

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

CITATION: *Re: variation of the Queensland Fire and Emergency Service Employees Award – State 2016 [2020] QIRC 174*

PARTIES: **State of Queensland (Queensland Fire and Emergency Services)**
(Applicant)

v

**United Firefighters' Union of Australia,
Union of Employees, Queensland**
(First Respondent)

&

Queensland Fire and Rescue – Senior Officers Union of Employees
(Second Respondent)

&

Together Queensland, Industrial Union of Employees
(Third Respondent)

CASE NO: MA/2020/19

PROCEEDING: Application to vary a modern award

DELIVERED ON: 29 September 2020

MEMBER: Knight IC

HEARD AT: On the Papers

ORDER: **1. Application granted. Full Orders as per final pages of decision.**

CATCHWORDS: INDUSTRIAL LAW – VARIATION OF A MODERN AWARD – application to vary a modern award.

LEGISLATION: *Industrial Relations Act 2016* (Qld)

Reasons for Decision

- [1] The State of Queensland (Queensland Fire and Emergency Services) has filed an application to vary the *Queensland Fire and Emergency Service Employees Award – State 2016* ("the Award").¹ The application is made with the consent of the union parties.
- [2] The Award was read and interpreted in conjunction with the *Queensland Fire and Emergency Service Certified Agreement 2016*,² cl 5 of which provided:
- 5. Modern award review**
- (a) During the life of this certified agreement the parties agree to review the *Queensland Fire and Emergency Service Employees Award – State 2016* to identify provisions that require clarification of their wording and/or variation to more reflect current employment conditions.
- (b) The parties agree to work co-operatively together to reach a consent position regarding any variations.
- (c) It is not the intention of the parties to reduce or increase employment conditions as a result of the review of the modern award.
- [3] In his affidavit sworn on 28 August 2020, Mr Gregory Leach, Commissioner of the Queensland Fire and Emergency Services, deposed that the parties were unable to conduct a review of the Award within the life of that certified agreement. Accordingly, they agreed to complete this task as a priority following the certification of the *Queensland Fire and Emergency Service Certified Agreement 2019*.
- [4] Exhibited to Mr Leach's affidavit is explanatory notes which clarify the purpose of the variations.
- [5] Chapter 3 of the *Industrial Relations Act 2016* ("the Act") provides for the exercise of powers with respect to modern awards. Relevantly, s 147 of the Act provides that the Commission may make an order varying a modern award to provide for fair and just employment conditions.

¹ *Industrial Relations Act 2016* (Qld) s 149.

² Replaced by the *Queensland Fire and Emergency Service Certified Agreement 2019* on 6 November 2019.

- [6] Section 141 of the Act requires that, in exercising its powers under ch 3, the Commission must ensure a modern award:
- (a) provides for fair and just wages and employment conditions that are at least as favourable as the Queensland Employment Standards; and
 - (b) generally reflects the prevailing employment conditions of employees covered, or to be covered, by the award.
- [7] I am satisfied that the variations sought would ensure that the Award continues to provide "fair and just employment conditions" and generally reflect the prevailing employment conditions of employees covered by the Award.
- [8] I grant the application and make the necessary orders to vary the Award.

Orders

Pursuant to s 147 of the Act, the *Queensland Fire and Emergency Service Employees Award – State 2016* is varied as follows:

- 1. By inserting the following new definition in alphabetical order into clause 3:**

platoon means a group of firefighters and station officers assigned to a shift at a station
- 2. By deleting the "scheduled day off" definition in clause 3 and inserting the following in lieu thereof:**

scheduled day off means:

 - **for an employee whose ordinary hours of duty are Monday to Friday: Saturday and Sunday**
 - **for an employee whose ordinary hours of duty include a Saturday and/or Sunday: one of the two days each 7 day period, or four days each 14 day period, that the employee is not rostered for duty in accordance with clause 15.1(b)(iv). Depending on the working arrangements, a Saturday and/or Sunday may also be a scheduled day off**
- 3. By deleting clause 4.3 and inserting the following in lieu thereof:**

4.3 Directives applying to employees covered by this Award

In addition to the conditions of employment provided in this Award, Schedule 8 of the Public Service Regulation 2018 lists the directives that apply to employees covered by this Award.

4. By deleting clause 11.2 and inserting the following in lieu thereof:

11.2 Employer's duty to consult over change

- (a) The employer shall consult the employees affected and, where relevant, their union/s about the introduction of changes referred to in clause 11.1, the effects the changes are likely to have on employees (including the number and categories of employees likely to be dismissed, and the time when, or the period over which, the employer intends to carry out the dismissals) and ways to avoid or minimise the effects of the changes (e.g. by finding alternate employment).
 - (b) The consultation must occur as soon as practicable after making the decision referred to in clause 11.1.
 - (c) For the purpose of such consultation the employer shall provide in writing to the employees concerned and, where relevant, their union/s, all relevant information about the changes including the nature of the changes proposed, the expected effects of the changes on employees, and any other matters likely to affect employees.
 - (d) Notwithstanding the provision of clause 11.2(c) the employer shall not be required to disclose confidential information, the disclosure of which would be adverse to the employer's interests.
5. By replacing the reference to "clause 23.1" in clause 12.4(b) ♦ with "clause 23.2".
6. By replacing the reference to "clause 23.1" in clause 12.4(c) ♦ with "clause 23.3".
7. By deleting clause 13.1 and inserting the following in lieu thereof:

