad precedent and is contrary to the general practices and processes involved in the determination of appropriate remuneration levels for staff such as firefighters.

[136] For example, payment of an allowance to a particular group of employees who might have undertaken some additional training could lead to situations where other employees actively compete with each other for an opportunity to undertake the same training so that they can receive additional income. As such, they could potentially become angry and/or disenchanted if they are not able to undertake the relevant training as soon as they might wish. Further, it could also lead to situations where employees actively decline to participate in training to improve and/or update their skills unless they receive an additional allowance or increased remuneration for doing so.

[137] Our view, which is reflected elsewhere in this Decision, is that all employees are expected to undertake, and fully participate in, all and any training which is relevant to improving their current skills - whether this be by way of new and additional skills, a different way of undertaking tasks they might previously have undertaken or other changes based upon changes in equipment and/or technology. Any such changes can be taken into account in periodic "work value assessments" of the relevant employees.

[138] We have also decided to refuse the SOU claim for an additional allowance to be paid to senior officers who hold Level 2 or 3 qualifications. On the evidence presented senior officers, although they might be trained to those levels, are not actually called upon to utilise their training in the performance of their day to day duties. In any event, for reasons identical to those expressed immediately above, we would have refused the claim

for an individual allowance based on the holding of a particular qualification and/or qualifications.

Item 18 - Progression through paypoints whilst on higher duties
Item 19 - Leading firefighters
Item 20 - Functional dayworkers overtime

[139] The document said to identify the areas of agreement and matters in dispute (ID 28), which was prepared by QFES, suggests that clause 4.12 - Progression through paypoints whilst on higher duties and clause 4.14 - Functional dayworkers overtime, respectively, were agreed, subject to the employer's claims involving an Aggregate wage. Further, QFES submits that its claim in relation to leading firefighters (at clause 4.13) should be granted on the basis there was no counter proposal advanced by UFU.

[140] In its submissions (at paragraph [681]) UFU opposed each of the above provisions on the basis they were not matters at issue during the negotiations. In advancing this point the Union relied upon its cross-examination of Mr Donovan (T 8-11 and 12) to the effect that while these matters - which came from previous certified agreements - had been canvassed with the Union previously they had not been talked about during the unsuccessful negotiations for a new certified agreement. In Mr Donovan's view the matters were uncontroversial and their inclusions was simply a tidy up exercise.

[141] We are somewhat confused about the actual status of these three matters. On the one hand we have ID 28, which suggests that two of the items are substantially agreed. On the other hand we have the submissions of UFU, which appear to be supported by the evidence of Mr Donovan. However, in contradiction of the submissions of UFU, and the evidence of Mr Donovan, a copy of a proposed certified agreement forwarded to the Union by Mr Carthew of QFES under cover of email dated 12 September 2012 (Exhibit 30) clearly records each of the three matters under discussion as clauses 4.4 - 4.6, inclusive, in a proposed new certified agreement. Accordingly, given the circumstances, we are not inclined to include the proposed clauses 4.12 or 4.14, respectively, unless there is agreement between the parties. In this respect, we note that the 2009 agreement included very similar provisions (see clause 4.4) to those proposed by QFES.

[142] We are also not of a mind to include clause 4.13 - Leading Firefighters, which was proposed by QFES. While QFES has pressed us to include that provision on the basis that UFU did not advance a counter proposal such a submission is a two edged sword. If we adopt that approach for one party it would necessarily mean that we would have to adopt the same approach for the other party. This would lead to a situation where we were making a bargain for the parties, which is not permitted[6], rather than deciding each matter at issue consistent with the provisions of the legislation and after due and proper consideration of the evidence and submissions placed before us.

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[6] *Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees AND Department of Community Safety (formerly the Department of Emergency Services) and Another (CA/2008/317) - Decision <http://www.qirc.qld.gov.au>.*

Item 21 - Community safety activities
Item 22 - Commercial activities

[143] QFES presses for the inclusion of two provisions which record that the rate of pay for its employees engaged in community service activities and commercial activities is to be at the rate of time and a half, on designated rates, whenever they are so engaged. Relevantly, each item is pressed on the basis that UFU has not advanced any counter proposal to the claim.

[144] For the reasons outlined immediately above we have also decided not to grant each of these claims. However, they can be included in the Determination if there is agreement between the parties.

Item 23 - Aerial driver/s appliance allowance

[145] The parties have agreed to include two allowances in the Determination to recognise the skill and competence required for firefighters called upon to operate Telescopic Aerial Pumpers (TAPs) and High Aerial Appliances (Brontos), respectively, but do not agree in relation to whether that payment should be extended to Station Officers. In addition, there is some minor disagreement about the introductory words leading into the identification of the quantum of allowance to be paid to TAPs and Brontos operators, respectively.

[146] In opposing the extension of the allowances to Station Officers, Mr Roche said it had been a longstanding practice of QFES not to extend payment of the aerial allowance to Station Officers, a position which had been supported by the Commission in several disputes. Station Officers were remunerated at a higher level than other fire fighting staff for a variety of reasons, including the holding of a number of different qualifications and competencies which might differ from station to station depending upon the equipment assigned.

[147] In support of its claim that the allowances be extended to Station Officers, UFU referred to the evidence of Stephen Scanlan whose affidavit set out the history of the use of aerial equipment in Queensland from the late 1960s/early 1970s to the present time. Mr Scanlan said he had a long working history with QFES and had held the positions of: Senior Firefighter; Acting Station Officer; Aerial Operator; Aerial Trainer/Assessor; Commissioner's Representative for the State Appliance Prototype Program; and Development Officer for the Aerial Training Module.

[148] According to the history recounted by Mr Scanlan, a special allowance for operators of aerial equipment was introduced in mid-1997 following negotiations between the Union and the then Commissioner. The final outcome was that only those aerial operators who held the Workplace Health and Safety "elevated work platform licence" would be paid the aerial allowance. Station Officers were excluded from receiving the allowance because they were not permitted to operate aerial appliances. In addition, only those officers who maintained their qualifications were able to exercise "any authority or supervisory functions over aerial appliances".

[149] In Mr Scanlan's opinion, UFU's claim was justified because the capacity of a Station Officer to maintain a qualification involved their participation in an ongoing training and assessment program, as well as the fact that they had to maintain those skills at a standard

above a "normal" Station Officer (T 8-95), albeit that it "would take an extreme set of circumstances for them to actually take charge" as the operator of an aerial appliance. Mr Scanlan said the allowance should be paid to all Station Officers who were certified to use an aerial appliance, even if they never used it, provided there was such an appliance in the station to which they were allocated.