13.1 Aerial appliance allowance - Fire and rescue stream

- (a) The following allowances will be paid to employees in the Fire and rescue stream certified to operate aerial appliances (excluding station officers) while they are stationed at stations with such appliances:
 - (i) appliances less than 25 metres \$9.00 per week
 - (ii) appliances 25 meters and above \$45.62 per week
- (b) Where an officer is relocated to a station where these competencies are not required, the allowances will continue to be paid until the date of recertification. During this period the employer may recall employees as required.

- (c) For the purpose of clause 13.1(a) aerial appliance means a telescopic aerial pumper, a hydraulic ladder platform or a high reach aerial appliance.

8. By deleting clause 13.6 and inserting the following in lieu:

13.7 Adjustment of monetary allowances

- (a) The monetary allowance specified in clause 13.1 (aerial appliance allowance) shall be automatically adjusted from the same date and in the same manner as monetary allowances are adjusted in any State Wage Case decision or other decision of the Commission adjusting minimum wage rates in this Award.
- (b) At the time of any adjustment to the wage rates in this Award the expense related allowances at clauses 13.3 (motor vehicle allowance) and 13.5 (overtime meal allowances and meal breaks), respectively, shall be automatically adjusted by the relevant adjustment factor. The relevant adjustment factor for this purpose is the percentage movement in the applicable index figure most recently published by the Australian Bureau of Statistics since the allowance was last adjusted.
- (c) The applicable index figure is the index figure published by the Australian Bureau of Statistics for the Eight Capitals Consumer Price Index, as follows:

<u>Allowance</u>	<u>Eight Capitals Consumer Price Index (Cat No. 6401.0 - Table 7)</u>
Motor vehicle allowance (last adjusted 1 September 2019)	Private motoring sub-group
Overtime meal allowance (last adjusted 1 September 2020)	Take-away and fast foods sub-group

9. By inserting a new clause 13.6 as follows:

13.6 38 hour week allowance – Fire and rescue and Communications Streams

- (a) The 38 hour week was introduced by way of the payment of an allowance known as the 38 hour week allowance. The 38 hour week allowance is paid in lieu of reducing ordinary working hours from 40 to 38.
- (b) The allowance is paid fortnightly and is calculated as follows:

The employees' fortnightly rate of pay* \div 76 x 4 = 38 hour week allowance

***where the fortnightly rate of pay is equivalent to the base rate, weekend penalty and night shift penalty.**

- (c) **The 38 hour week allowance is payable on all forms of leave.**
- (d) **The employer will provide a contribution equivalent to 9.5% of the employee's 38 hour week allowance to the employee's superannuation accumulation account.**

10. By deleting clause 15.1 and inserting the following in lieu:

15.1 Ordinary hours of duty - employees other than Senior Officers

- (a) **Subject to the provisions of clauses 15.1(b) and (c), 15.2 and 15.3, the ordinary hours of duty for employees covered by this Award (other than Senior Officers) shall be as recorded in the table below:**

Stream	Average ordinary hours of work per week over a roster cycle	Maximum ordinary hours of work per day
(i) Fire and rescue stream		
(A) residential training courses	40	10
(B) recruit training courses	40	10
(C) all other duties	40	14
(ii) Communications stream		
(A) residential training courses	40	10
(B) all other duties	40	14
(iii) Rural fire service stream		
(A) full-time and part-time employees	38 38	10 10
(B) casual employees		

- (b) **Except where an employee in the Fire and rescue or Communications streams (other than a Senior Officer) is participating in training, the ordinary hours prescribed in clause 15.1(a) shall be worked as prescribed below:**
 - (i) **For continuous shift workers**

- (A) The 10/14 roster will remain in place as the recognised shift roster for continuous shift workers in the Fire and rescue or Communications streams.
- (B) The 10/14 roster cycle consists of seven (7) tours, worked over an eight (8) week period. A tour consists of two (2) 10-hour day shifts, two (2) 14-hour night shifts, and four (4) days off.
- (C) Employees in the Fire and rescue stream will be assigned to one of four platoons (A, B, C, or D) and employees in the Communications stream will be assigned to one of four shifts (A, B, C or D).
- (D) Each platoon or shift will work according to the following continuous roster.

D – Day Shift (10 hours)

N – Night Shift (14 hours)

X – Rostered day off

	Week 1							Week 2						
	M	T	W	T	F	S	S	M	T	W	T	F	S	S
A PLATOON / SHIFT	D	D	N	N	X	X	X	X	D	D	N	N	X	X
B PLATOON / SHIFT	X	X	D	D	N	N	X	X	X	X	D	D	N	N
C PLATOON / SHIFT	X	X	X	X	D	D	N	N	X	X	X	X	D	D
D PLATOON / SHIFT	N	N	X	X	X	X	D	D	N	N	X	X	X	X
	Week 3							Week 4						
	M	T	W	T	F	S	S	M	T	W	T	F	S	S
A PLATOON / SHIFT	X	X	D	D	N	N	X	X	X	X	D	D	N	N
B PLATOON / SHIFT	X	X	X	X	D	D	N	N	X	X	X	X	D	D
C PLATOON / SHIFT	N	N	X	X	X	X	D	D	N	N	X	X	X	X
D PLATOON / SHIFT	D	D	N	N	X	X	X	X	D	D	N	N	X	X
	Week 5							Week 6						
	M	T	W	T	F	S	S	M	T	W	T	F	S	S
A PLATOON / SHIFT	X	X	X	X	D	D	N	N	X	X	X	X	D	D
B PLATOON / SHIFT	N	N	X	X	X	X	D	D	N	N	X	X	X	X

C PLATOON / SHIFT	D	D	N	N	X	X	X	X	D	D	N	N	X	X
D PLATOON / SHIFT	X	X	D	D	N	N	X	X	X	X	D	D	N	N
	Week 7							Week 8						
	M	T	W	T	F	S	S	M	T	W	T	F	S	S
A PLATOON / SHIFT	N	N	X	X	X	X	D	D	N	N	X	X	X	X
B PLATOON / SHIFT	D	D	N	N	X	X	X	X	D	D	N	N	X	X
C PLATOON / SHIFT	X	X	D	D	N	N	X	X	X	X	D	D	N	N
D PLATOON / SHIFT	X	X	X	X	D	D	N	N	X	X	X	X	D	D

- (E) The 10/14 roster necessitates the working of an average of 42 hours per week. Full-time employees on the 10/14 roster will be paid for 40 ordinary hours per week.
- (F) For full-time employees, two (2) hours of the average of 42 hours is credited towards additional leave, to be taken at a time convenient for the employer. This accrued leave may form part of fixed leave blocks for employees on the rotating leave roster or be taken as Z leave for employees in the Communications stream.
- (ii) Employees other than continuous shift workers may work according to a shift roster or daywork roster as agreed and that complies with this clause.
- (iii) Unless mutually agreed otherwise, all ordinary hours of duty, other than attendance at residential training courses and recruit training courses, are to be worked continuously (exclusive of unpaid meal breaks) with a minimum of 8 hours per day.
- (iv) Scheduled days off
- (A) All employees shall be entitled to not less than 2 consecutive scheduled days off duty each 7 consecutive days.
- (B) In lieu of 2 whole days off in each 7 consecutive days an employee may be allowed in each 14 consecutive day period either one scheduled day off in one 7 day period and 3 consecutive scheduled days off in the other 7 day period or 4 consecutive scheduled days off.
- (C) Two consecutive scheduled days off, one at the end of one 7 day period and one at the beginning of the following 7 day

period may be counted as meeting the requirements of clause 15.1(b)(iv).

- (v) Employees will be provided a minimum of 8 hours break between the finish of ordinary hours of duty on one day and the commencement of ordinary hours of duty on the following day.
- (vi) Unless otherwise provided in a shift work or continuous shift work roster, a full-time employee will work an 8 week 320 hour cycle and the pattern of working hours shall be determined by the employer having due regard to the work requirements and the wishes of the employee.
- (vii) If the employer proposes to alter the pattern of working hours in any work location, consultation regarding the proposed working arrangements will occur with the employee/s directly concerned and, if requested by the employee/s, their union/s, prior to their implementation.

(c) Rural fire service stream

Except where an employee in the Rural fire stream (other than a Senior Officer) is participating in training, the ordinary hours prescribed in clause 15.1(a) shall be worked as prescribed below:

- (A) Ordinary hours of duty shall be nominally 304 hours in an 8 week period.
 - (B) Ordinary hours of duty shall be worked on 10 days out of each 14 day period with an average of 7.6 hours worked per day, managed flexibly.
 - (C) On average, an employee in the Rural fire service stream may expect to have an average of one full weekend and two part weekends over an 8 week cycle impacted by work.
 - (D) A maximum of 14 nights may be impacted by work in an 8 week cycle. These nights will usually be worked as an average of 4 nights per fortnight.
- (d) Employees shall be given at least two weeks' notice of a requirement to attend training, change shifts or change roster. Where two weeks' notice cannot reasonably be given, the employer will make all reasonable efforts to provide the maximum amount of notice. Where an employee raises concerns about the change based on their individual circumstances, the employer will consider those circumstances.