[150] We have decided to refuse UFU's claim for the aerial appliances allowances to be extended to Station Officers. The evidence of Mr Roche (Exhibit 11, from paragraph [95] onwards) was to the effect that Station Officers are required to undertake a variety of functions in the performance of their role. This includes leading and managing their crews at incidents and leading and directing staff during both operational and non-operational activities (paragraph [116] of Exhibit 11). In regions outside Brisbane and the South-East, Station Officers have to be qualified and capable of operating aerial appliances at their station (paragraph [121] of Exhibit 11). This evidence was confirmed by Mr Scanlan (at T -96 and 98), although he advocated for officers capable of operating the aerial appliances to receive additional remuneration because of the "special" requirements and qualifications involved.

[151] In our view, it would be completely contrary to normal practices to start to introduce particular allowances to Station Officers who might be called upon to be familiar with, and possibly operate, particular pieces of specialist equipment simply because such equipment is located in a station to which they are assigned. The nature and range of the overall duties of Station Officers require that the remuneration levels for that classification of employee to be determined on a "whole-of-service" basis rather than station by station.

Item 24 - Adjustment to allowances

[152] Clause 4.8 of the 2009 Agreement relevantly provides:

> "Telescopic Aerial Pumper, Aerial Appliance and other trade allowances relating to how work is performed will be adjusted in accordance with State Wage Case decisions or General Rulings handed down by the Queensland Industrial Relations Commission. Adjustments will take effect on the operative date of such decisions."

[153] In ID 28 QFES is recorded as seeking a replacement provision, which reads:

> "Telescopic Aerial Pumper and Aerial Appliance allowances relating to how work is performed will be adjusted in accordance with State Wage Case decisions or General Rulings handed down by the Queensland Industrial Relations Commission. Adjustments will take effect on the operative date of such decisions."

[154] UFU seeks different wording, as follows:

> "Work related allowances will increase by an equivalent amount to the percentage increase to work related allowances as determined by the Queensland Industrial Relations Commission State Wage Case increases and from the date of the QIRC determined increases."

[155] Notwithstanding that UFU's submissions highlighted the difference between the existing clause and that proposed by QFES - where the words "and other trade" were missing -

the employer's Reply submission asserted that the provisions it proposed simply reflected the existing terminology and that no case had been made out "for the adoption of any form of words other than that applied (for) by the employer".

[156] On the basis that both QFES and UFU seek to continue the practice of adjusting relevant allowances to reflect State Wage Case decisions, and that neither party has advanced any particular argument to support any alteration to the present wording, we have decided that the Determination will include essentially the same wording contained at clause 4.8 of the 2009 Agreement, the only difference being the removal of the word "trade" - which we believe is confusing.

Item 25 - Compressed air foam systems allowance

[157] UFU seeks the inclusion of an allowance of $10.00 per shift payable to all officers whose duties entail the operation of Compressed Air Foam Systems (CAFS). As we understand it, the allowance would be payable to each of the four officers assigned to each of two specially fitted CAFS vehicles whenever they are called upon to apply compressed air foam in a particular fire situation.

[158] In support of its claim UFU led evidence from Station Officers Raffel and Watts, respectively. Mr Raffel gave extensive evidence about the history of introduction of CAFS into QFES, the difference between CAFS Units and other fire fighting units, the training requirements for operators of CAFS-fitted vehicles, complexities associated with the operation of CAFS-fitted vehicles and examples of incidents where CAFS has been used.

[159] Mr Raffel said that CAFS is a method of producing fire fighting foam by the introduction of air into a foam solution (water plus foam concentrate) just before it leaves the pump delivery outlet. This produces a more consistent bubble size which improves the extinguishing efficiency of the foam. The overall effect is to increase the extinguishing potential of a given quantity of water by approximately seven fold. CAFS is particularly well suited to fire fighting situations where water supplies are limited and the successful extinguishment is heavily reliant on the available on-board water supplies, examples being motorways and deep-seated fires in large piles of material such as mulch, compost and grain storage areas.

[160] Officers had to attend an intensive two day training program in order to understand the differences between the CAFS units and other QFES pumpers, as well as to learn how to correctly mix the water and foam solution to achieve the required consistency of foam. This involved the use of 10 leavers on the pump whereas on a traditional pump there were only four leavers. Mr Raffel opined that payment of an additional allowance to firefighters trained to operate the CAFS pumpers was warranted because of the enhanced capacity of firefighters assigned to the CAFS-fitted vehicles to understand when to apply, or not apply, different types of foam to a fire as well as the additional complexities attached to the operation of the CAFS units.

[161] Mr Watts was the Union representative during the consultation phase for the introduction of CAFS into QFES. He said that CAFS-fitted vehicles are distinguishable from other fire appliances as the tolerances for errors by the pump operator are very low. If the operator makes a mistake the results can range from no foam being produced to firefighters being injured, either by poor foam production or injury through excessively

high pressures causing equipment failure. Further, the CAFS units have a range of additional components and operator tasks over and above regular pumpers. This adds to the complexity of the operation and the skills required. A CAFS operator needs to be able to manage variables and contingencies that arise on the fire ground and rapidly anticipate and troubleshoot any problems with the CAFS application, such as "too wet" or "too dry" foam.

[162] Assistant Commissioner Mitchel disputed much of the evidence provided by Mr Watts, stating that it was his view that the additional or different skills associated with CAFS did not constitute significant change to the general skill-set required of a qualified firefighter. He also took issue with the evidence of Mr Raffel, saying that while CAFS is a different type of foam to other foam products used by QFES, and has some differences in how it is produced, the Service's training program was comprehensive and all operators had been taught the necessary skills to utilise CAFS safely, just as with all other situations where new systems or skills were to be applied. Further, QFES had been using foam systems for at least 60 years with CAFS being just the latest. While it was different to previous foam delivery systems it was not so significantly different "that the skills learned to operate the system stand outside the usual skills associated with those expected of a professional firefighter."

[163] Mr Mitchel also opined that there was no warrant for introducing the special allowance claimed for firefighters manning the CAFS units. CAFS was simply the latest in a developing series of products and devices designed to make fire fighting more effective and safer. All such products and devices must be the subject of training, and all require some skill to operate, but the introduction of this device does not involve any significant increase in skill on the part of QFES staff. The fact that it is slightly different from other foam systems, each of which have their own characteristics and require particular skills, does not mean that this device warrants payment of a special allowance to the user.