11. By deleting clause 15.2 and inserting the following in lieu:

15.2 Ordinary hours of duty - Senior Officers

- (a) **Standard hours of work for Senior Officers will consist of 38 hours per week. Both Senior Officers and their managers are to maintain a "position" focus rather than an "hours" focus. The effective management of working hours and responsibilities will be planned in consultation with the employee's manager. Planned hours are in recognition that most positions need flexibility with starting and ceasing times to satisfy work responsibilities, for example, positions that require flexible arrangements for contact with Auxiliary Firefighters.**
- (b) **The provisions of clauses 15.1(b)(iv), 15.1(b)(vii) and 15.1(d) shall apply to all Senior Officers.**
- (c) **In addition to the provisions contained in clause 15.2(b) the provisions of clauses 15.1(b)(v) and (vi) shall also apply to those Senior Officers who perform a Duty Manager Operations role and who work shift rosters.**
- (d) **Subject to the conditions in clauses 15.2(d)(i), (ii) and (iii), a Senior Officer (other than one performing a Duty Manager Operations 10/14 role) shall be able to work a 40 hour week and accrue two hours per week towards a programmed day off (PDO) to be taken once every 28 calendar days.**
 - (i) **Where a Senior Officer is unable to access a PDO, then they are to be placed on such PDO during the current roster period or the next. Taking alternative PDOs will be with the agreement of the relevant Assistant Commissioner.**
 - (ii) **A PDO may be taken on its own or in conjunction with annual leave or weekends (or their equivalent if standard hours are worked on a Saturday and/or Sunday).**
 - (iii) **There will be no cash equivalent paid in lieu of PDOs not taken.**

12. By deleting clause 15.4(c) and inserting the following in lieu:

- (c) **All ordinary hours of duty worked by an employee between 0000 and 2400 on a public holiday shall be paid for at the rate prescribed in clause 23.1 or 23.2, as the case may be.**

13. By deleting clause 15.5(b)(iv) and inserting the following in lieu:

- (iv) **between 0000 and 2400 on a public holiday - at the rate prescribed in clause 23.3.**

14. By deleting clause 17 and inserting the following in lieu:

17. Rest pauses

- (a) **Subject to clause 17(c), an employee shall be entitled to rest pauses as prescribed below:**
 - (i) **an employee who works for at least 3 hours but less than 6 hours in any one day or shift shall be entitled to one paid 10 minute rest pause;**
 - (ii) **an employee who works 6 hours or more in any one day or shift shall be entitled to a paid 10 minute rest pause in the first and second half of the employee's working day or shift.**
- (b) **All rest pauses must be taken at a time which maintains continuity of work where continuity is necessary.**
- (c) **The entitlement to one or more rest pauses in clause 17(a) shall not apply in the event of attending fires or other similar emergencies.**
- (d) **Continuous shift workers in the Fire and Rescue stream are to be available for all duties for the duration of their shift. Notwithstanding that availability, employees shall be permitted to rest and recline between the hours of 2200 and 0600 subject to operational requirements.**

15. By deleting clause 18.3 and inserting the following in lieu:

18.3 Payment for overtime

- (a) **Subject to clauses 18.3(b) and 18.4:**
 - (i) **an employee, other than a continuous shift worker, is to be paid for overtime at the rate of time and one-half for the first 3 hours on any one day and double time thereafter, except for Sunday which is double time.**
 - (ii) **all continuous shift workers are to be paid for overtime at the rate of double time.**
- (b) **All authorised overtime worked on a public holiday shall be paid for at the rate prescribed in clause 23.**
- (c) **All calculations for overtime payments made in accordance with clauses 18.3(a) and (b) shall be made on an employee's base rate of pay.**

16. By deleting clause 18.10(c) and inserting the following in lieu:

- (c) **Clause 18.10 does not apply where:**

- (i) the employee is recalled to work overtime and actually works not more than 2 hours overtime; or
- (ii) the period between rostered shifts is less than 10 hours.

17. By deleting clause 18.11(e) and inserting the following in lieu:

- (e) (i) All TOIL for Senior Officers shall be accrued at single time.
- (ii) Senior Officers and their Managers will ensure that Senior Officers will have access to such TOIL within 12 months of its accrual.
- (iii) Superintendents and Chief Superintendents who do not access their TOIL balances within 12 months of accruing their TOIL, through no fault of their own, will retain such balances until such time as the TOIL is taken. Inspectors who have not accessed their TOIL may have TOIL balances paid out at the end of each 12 month period.

18. By deleting the text underneath clause 19 and inserting the following in lieu:

Annual leave is provided for in Division 5 of the QES. Clauses 19.1 to 19.9 supplement the QES.

19. By deleting clause 19.1 and inserting the following in lieu:

19.1 Entitlement to annual leave - Fire and rescue stream

For each full year of employment, an employee in the Fire and rescue stream shall be entitled to the following annual leave:

- (a) For employees other than senior officers:
 - (i) 200 hours leave on full pay exclusive of scheduled days off and rostered days off according to the roster on which the employee commenced leave,
 - (ii) 104.3573 hours accrued leave, and
 - (iii) 8 hours additional leave.
- (b) For senior officers:
 - (i) 200 hours leave on full pay exclusive of public holidays, scheduled days off and rostered days off according to the roster on which the employee commenced leave.