[164] Mr Mitchel was critical of the position adopted by UFU in relation to the roll-out of CAFS which, he said, had been limited to a trial of CAFS on two appliances only as a result of a claim by the Union for an additional payment to the operators of such units. This had held up the wider implementation of CAFS for over four years, which was most regrettable. He said if QFES acceded to the claim it would create a dangerous precedent. "QFES would be at risk of being effectively blackmailed into paying an extra allowance to employees every time a new and better piece of equipment was introduced, as the price of being permitted to bring that equipment online".

[165] In the course of its submissions on this topic, QFES was particularly critical of the "smoke and mirrors" approach taken by the UFU in its pursuit of this claim. Not only had it attempted to tease out of the overall duties of a professional firefighter a single strand of activity on a single piece of equipment, when the overall duties of a professional firefighter had previously been taken into account in the Mercer Report, it had failed to provide the Full Bench an "equally spectacular display of the use of any of the other foam systems operated by QFES for many decades without the payment of any form of allowance". (This was a reference to a demonstration of the application of foam to a car fire by a CAFS unit during inspections).

[166] Finally, QFES said:

> "307 For these reasons, the claim for a special allowance on account of being trained to use this piece of equipment which, if it succeeds, will be the first in a very long series of such similar claims in the future, should be firmly rejected. It is a fundamental feature of the training and duties of a firefighter to adapt to systems of this kind and to learn and embrace them. To reject them on account of a claim for more money to perform the existing range of duties is an approach which the Commission should stand firmly against."

[167] For reasons outlined elsewhere in this Decision and below, and also for reasons of merit, we are not prepared to grant the claim for a special CAFS allowance.

[168] While the two CAFS units might be new to QFES, and the skills and techniques involved in operating the associated equipment might also be new and different to other foam producing equipment on QFES vehicles, our consideration of the evidence leads us to conclude that there is nothing so special or different about the CAFS units which would warrant the introduction of some special payment to the operators involved.

[169] Even if there was something special or different involved in the use of the CAFS vehicles we would not have been inclined, on this occasion, to "reward" the behaviour recorded in Mr Mitchel's evidence, which has seen the roll-out of the CAFS units held up for a number of years. As stated elsewhere in this Decision, the appropriate way to have any new skills recognised and rewarded is not through claims for additional payments to operators or users of new pieces of plant and/or equipment but, rather, through the practice of readily adopting new equipment, products and technologies as they are introduced and to seek to have the additional skills acquired by firefighters, as a group, recognised and rewarded through periodic work value cases.

Item 26 - Deployment
Item 36 - Deployment - communications centres

[170] QFES presses for the inclusion of its proposed clause 4.19.1 on the basis there has been no counter proposal put by UFU or SOU. However, all of its other claimed provisions in clause 4.19 are in dispute.

[171] Included in the clause sought by QFES is a provision (at 4.19.10) which would permit officers recalled from annual leave or long service leave to attend critical incidents (such as the January 2011 flood events) to have the option of having their leave re-credited in lieu of being paid at overtime rates. In the case of annual leave, officers would also have the option of adding the re-credited time to the end of the leave block from which they were recalled. Although UFU did not lead any evidence in support of or in opposition to these proposals, two witnesses called by SOU, Area Commander David Hermann and Acting Chief Superintendent Kevin Walsh, were both strongly opposed to the proposed provision.

[172] Mr Hermann said that officers under his command were rostered to blocks of annual leave "years in advance" and any proposal which would allow officers to take additional (re-credited) leave at the end of their scheduled block of leave, or at a later time, would be very difficult to implement. Further, it was unlikely to achieve any financial savings because any officer who took leave at a later time would need to be replaced on their shift by another officer, usually at overtime rates. Mr Walsh said that when firefighters graduated from the academy they were placed into a designated annual leave block,

numbered 1 to 7, and took their six weeks leave across a rolling roster according to their allocated block.

[173] Mr Walsh also said that knowledge of when officers would be at work or on leave provided QFES with knowledge about when they would be able to participate, for example, in training courses and other matters requiring scheduling. Because of the certainty provided by the existing arrangements, staff on holidays were those who were primarily targeted to go on deployment. If there was an option for officers to defer or re-credit their leave this would have significant service-wide implications. One such implication was that federal government funding under the National Disaster Relief and Recovery arrangements only covered reimbursement for overtime and not normal wages. More importantly, from Mr Walsh's perspective, it was the difficulty of trying to manage the allocation and re-allocation of resources to try to accommodate out-of-block leave arrangements which led him to oppose the proposed provision.

[174] In its Reply submissions, UFU supported continuation of the existing provisions in the 2009 Agreement and suggested that QFES had not produced any evidence to support any changes to those provisions.

[175] In line with our decision in respect of Item 12 - TOIL, we have decided to approve QFES's proposed clause 4.19.10, notwithstanding the strong opposition to it by Messrs Hermann and Walsh, on the basis that:

- any election to seek to have leave re-credited will be voluntary;
- it is important for workplace health and safety and personal welfare reasons that employees be able to take annual leave rather than just receiving additional income;
- inclusion of the provision could lead to additional employment opportunities for employees on the reserve roster; and
- it will help reduce QFES's cost structure.

[176] However, in the circumstances where QFES has not advanced any material which would support any alteration to the other existing provisions, we are inclined - with one caveat - to decide that the existing provisions of clause 4.3 of the 2009 Agreement should be included in the Determination. The caveat is that the provision should be expanded to refer not only to intra-state or inter-state deployments but also to those deployments which are made to overseas destinations.

Item 27 - 38 hour week allowance

[177] Although this provision was previously in dispute, QFES has subsequently accepted the proposed UFU clause about this matter. Consequently, UFU's claim is approved and will be incorporated into the Determination.

Item 28 - BAO, on-call and non-standard hours of work

[178] QFES seeks to vary the existing certified agreement provision by removing the requirement that the relevant Deputy Commissioner consult UFU and affected Building

Approval Officers (BAOs) before implementing a regional on-call arrangement for such BAOs. In its submissions, QFES said that all impediments to management prerogative should be removed from the industrial instrument in circumstances in which they are neither necessary nor appropriate to safeguard the interest of employees. This is said to be on the basis that the evidence concerning consultation generally establishes that QFES has a history and practice of consulting with its workforce in the management of its organisation, irrespective of any legally enforceable obligation to do so.

[179] In the circumstances, and in light of our decisions on consultation elsewhere in this Decision, we have decided to include a provision in the determination to the effect that the on-call arrangements will be determined on a region-by-region basis "by the Deputy Commissioner after consultation with the affected employee or employees and, where requested by the employee(s), their Union representative."

Item 29 - Senior officers, hours of duty

[180] QFES and SOU have reached agreement about the provisions of clause 6.1 in ID 28. As such, this clause is approved for inclusion in the Determination.

Item 30 - Senior officers, programmed day off

[181] QFES and SOU have reached agreement that senior officers who are currently working a 38-hour week should be allowed to work a 40-hour week and accrue 2 hours per week toward a programmed day off to be taken once every 28 calendar days or at another time agreed with the senior officer's manager. The agreed provision is to be included in the Determination.

Item 31 - Senior officers, on call arrangements and non-standard hours of work

[182] QFES and SOU have reached agreement about this provision, which is recorded at clause 6.3 of ID 28. On the basis of such agreement this clause will be included in the Determination.

Item 32 - Senior officers, additional leave for duty manager officers working the continuous shift roster

[183] QFES and SOU have also reached agreement about this provision, clause 6.5 in ID 28, which will be included in the Determination.

Item 33 - Senior officers, additional paypoints

[184] SOU seeks the inclusion of additional paypoints for senior officers, who occupy the positions of Inspector, Superintendent and Chief Superintendent, respectively, on the ground of improving parity in the take-home pay situation of such officers (especially Inspectors) and the staff they supervise. In particular, SOU referred to the evidence of Messrs O'Neill, Cawcutt, Mutzelberg, Byatt, Gresty and Hackett, who said that the poor remuneration levels of senior officers had a considerable impact on QFES's ability to recruit Station Officers and others into those roles. However, this evidence was disputed by Mr Roche who said QFES had no difficulty recruiting staff into its senior ranks.

[185] Mr Cawcutt's evidence was to the effect that the base salary of an Inspector was now only 5% above that of a Station Officer and that this difference was wiped out whenever a Station Officer worked overtime because Inspectors, as with other senior officers, received no extra remuneration for working additional hours. In this respect, SOU referred us to the evidence of its witnesses who testified that they consistently worked in excess of 40 hours a week without any additional compensation.

[186] In addition to its arguments about senior officers' incomes reducing over time in comparison to their subordinates, SOU also relied upon the evidence of Mr Cawcutt to the effect that equivalent level staff in the Queensland Ambulance Service (QAS), the Queensland Police Service (QPS) and interstate Fire Services were better remunerated than senior officers employed by QFES.

[187] Given the nature of these proceedings, which provided very little opportunity to analyse the nature and scope of the duties of senior officers under the current [new] rank structure as compared to the previous structure, and the strictures imposed on us by the CBRC Minute referred to above, we have decided not to grant SOU's claim. However in an endeavour to try to accommodate both the interests of QFES and senior officers we would strongly encourage the respective parties to jointly examine the level of the overall remuneration package of senior officers employed by QFES compared to comparable levels of senior officers employed by QPS and QAS and the "margin" between the pay levels of such senior officers and their subordinates. Information of this type, as well as the potential assessment of the work performed by senior officers within QFES by an organisation like Mercer, might help the parties reach an agreed, or partially agreed position in the lead up to the negotiation of a Certified Agreement in late 2016.

Item 34 - Communications centres - pattern of work

[188] QFES seeks to amend the existing provision which requires it to have "due regard to the work requirements and the wishes of the employee" when determining the pattern of working hours for other than continuous shift workers. This alteration is opposed by UFU.

[189] Reflecting our decisions elsewhere on consultation, we determine that the words "and the wishes of the employees" be deleted and replaced with "and after consultation with the affected employee or employees and, where requested by the employee(s), their Union representative."

Item 35 - Communications centres - 38 hour week allowance

[190] QFES and the UFU are in agreement about the terms of this provision. As such, it shall be incorporated into the Determination.

Item 36 - Communication centres - deployment (see Item 26)

Item 37 - Rural flexibility allowance

[191] QFES seeks to include the provisions of clause 7.1 of the 2009 Agreement which provide for additional compensation to Rural Fire Management Officers working nights and weekends.

[192] Although the provisions provide for additional payments to the employees affected, UFU has not indicated whether it wishes to continue the existing provisions in the 2013 Determination or whether it opposes the inclusion of such provisions.

[193] Given our awareness of the interest of Together Queensland, Industrial Union of Employees in other matters in the Commission involving Rural Fire Management Officers it might be the case that UFU has not expressed a view in relation to the matter for the reason that such persons are not its members. Accordingly, in the circumstances, we neither approve nor refuse QFES's request to continue this provision. However, if the Commission is advised that the relevant parties agree to the continuation of the provisions dealing with the rural flexibility allowance it will be included in the 2013 Determination.

Item 38 - Job evaluation

[194] Although it was not the subject of any evidence and/or submissions, the contents of ID 28, as well as a topic heading in the employer's outline of submissions, both indicate that we are being called upon to decide a dispute between QFES and the Automotive, Metals, Engineering, Printing and Kindred Industries Industrial Union of Employees, Queensland about how any disagreement regarding an internal assessment for movement within the FC classification structure should be dealt with.

[195] Given the absence of argument and evidence about this matter we are only prepared to incorporate those provisions which are agreed between QFES and the Union. As such, the employer's proposal, which mirrors the first two sentences of the Union's proposal, will be incorporated into the Determination. The additional sentence claimed by the Union is not granted.

Item 39 - Deployment conditions for rural fire management and maintenance services

[196] QFES presses for the inclusion of a proposed Part 11 of the Determination which would contain provisions setting out the deployment conditions for rural fire management and maintenance services in the event employees are sent to locations to assist with critical incidents that may arise intra-state, inter-state or internationally. In doing so, it highlights that no other party to the proceedings advanced any counter proposal.

[197] Although we understand that this claim was a matter at issue during the course of the parties' negotiations, we have no information before us to enable us to decide what impact, if any, the proposed provisions will have on existing arrangements. In those circumstances we neither approve nor reject the proposed provision and leave it to the parties to discuss whether the provision is to be included in the Determination. If there is agreement, the provision will be included. If there is not, it will not be.

Item 40 - Work health and safety

[198] UFU seeks the inclusion of comprehensive provisions dealing with workplace health and safety which would see the establishment of a Workplace Health and Safety Committee comprised of an equal number of employer and union representatives. In addition, all elected workplace health and safety representatives (HSRs) and deputy health and safety representatives (DHSRs) would be entitled to participate in meetings of the Committee.

Further, the proposed provisions would require QFES to provide all HSRs and DHSRs the necessary time and resources to undertake their roles in accordance with the provisions of the *Workplace Health and Safety Act 2011* and allow HSHR and DHSRs to attend a range of courses relevant to their roles, without loss of pay, upon giving 14 days' notice to QFES.

[199] The proposed clause would commit QFES to providing "a workplace free from health, safety or environmental risks" and to promoting "a framework for continuous improvement and progressively higher standards in the prevention and management of situations that cause injury or illness in the workplace."