20. By deleting clause 19.2 and inserting the following in lieu:

19.2 Entitlement to annual leave - Communications stream

For each full year of employment, an employee in the Communications stream shall be entitled to 200 hours leave on full pay exclusive of public holidays, scheduled days off and rostered days off according to the roster on which the employee commenced leave.

21. By deleting clause 19.4 and inserting the following in lieu:

19.4 Provisions of common application

- (a) Employees are entitled, upon application, to have annual leave paid in advance.
- (b) Subject to clause 19.4(a), the monetary equivalent of accrued leave, including *pro rata* accrued annual leave, is to be paid to an employee upon cessation of their employment.
- (c) Except for absence on workers' compensation of whatever duration, which counts as service, any leave of absence without pay in excess of three months will not count as service for the purpose of calculating annual leave entitlements.

Note: Where a directive about leave without salary credited as service covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

22. By deleting clause 19.8 and inserting the following in lieu:

19.8 Recall – Rural Fire Service and Senior Officers' annual leave to be re-credited

A Rural Fire Service Officer or Senior Officer recalled from annual leave to perform duty shall have the period of leave foregone re-credited to their annual leave balance.

23. By deleting clause 20.2(b) and inserting the following in lieu:

- (b) All other employees - on a time for time basis in accordance with the employee's roster or agreed pattern of ordinary hours.

24. By deleting clause 20.3 and inserting the following in lieu:

20.3 Medical certificates - Fire and rescue and Communications streams

Where a sick leave or carer's leave absence exceeds two consecutive working days/shifts, an employee in the Fire and rescue stream or the Communications stream shall produce the following evidence (if required):

- (a) For sick leave, a medical certificate from a duly qualified medical practitioner, specifying:
 - (i) the nature of the illness; and
 - (ii) the period or approximate period during which the employee will be unable to work.
 - (b) For carer's leave, a medical certificate or statutory declaration evidencing that the person the employee is caring for is ill with an illness requiring care or support.
25. By renumbering existing clause 20.4, 20.5, 20.6, 20.7 and 20.8 as clauses 20.5, 20.6, 20.7, 20.8, 20.9 respectively and inserting a new clause 20.4, as follows:
- 20.4 Illness and annual leave and long service leave – Fire and rescue and Communications streams**
- (a) Where an employee becomes ill before the start of annual leave or long service leave and their illness continues into that leave, they may be granted sick leave on full pay for the period of the illness instead of the leave which had already been approved, provided they submit an application for sick leave with a medical certificate issued by a registered medical practitioner to the Assistant Commissioner, prior to leave commencing and that they have accrued sick leave available for the period covered by the medical certificate.
 - (b) Illness whilst on paid leave:
 - (i) An employee who becomes ill after starting annual leave or long service leave may be granted sick leave for the period of the illness instead of the approved leave provided:
 - (A) the employee submits a written application supported by a medical certificate issued by a registered medical practitioner to the Assistant Commissioner; and
 - (B) the period of illness is more than three (3) working days; and
 - (C) the employee advises the employer of their illness prior to returning from the approved leave.
 - (ii) Paid sick leave is not available to an employee on unpaid leave.
26. By deleting the new numbered clause 20.7 and inserting the following in lieu:
- 20.7 Absenteeism management**
- (a) Without limiting the employer's existing rights, where an employee has a proven pattern of recurring sick leave, the employer shall notify the

employee and the employee's representative (if relevant) of its findings in relation to the employee's pattern of recurring absence.

- (b) The employer shall first attempt to determine the reason for such absences and, where appropriate, ensure that the employee is counselled in relation to the employee's pattern of recurring absence.
- (c) If a pattern of sick leave continues, the employee may be placed on an absenteeism management plan which will require them to produce a medical certificate for future absences. At the expiration of a 12 month period, the requirement to provide a medical certificate for all absences will be reviewed.
- (d) Any procedure regarding absenteeism management will adhere to best practice public sector guidelines, including consideration of reasonable adjustments, if appropriate.

27. By deleting clause 21 and inserting the following in lieu:

21. Parental leave

- (a) Unpaid parental leave is provided for in Division 8 of the QES and covers:
 - (i) birth-related leave for an employee who is pregnant or whose spouse gives birth;
 - (ii) adoption leave; and
 - (iii) surrogacy leave.
- (b) Notwithstanding the provisions of Subdivision 2 of Division 8 of the QES, all full-time and part-time employees are entitled to unpaid parental leave upon commencement of employment.
- (c) In addition to the unpaid parental leave set out in Division 8 of the QES, employees are also entitled to paid parental leave in accordance with the relevant government directive relating to paid parental leave.
- (d) An employee who is pregnant, during the term of their pregnancy until 6 weeks before the expected date of birth of their child or lesser period as approved by the employer, may request to work part-time or other flexible work arrangements.