[200] QFES opposes the claimed provisions.

[201] Given the prescriptive nature of the claim, QFES's opposition to it and the general regulation of workplace health and safety matters via the *Workplace Health and Safety Act 2011*, we have decided not to include any provisions dealing with workplace health and safety in the Determination. This is not to suggest that the topic is not important. It clearly is. However, the absence of clear agreement on how workplace health and safety issues might best be addressed in such a hazardous occupation as fire fighting causes us to be very circumspect about deciding what the appropriate provisions dealing with such matters should look like.

[202] For that reason, we propose to leave it to the parties to discuss, again, whether they can reach agreement on this point and, if they can, to also decide whether the terms of their agreement should be contained in the Determination or elsewhere, especially given that a Determination cannot be amended during its life (see s 150(8)(b)).

Item 41 - Additional pay points - Senior Firefighters and First Class Firefighters

[203] UFU seeks the introduction of an additional paypoint for the classifications of Senior Firefighter and First Class Firefighter, respectively. It is proposed that the additional paypoint be set at 3.5% above paypoint 1 and applied to officers classified at the respective levels after 5 years' experience in the role. In support of this claim UFU called evidence from Messers Cross, Watts, Ryan and Ruig.

[204] Mr Cross has been a Senior Firefighter for 15 years. His evidence was that he had elected not to progress to a Station Officer position as he believed it was less "hands-on" and involved more of a management role. He opined that the role of experience in shaping a capable firefighter is critical and that he had frequently utilised his 33 years of experience to rapidly assess steps which had to be taken to control a particular situation and what the possible risks might be. As an experienced firefighter he carried out a critical role in mentoring less experienced firefighters, even if they were at the same classification level. He had commonly heard the most experience firefighter on a fire fighting vehicle or in the station referred to as the "senior man". In his experience there was a senior man on each shift at every station.

[205] Mr Cross also referred to changes which he said had occurred in his work over the past 6 years or so which included: increased paperwork and data entry; increased frequency of being required to act as a Station Officer; an increase in non-operational workload; an increase in additional work such as coordinating training, inspection of premises and

maintenance and inspection reports; larger intakes of new firefighters and an increased mentoring role.

[206] Messers Watts and Ryan gave evidence designed to generally support that advanced by Mr Cross. They spoke about situations they had witnessed where senior personnel would provide advice and guidance to less experienced Station Officers and other firefighters during fire fighting operations. They opined that more experienced firefighters took on an informal leadership and mentoring role and kept a watch over less experienced firefighters on the fire ground.

[207] Mr Ruig said that experienced firefighters with considerable periods of service were generally referred to as the "senior man" or "senior hand". He claimed that these firefighters are expected to assume a significant degree of responsibility and to mentor and advise lesser experienced firefighters. As a senior First Class Firefighter he was called upon to mentor other firefighters, while on the fire ground he was relied upon by others to ensure that lesser experienced personal were safe. In that respect, he was frequently told not to let a more junior firefighter out of his sight.

[208] Mr Ruig also said that as a result of his extensive exposure to a multitude of situations and hazards he knew what to look for and to expect. He found lesser experienced firefighters often did not identify the hazards they might encounter as they had not seen them before. By contrast, he was able to anticipate, for example, the likelihood of flash overs or back drafts. During road accident rescue work he was able to impart his considerable experience to others, including how to deal with the situation of encountering deceased persons. He was frequently able to guide the mental health needs of junior or inexperienced firefighters because they felt comfortable with his position and role in the crew.

[209] UFU's claim for the additional paypoints was opposed by QFES for a variety of reasons including the absence of objectively verifiable criteria against which it could be established whether an individual firefighter had attained any particular level of expertise, other than by the passage of time. Further "there is no basis on the evidence for suggesting that all senior firefighters who have attained five years' experience thereby pass some invisible line in which they become mentors, guides or protectors of other firefighters, other than as an intrinsic and fundamental part of the work which they all do." Further, QFES argued that there is no objectively verifiable means of ascertaining whether any of the firefighters with more than five years' experience perform any mentoring functions at all which might be described as more or different from those which they performed before the fifth anniversary of appointment to their classification.

[210] QFES also referred to the evidence of Mr Roche in relation to both claims, during the course of which he indicated there was no discernable difference between the duties undertaken by Senior Firefighters and First Class Firefighters, before 2007, when Mercer undertook its work evaluation, and after that date. Further, the duties referred to in the affidavits of Messers Watts, Ryan and Ruig were consistent with those duties that QFES reasonably expected its First Class Firefighters to perform from time to time and which had been part of those duties for many years. Similar comments were made in respect of the witnesses who gave evidence about the duties of a Senior Firefighter.

[211] We have decided to reject UFU's claims for the additional paypoints. The evidence simply does not establish any discernable difference between the duties of Senior

Firefighters and First Class Firefighters between, or prior to, 2007 and the present time. All that the evidence does is confirm:

- that exposure to different fire fighting and rescue operations over many years allows an officer to draw on their experience whenever they encounter a new situation; and

- that other employees might expect, or seek to, use that level of experience to deal with a situation they might not have encountered before and/or improve their own knowledge base.

[212] With great respect to the witnesses who gave evidence, there is nothing special or unique about their situation. A carpenter, plumber, electrician, or even an airline pilot, with many years of experience would be able to recount similar experiences about how they have been able to draw on their exposure to previous situations to help them deal with any new situation which might arise and that other employees might seek to draw on that level of experience. However, none of those occupational groups receive additional remuneration on the sole basis of length of employment in the performance of their particular role. In pay structures based upon time served the wage rate of less experienced staff are necessarily lower than those with more experience. If we had been of a mind to consider these claims we would also have had to consider what (lower) wage rates should be paid to those officers in each role with less than 5 years' experience.

Item 42 - Additional pay point - Building Approval Officers (BAO's)

[213] UFU seeks an seeks an additional paypoint, set at 3.5% above BAO2, for BAOs who possess a Graduate Diploma of Fire Safety on the basis of the extra skills and capacities the holder of such diploma brings to the role of Building Approval Officer. In support of its claim UFU called Mr Ken Clark who gave evidence about the additional skills and knowledge he was able to bring, as the holder of a Graduate Diploma, to the performance of his role above that exhibited by other BAOs who only possessed a Graduate Certificate. In particular, Mr Clark opined that a BAO who held a Graduate Diploma possessed a far greater depth of understanding of fire safety installations and services than other BAOs and allowed that person to establish, for example, if a particular fire safety solution, especially an alternative solution to that generally prescribed, was designed in accordance with legislative requirements. In addition, by having a more in-depth knowledge of fire engineering principals, such a person provided stakeholders with more relative and comprehensive advice in a significantly shorter timeframe.

[214] Finally, Mr Clark opined "the Graduate Diploma facilitates BAOs to perform other tasks that can generate additional revenue for the QFES, as well as greatly increasing a BAO's capacity in all tasks in their role description".

[215] QFES opposed UFU's claim on the basis Mr Clark had elected to undertake further study to improve his knowledge in circumstances where the additional qualification he had obtained (the Graduate Diploma) was not requested or required by QFES and, relevantly, was not mandated in his role statement. In opposing the claim, QFES called evidence from Mr Roche and Mr Steven McKee, Executive Manager, Fire Engineering Command, State Community Safety Operations Branch of QFES. Mr McKee is a Registered Professional Engineer of Queensland and a Chartered Fire Engineer with the Institution

of Fire Engineers. In addition to his Bachelor's Degree he held a Post-Graduate Diploma in Building Fire Safety and Risk Engineering from Victoria University.

[216] After providing evidence about the nature of the work undertaken by BAO1 and BAO2 employees Mr McKee said:

> "25 I am aware that several BAO2 employees have completed a Graduate Diploma in Building Fire Safety and Risk Engineering from Victoria University. Whilst it is expected that those employees who have completed a Graduate Diploma will have an enhanced level of fire safety engineering knowledge and capability above those who have only completed a Graduate certificate, this additional knowledge and capability will not change the employee's prescribed duties or responsibilities.
>
> 26 Regardless of whether an employee holds a Graduate Diploma or a Graduate Certificate, the Building Approval Officer will still be required to undertake the same prescribed tasks, perform the same prescribed duties and display the same minimum competencies.
>
> 27 Completing a Graduate Diploma will not allow the employee to undertake duties above that of a BOA2 that involve the provision of 'professional engineering services' unless and until the Graduate Diploma qualifies the fire officer to become a Registered Professional Engineer in Queensland, and is appointed to a position that has those duties and accountabilities."

[217] In the course of his evidence (T4-65) Mr McKee said it was not the role of BAOs "to interrogate the nuts and bolts of the engineering" of any alternative fire solutions, that was the role of an engineer. "If they were to do that they may stray into the realms of doing engineering and that's not, you know, their role. And in Queensland you have to be a registered engineer to do engineering and that's why everybody has got their role. The BAO has got their role and the engineers have got their role".

[218] After considering the evidence, especially that given by Mr McKee, we have decided to refuse UFU's claim for an additional paypoint. In doing so, we agree with the submissions of QFES which were to the effect that an employee is not at liberty to impose a particular qualification on an employer, in the sense of demanding a higher rate of pay for a qualification that the employer does not want or need for someone to perform the role in question. To borrow the employer's example "If a qualified fire engineer applied for and was appointed to the BAO role, that person would not be entitled to a higher salary for a role that is other than the role which the employer requires of them".

Item 43 - Additional provisions for BA hazmat / safety equipment officers

[219] UFU seeks the inclusion in the Determination of a new stream, which has a similar structure to the agreed rescue technician stream, which is said to be needed to recognise the specialist skills and training of safety equipment officers. Evidence in support of this claim was provided by Station Officer Andrew Berrill (Exhibits 50 and 51).

[220] Mr Berrill is one of three Special Operation Response Team members at Cannon Hill who work within the Breathing Apparatus Hazmat Unit (BAHU), and whose role title is Safety Equipment Officer (SEO). The duties of the 3 x SEOs include responding to

incidents which require breathing apparatus and associated equipment and/or hazardous material (hazmat) equipment; delivering of training to QFES and other emergency services' staff in connection with breathing apparatus and hazmat; servicing and maintaining breathing apparatus, hazmat suits and gas detection equipment; and project management associated with such matters as identifying new equipment and/or processes to enhance service delivery.

[221] Mr Berrill said that while he was remunerated at the rank of Station Officer, paypoint 2, the nature of the duties he undertook as an SEO had not been considered by Mercer during its 2007 evaluation of roles within QFES. Before that time, and subsequently, there had been many changes in the nature of his work including: the introduction of negative pressure masks in 2009 which had to be individually face fitted; the purchase of additional maintenance equipment in 2011 to enable in-house servicing of four gas detectors; the start of the roll-out of hazmat support vehicles (largely breathing apparatus) in 2011; becoming part of the international USAR deployment taskforce team during 2012 and, in this role, conducting field calibrations and servicing of equipment - thus enabling the functionality of the equipment to continue during deployment; the purchase of hazardous transfer equipment during 2012 which provided a capacity for hazardous liquids to be decanted from damaged vessels to a recovery vehicle, and so on.

[222] Mr Berrill generally opined that the role he and the other SEO's undertook was a specialist role which required recognition, including the rank structure set out in the UFU claim. Such structure would accommodate decisions announced by QFES which would see the commissioning of new vehicles and equipment and the engagement of specialist additional staff at Cannon Hill. There was also an expectation of increased chemistry-based training and incident specific equipment, with movement towards further in-house maintenance of equipment as a cost saving measure.

[223] The Union's claim for an additional stream and classification structure was opposed by QFES. In particular, QFES was critical of the approach adopted by UFU in its attempt to have the Commission re-arrange the structures of QFES to create a stream that did not exist, as well as classifications that did not exist. It might have been different if QFES had created such a stream, in that the Commission could have been asked to rule upon the appropriateness of remuneration levels and the like within the stream, "but to create the stream is to re-design the QFES business operation, which simply can't be done."

[224] QFES also highlighted that Mr Berrill held the substantive rank of Station Officer and, like a number of other persons who held that substantive rank, was required to work in some speciality area of QFES's overall operations. While he was performing in his specialist role he was not required to perform his general Station Officer duties. Further, the evidence did not provide any comparison between the duties, skills and responsibilities of a Station Officer compared to those undertaken by Mr Berrill and his colleagues as SEOs. As such, there was no basis upon which the Commission could determine that the work being undertaken by SEOs should be paid at a higher level than the classification at which they were already being paid.

[225] We are not prepared to grant the claim advanced by UFU. This is for a number of reasons, including:

- there has been no evidence given about the differences between duties undertaken by staff such as Mr Berrill and other Station Officers;

- it would be highly unusual for the Commission to decide to establish a specialist stream within a particular workforce, in the face of employer opposition to such step, during a s 149 arbitration;

- although Mr Berrill is currently working in a specialise role he, and his colleagues, could be transferred back to normal Station Officer duties at any point in time; and

- any changes in the nature of the work performed by a particular classification of employees (in this case Station Officers) should be assessed on a whole-of-service basis rather than by setting different wage rates for individual employees, or groups of employees, while they are assigned to a "specialist" role for a period of time.