Note: Where a directive about parental leave covers an employee, the provisions of the directive apply to the employee to the extent it provides a more generous entitlement.

- 28. By deleting clause 22 and inserting the following in lieu:**
- 22. Long service leave**
- (a) Long service leave, including for casual employees, is provided for in Division 9 of the QES. Clauses 22(b) to (e) supplement the QES.
- (b) In lieu of the provisions of sections 95(2)(a) and (b) of the Act, all employees who complete 10 years' continuous service are entitled to long service leave at the rate of 1.3 weeks on full pay for each year of continuous service and a proportionate amount for an incomplete year of service.
- (c) Access to pro rata long service leave after seven years' service.
- (i) Employees will be entitled to access pro rata long service leave after seven years' service. Pro rata cash equivalent of long service leave on termination will only be available in accordance with the terms of s. 95(3) and (4) of the *Industrial Relations Act 2016*.
- (ii) Where an employee voluntarily reverts to a lower classification, the employee will be entitled to leave accrued as at the date of the reversion at the salary applicable at the date of the reversion. Employees will not be compelled to take accrued long service leave at the date of the reversion.
- (iii) The minimum period of long service leave that may be taken at any one time is one (1) calendar week.
- (d) Long service leave at half pay
- (i) An employee may request and the employer may agree to extend the period of long service leave for which the employee qualifies by the employee taking the leave at half pay.
- (ii) Granting of the leave is subject to departmental convenience. However, requests for leave should not be unreasonably refused.
- (e) Payout of long service leave after ten years of service
- (i) An employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave by making application to the Queensland Industrial Relations Commission.
- (ii) The Queensland Industrial Relations Commission may order payment of this leave if they are satisfied that the payment should be made:
- (A) on compassionate grounds; or

- (B) on the grounds of financial hardship.**
 - (iii) The employer will not oppose a reasonable application to the Queensland Industrial Relations Commission.**
 - (iv) An employee considering accessing this provision is strongly advised to seek financial advice prior to their application and provide proof of financial hardship with their application**
- 29. By deleting clause 23 and inserting the following in lieu:**

23. Public holidays

Public holidays are provided for in Division 10 of the QES. Clauses 23.1 to 23.7 supplement the QES provisions.

23.1 Payment for public holidays and for work on a public holiday – Fire and rescue stream

- (a) Subject to clauses 23.4 and 23.5, an employee who is not a shift worker or a continuous shift worker (other than a casual employee) who would normally work on a day on which a public holiday falls and who:**
 - (i) is not required to work on that day, shall be paid for the ordinary hours the employee would normally have worked if that day had not been a public holiday;**
 - (ii) is required to work on the public holiday shall, in addition to the payment prescribed in clause 23.1(a)(i), be paid at the rate of time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.**
- (b) A shift worker or a continuous shift worker (other than a casual employee) who:**
 - (i) is required to work on a public holiday (other than the Queen's Birthday public holiday) shall, be paid at the rate of double time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.**
 - (ii) is required to work on the Queen's Birthday public holiday shall be paid at the rate of time and one-half time for any hours worked, with a minimum payment as for 4 hours' work for the day.**
 - (iii) does not perform work on a public holiday (other than the Queen's Birthday public holiday) due to being either rostered off duty, or on annual leave or long service leave, shall be paid an additional 8 hours' pay.**

- (iv) performs less than 8 hours of rostered work on a public holiday, shall receive an additional payment equal to the difference between the number of hours worked on the public holiday and 8 hours, at the rate of single time.
 - (v) in the case of a part-day public holiday, the entitlement to an additional 8 hours' pay in clauses 23.1(b)(iii) and (iv) shall be proportionate to the number of hours out of the full day (24 hours) that has been gazetted as the public holiday.
- (c) An employee (other than a Senior Officer) who performs authorised overtime on a public holiday shall be paid for such time at double the overtime rate prescribed in clause 18.3(a). Senior Officers shall be paid at the rate prescribed in clause 23.1(a)(ii).

23.2 Payment for public holidays and for work on a public holiday – Communications stream

- (a) Subject to clauses 23.4 and 23.5, an employee (other than a casual employee) who would normally work on a day on which a public holiday falls and who:
- (i) is not required to work on that day, shall be paid for the ordinary hours the employee would normally have worked if that day had not been a public holiday;
 - (ii) is required to work on the public holiday shall, in addition to the payment prescribed in clause 23.2(a)(i), be paid at the rate of time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.
- (b) A continuous shift worker (other than a casual employee) who does not perform work on a public holiday due to being either rostered off duty, or on annual leave or long service leave, shall be paid an additional 8 hours' pay.
- (c) A continuous shift worker (other than a casual employee) who performs less than 8 hours of rostered work on a public holiday, shall receive an additional payment equal to the difference between the number of hours worked on the public holiday and 8 hours, at the rate of single time.
- (d) In the case of a part-day public holiday, the entitlement to an additional 8 hours' pay in clauses 23.2(b) and (c) shall be proportionate to the number of hours out of the full day (24 hours) that has been gazetted as the public holiday.
- (e) An employee (other than a Communications Manager) who performs authorised overtime on a public holiday shall be paid for such time at double the overtime rate prescribed in clause 18.3(a).