Item 44 - Fire Investigators' pay level

[226] UFU seeks the creation of a new minimum pay rate for officers who undertake fire investigations (Fire Investigators) such that it is equivalent to that of a BAO1. In pressing this claim UFU argued that Fire Investigators received no additional remuneration to recognise their fire investigation training and expertise and that the nature of their role demands that they should receive additional compensation, equivalent to that paid to a BAO1.

[227] Evidence and material in support of the Union's claim was provided by Mr Christopher Markwell who is employed in the specialist role of Fire Investigation Officer. He said that QFES has a legislative obligation under the *Fire and Rescue Service Act 1990* to conduct fire investigation activities to determine the origin and cause of fire incidents. These are conducted to identify unsafe equipment, work practices, building design or malicious activity within the community. The outcomes of such investigations are used, amongst other purposes, to develop public safety information packages to educate and increase awareness in fire safety practices within the community.

[228] The development of a formalised fire investigation capability began in 1994 under the predecessor of QFES. The Fire Investigation Research Unit (FIRU) was introduced in 1995 and renamed as the Fire Investigation Unity (FIU) in 2009. As a result of developments over the years FIU has designed and developed training courses to fulfil the requirement for fire investigations capability within QFES. The course is conducted in components across a 12 month time frame and consists of:

- a six month distance education component;

- a three week residential stage;

- a four month regional based practical investigation component; and

- a further one week residential stage.

[229] The training package has achieved national recognition to the degree that other State Fire Services regularly send participants to the FIU conducted course. The FIU course, which leads to successful participants receiving a Statement of Attainment, is recognised by the

Charles Sturt University which grants a 50% credit towards the Graduate Certificate in Fire Investigation offered by that University and a 25% credit towards its Graduate Diploma in Fire Investigation.

[230] In addition to dealing with the history of fire investigation within QFES and the number of fire investigations undertaken during the 12 year period 2002-2012, Mr Markwell identified the nature of the duties undertaken by a Fire Investigator in Queensland, some of whom were engaged full-time in the role while others only undertook the work on an "as required" basis. At the time he prepared his affidavit there were 80 Fire Investigators in Queensland whose qualifications were contemporary, with approximately 30 of those having achieved their qualifications within the last three years. Since 1994 the FIU had trained approximately 120 QFES officers in fire investigation.

[231] Mr Markwell also provided a comparison between the training, assessment, role, responsibilities and duties of a BAO1 and opined that the comparison provided justification for UFU's claim that Fire Investigators should be paid at the same wage level as a BAO1. He also said that Mercer did not look at the work of Fire Investigation Officers in 2007, and that, as a result, the work of he and his colleagues had never been properly evaluated.

[232] UFU's claim that full-time Fire Investigators be paid at the equivalent to the BAO1 rate was opposed by QFES, primarily through the evidence of Mr Roche. He said that while QFES was undertaking work to develop an Advanced Diploma package it did not require an employee to have completed an Advanced Diploma in order to be a Fire Investigator. He also said that UFU's claim failed to take into consideration the additional benefits Fire Investigators received above that of a BAO1. For example, Fire Investigators such as Mr Markwell received:

- an allowance whilst on call;
- overtime at the rate time and one-half;
- a 2.5% flexibility allowance, which also compensated the Fire Investigator for the first two hours of overtime; and
- overtime penalties generally.

[233] By contrast, the payscales for a BAO1 differed in that they:

- received a 20% loading to be on call for 1 week in every 4, but received no additional payment for their attendance at any incident during the on call period; and
- did not receive payment for overtime worked outside their normal hours of duty being required, instead, to accrue TOIL at single time rates.

[234] In addition, Mr Roche strongly disputed the comparative table in which Mr Markwell set out the training requirements, duties and the like of a Fire Investigator compared to those of a BAO1. He said "these tables do not provide an accurate account of the training and assessment as well as the roles and responsibilities of the BAO1 and Fire Investigator. They appear to be an unbalanced appraisal and distorted to support his argument… I do

not consider that there is any justification to suggest that the performance of that position has changed in recent years, and certainly not so as to warrant a reclassification to BAO1."

[235] Our consideration of Mr Markwell's evidence, as well as our exposure to him during the inspections, leads us to conclude that he is a very dedicated and enthusiastic officer who is totally committed to the role he undertakes. However, more than enthusiasm and dedication is required to meet the criteria against which we are required to evaluate the Union's claim for a higher wage rate to be paid to him and his two colleagues.

[236] On the evidence presented we have no way of being able to identify the relative value of the work undertaken by Fire Investigators, such as Mr Markwell, with that undertaken by BAO Level 1 employees. Further, we do not have any clear evidence before us which would enable us to evaluate any changes in work value for Fire Investigators since their last (reasonably significant) wage increase in 2007.

[237] Quite apart from these considerations, we are (as explained elsewhere in this Decision) reluctant to consider setting a new wage rate for an individual group of employees who, while appointed to perform a particular specialist role at the moment, appear to be, yet again, classified at the Station Officer level. As such, granting an individual rate of pay to such group would simply create a "silo" or "box" within the overall structure of QFES, with all of the problems that type of situation brings. Employees in silos or boxes are reluctant to be moved out of their specialist roles because their pay rates alter. Any reluctance by individuals to move back to their substantive level reduces the opportunities available to other employees to move into new and/or different roles. Rather than leading to an expansion of skills, including having trained back-up staff, across an organisation such as QFES, such a practice tends to lead to an overall reduction in skills which, while it might not have an immediate effect, can ultimately impact the overall responsiveness of the particular organisation.

[238] Accordingly, for the foregoing reasons, we formally refuse this claim.

Item 45 - Senior communications officers' paypoint

[239] UFU seeks the introduction of a new Communications Officer paypoint between levels FCO1.4 and FCO2.1 to apply to a new role described as "Senior Communications Officer". In advancing this claim UFU relied upon the evidence of four witnesses (Docherty, Girgenti, Carney and Taylor), stating that their evidence established:

- there is an operational gap between the highest level of Communications Officer (FCO1.4) and a Communications Supervisor (FCO2.1);
- a number of more experienced Communications Officers are increasingly being called upon to perform tasks which fall outside of their role description;
- introduction of the senior communications role will prepare Communications Officers to advance to Supervisor or acting manager levels; and
- a number of centres did not have Supervisors as a result of which senior Communications staff, because of their significant experience, became "de-facto" Supervisors, although not appointed as such.

[240] The UFU claim was opposed by QFES which argued:

- it was the witnesses' own assessment that the work they performed went beyond the requirements of their position description;
- the additional paypoint would create a supervisory role which each witness understood QFES did not want and had assessed as not been required; and
- each of the witnesses had successfully performed the role of acting manager in the past, and been remunerated for working at that level, notwithstanding the absence of the claimed additional paypoint.

[241] In addition, QFES noted that the witnesses (and UFU) still pressed for the introduction of the new paypoint notwithstanding their knowledge that QFES had assessed the need for a supervisory position of the kind claimed and had decided that no position of that type was required.

[242] Notwithstanding the passion with which each of the witnesses who gave evidence on this topic pressed for the new classification and paypoint to be introduced, we are not prepared to interfere with the decision taken by QFES, after assessment, that a position of the type claimed is not required in the relevant communications centres.

[243] It is part and parcel of any classification structure that there will be a spread of skills and experience between employees classified at the same level. In that respect, it is a natural consequence of that circumstance that some more "senior" people in a particular role will be called upon to exercise additional responsibilities or provide guidance and/or some "direction" to less experienced staff from time to time and as circumstances dictate.

[244] However, that fact does not justify a higher rate of pay for the people concerned. This is because pay rates usually reflect the range of skills and/or experience of the people who undertake a particular role. If this was not the case then two, three or more classification levels might be necessary to cover the range of skills and experience which are held by individual employees ostensibly performing the same role. While industrial tribunals might have adopted that approach in the past (where, for example, the *Metal Trades Award 1952* had over 350 individual classifications of employee) that approach has long since passed (the metal industry award now only has 14 classifications).

Item 46 - Employment security

[245] QFES opposes UFU's claim to retain clauses 2.3.1, 2.3.3 and 2.3.4, respectively, from the 2009 Agreement on the basis that such provisions offend s 691C of the IR Act.

[246] While not obviously apparent, in that the term “industrial instrument” in the IR Act does not include a Determination, the adoption (at s 691A) of the definition of the same term from the *Public Service Act 2008* has the effect that s 691C also applies to Determinations made under s 149. Accordingly, we are required to refuse UFU’s claim on the basis the provisions it proposes be included in the 2013 Determination are non-allowable.

Item 47 - Permanent employment

[247] For reasons identical to those recorded in the previous Item we refuse UFU's claim that clause 2.4 - Permanent Employment of the 2009 Agreement be replicated in this Determination.

Item 48 - Work and family life balance

[248] UFU seeks to replicate the provisions of clause 2.5 of the 2009 Agreement in the Determination. Relevantly, this clause provides:

> "To balance work and family life the following provisions are available subject to service delivery requirements and financial considerations:
>
> - Extension of purchased leave arrangements to purchase up to six (6) weeks purchased leave per year; and
> - Introduction of half pay recreation leave subject to Chief Executive Officer discretion."

[249] The inclusion of such provision is opposed by QFES which relies upon the evidence of Mr Donovan to the effect that the employer is opposed to the inclusion of provisions which restrict its ability to legitimately manage its business and to implement reforms consistent with Government requirements. In particular, QFES is opposed to the inclusion of matters, such as the clause claimed by UFU, which might need to be adjusted from time to time as circumstances require.

[250] Given QFES's objection to the inclusion of this provision and the absence of any evidence in relation to it we are not inclined to include it in 2013 Determination. This is because we have no way of knowing whether such provision is a reflection of existing policies, in which case there will be no detriment to the employees covered by the Determination, or whether they were provisions peculiar to the 2009 Agreement. If it is the latter situation, the employer's agreement to the inclusion of such provisions has now been withdrawn.

Item 49 - Conversion of casual communications officers to permanent part-time

[251] UFU also seeks the inclusion of the provisions of clause 6.7 of the 2009 Agreement which records QFES's commitment to maximising permanent employment and job security and other matters designed to increase permanent employment. The inclusion of such items is opposed by QFES on the basis they offend the provisions of s 691C of the IR Act.

[252] For the reasons recorded under item 46 we refuse the claim. In any event, we also note that the provisions sought to be continued are largely unenforceable because they are generally statements of intention rather than ones which bestow actual rights on employees.

Item 50 - Extra - ordinary hours of duty

[253] UFU also seeks to include clause 4.7.5 from the 2009 Agreement in the Determination. The introductory paragraph of this provision records that it is "an interim arrangement

pending the development of a Departmental or whole-of-government employment arrangement relating to emergency services deployments."

[254] Unfortunately, no evidence was produced by either party in connection with this matter. As such, we are not able to establish whether it is necessary to include comparable provisions in the 2013 Determination or whether the other provisions of the Determination will suffice to deal with any emergency deployment.

[255] In the absence of any agreement between the parties in relation to this matter we are not presently inclined to include it in the Determination. However, if the parties agree to the inclusion of the previous provisions, or some modification to them, we are prepared to include them in the ultimate Determination we will issue.

Item 51 - Consultation and dispute resolution (see Item 4)

Finalisation of the Determination

[256] As mention in paragraph [124] above, we direct the parties to confer about finalising the terms of the proposed 2013 Determination, in light of the contents of this Decision, and to report back to this Full Bench on a date to be set in mid-late February 2015. The dates of that Report Back Hearing will be advised to the parties in early January 2015.

[257] Clauses which are agreed between the parties or which are the subject of clear decision by the Commission (other than wage increases) will have an operative date of Sunday 15 February 2015. Clauses which require further discussion and/or which will be the subject of report back in mid-late February, as discussed immediately above, will have an operative date as agreed between the parties or by later decision of the Commission, whichever is relevant.

[258] We determine and Order accordingly.

Attachment 1

Sick Relief Callbacks per Day and Night (and Totals) – Raw Data

	2008-2009			2009-2010			2010-2011			2011-2012			2012-2013		
	Day	Night	Total	Day	Night	Total	Day	Night	Total	Day	Night	Total	Day	Night	Total
Monday	78	50	128	60	28	88	182	131	313	156	104	260	184	158	342
Tuesday	83	48	131	56	57	113	178	144	322	150	134	284	194	151	345
Wednesday	48	73	121	56	67	123	196	164	360	168	116	284	190	138	328
Thursday	54	70	124	49	66	115	176	194	370	195	152	347	185	196	381
Friday	81	110	191	58	114	172	187	227	414	209	258	467	197	262	459
Saturday	124	243	365	99	196	295	248	365	613	250	436	686	287	405	692
Sunday	145	70	215	124	70	194	290	181	471	265	178	443	289	216	505
TOTAL	**613**	**664**	**1275**	**502**	**598**	**1100**	**1457**	**1406**	**2863**	**1393**	**1378**	**2771**	**1526**	**1526**	**3052**