Communications Managers shall be paid at the rate prescribed in clause 23.2(a)(ii).

- (f) A casual employee in the Communications stream who is required to work ordinary hours on a public holiday shall be paid at the rate of double time and one-half for ordinary hours worked, with a minimum payment as for 4 hours' work for the day.**
- (g) The minimum payment provided in clause 23.2(f) shall not apply where the work performed on the public holiday is immediately preceding or following ordinary hours.**

23.3 Payment for public holidays and for work on a public holiday – Rural fire service stream

- (a) Subject to clauses 23.4 and 23.5, an employee (other than a casual employee) who would normally work on a day on which a public holiday falls and who:**
 - (i) is not required to work on that day, shall be paid for the ordinary hours the employee would normally have worked if that day had not been a public holiday;**
 - (ii) is required to work on the public holiday shall, in addition to the payment prescribed in clause 23.3(a)(i), be paid at the rate of time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.**
- (b) An employee (other than a casual employee and a Senior Officer) in the Rural fire service stream who would normally work on a day on which a public holiday falls and who performs authorised overtime outside the employee's ordinary working hours for that day shall be paid for such time at double the overtime rate prescribed in clauses 18.2 or 18.3, as the case may be. Senior Officers shall be paid at the rate prescribed in clause 23.3(a)(ii).**
- (c) A casual employee in the Rural fire service stream who is required to work on a public holiday shall be paid at the rate of double time and one-half for any hours worked, with a minimum payment as for 4 hours' work for the day.**
- (d) The minimum payment provided in clauses 23.3(c) shall not apply where the work performed on the public holiday is immediately preceding or following ordinary hours.**

23.4 Labour Day

- (a) All employees are entitled to a minimum of 8 hours' pay for Labour Day irrespective of the fact that no work may be performed on such day.**

- (b) **If an employee works on Labour Day they are to be paid a full day's wage for that day and, in addition, a payment for the time actually worked at one and one-half times the ordinary rate of pay, with a minimum payment as for 4 hours' work.**
- (c) **An employee in the Fire and rescue and Communications streams rostered off duty or on annual leave on Labour Day shall be paid an additional 8 hours' pay or an additional 8 hours' leave shall be added to their annual leave.**

23.5 Annual show

- (a) **All work performed by an employee from the district for which a holiday is gazetted under the *Holidays Act 1983* to be kept in relation to the annual agricultural, horticultural or industrial show shall be paid for at the rate of double time and one-half, with a minimum payment as for 4 hours' work, whether the work is performed within the district or elsewhere on that day.**
- (b) **Where there is agreement between the Commissioner and an employee as a Senior Officer in the Fire and Rescue stream, another ordinary day may be substituted for Annual Show Day.**

23.6 Substitution - Rural fire service stream

- (a) **Subject to statutory limitations (such as the time work may not be performed on Anzac Day) where there is agreement between the Commissioner and an employee or employees in the Rural fire service stream, another ordinary working day may be substituted for a public holiday.**
- (b) **Where an employee in the Rural fire service stream is subsequently required to work on the substituted day they shall be paid at the rate prescribed in clause 23.1.**

23.7 Employees who do not ordinarily work Monday to Friday of each week - Fire and rescue and Communications streams

- (a) **An employee (other than a casual employee) who does not ordinarily work Monday to Friday of each week is entitled to public holidays as follows:**
 - (i) **a full-time employee is entitled to either payment for each public holiday or a substituted day's leave;**
 - (ii) **a part-time employee is entitled to either payment for each public holiday or a substituted day's leave, provided that the part-time employee would ordinarily have been rostered to work on that day had it not been a public holiday; and**

- (iii) where a public holiday would have fallen on a Saturday or a Sunday (e.g. Australia Day) but is substituted for another day, an employee who would ordinarily have worked on such Saturday or Sunday but who is not rostered to work on such day is entitled to payment for the public holiday or a substituted day's leave.
 - (b) Nothing in clause 23.7 confers a right to any employee to payment for a public holiday as well as a substituted day in lieu.
- 30. By renumbering clause 33 as clause 34 in the sub-title, as well as in sub-clauses (b)(ii) and (b)(iv).
- 31. By deleting clause 32 and inserting the following in lieu:
 - 33. Industrial relations education leave
 - (a) Industrial relations education leave is paid time off to acquire knowledge and competencies in industrial relations. Such knowledge and competencies can allow employees to effectively participate in consultative structures, perform a representative role and further the effective operation of grievance and dispute settlement procedures.
 - (b) Employees may be granted up to 5 working days (or the equivalent hours) paid time off (non-cumulative) per calendar year, approved by the Commissioner, to attend industrial relations education sessions.
 - (c) Additional leave, over and above 5 working days non-cumulative (or the equivalent hours) in any one calendar year may be granted where approved structured employees' training courses involve more than 5 working days (or the equivalent). Such leave will be subject to consultation between the Commissioner, the relevant union and the employee.
 - (d) Upon request and subject to approval by the Commissioner, employees may be granted paid time off in special circumstances to attend management committee meetings, union conferences, and Australian Council of Trade Unions (ACTU) Congress.
 - (e) The granting of industrial relations education leave or any additional special leave should not impact adversely on service delivery, work requirements or the effectiveness and efficiency of QFES/the work unit concerned. At the same time, such leave shall not be unreasonably refused.
 - (f) Where leave is approved, the employer will arrange and pay for the employee to be backfilled (where required).

- (g) **At the discretion of the Commissioner, employees may be granted special leave without pay to undertake work with their union.**

32. By renumbering clause 30 and 31 as clauses 31 and 32 respectively.

33. By inserting a new clause 30 in Part 9 – Occupational Health and Safety Matters, Equipment and Amenities as follows:

30. Medical examination and termination on medical grounds

- (a) **Medical examination and termination on medical grounds are provided for in section 28 of the *Fire and Emergency Services Act 1990*. Clauses 30 (b) to (d) supplement the legislation.**

- (b) **Termination on medical grounds**

- (i) **If the medical officer attended by the employee reports to the employer that the employee is by reason of any infirmity, other than a temporary infirmity, unfit to discharge or incapable of discharging the full range of the employee's designated duties, the employer may terminate the employee's services in accordance with the provisions of the *Fire and Emergency Services Act 1990*.**

- (ii) **Prior to effecting any such termination the employer shall provide the employee with notice in writing that the employer intends to terminate the employee's services.**

- (c) **Referral to independent medical officer**

Where an employee has submitted for a medical examination under section 28 (3) of the *Fire and Emergency Services Act 1990* by the medical officer selected by the employer, and agreement cannot be reached between the employer and the employee as to such employee's fitness for duty, the matter shall be referred to an independent medical officer selected by the employee from a panel of independent medical officers mutually agreed between the employer and the relevant union.

- (d) **Refusal to submit to medical examinations**

If an employee called upon to submit to a medical examination in accordance with section 28 (3) of the *Fire and Emergency Services Act 1990* does not submit to such examination within the time specified, the employer may terminate the employee's services on giving the notice prescribed in clause 9.1.

34. By deleting the subheading "Progression within this level" contained under the heading "Fire communications officer level 1" in "Schedule 2 – Generic Level Statements – Communications Stream", and inserting the following in lieu:

Progression within this level

This level contains 4 paypoints.

New employees will commence at paypoint 1.

Upon engagement, new employees will be required to complete a formal Communications Training Plan which will include practical, classroom, simulated, live, self-paced and where applicable, local components. The course will cover all Core Skills necessary for employees to perform the basic requirements of all level 1 functions.

Recruit Level - Communication officer 1 paypoint 1- progress to Communication officer 1 paypoint 2 will occur after successful completion of Certificate III in Fire communications operations and six months' satisfactory performance.

Communication officer 1 paypoint 2 - progress to Communication officer 1 paypoint 3 will occur after successful completion of training and development as outlined in the Fire Communications Professional Development Plan and twelve months' satisfactory performance at paypoint 2.

Communication officer 1 paypoint 3 - progress to Communication officer 1 paypoint 4 will occur after successful completion of training and development as outlined in the Fire Communications Professional Development Plan and twelve months' satisfactory performance at paypoint 3.

All employees in this classification will be required to continue skills and knowledge maintenance, assessment and appraisal.

Similarly, regardless of length of service at this level, when any new skills or knowledge are introduced, every employee will be required to undertake training and demonstrate the appropriate understanding required.

Employees who progress to paypoint 4 may be required to assist or relieve Communications supervisors.

35. By deleting the subheading "Progression within this level" contained under the heading "Fire communications officer level 2" in "Schedule 2 – Generic Level Statements – Communications Stream", and inserting the following in lieu:

Progression within this level

This level contains 4 paypoints.

New appointees will commence at paypoint 1.

Progression through paypoints in this level is to be based on qualifications outlined in the Communications Training Professional Development Plan and twelve months' satisfactory performance at each paypoint.

Employees who progress to paypoint 4 must demonstrate highly developed skills and knowledge, beyond those expected for lower paypoints in this level.

Progression within this level will see a number of changes in the way in which the employee carries out their responsibilities:

- **demonstrated proficiency in application of advanced techniques;**
- **demonstrated ability to effectively assign work to, and check the work of, other employees, as well as carrying out staff training; and**
- **evidence of capacity to effectively co-ordinate activities.**

All employees in this classification will be required to continue skills and knowledge maintenance, assessment and appraisal.

Similarly, regardless of length of service at this level, when any new skills or knowledge are introduced, every employee will be required to undertake training and demonstrate the appropriate understanding required.

- 36. By deleting the subheading "Progression within this level" contained under the heading "Fire communications manager" in "Schedule 2 – Generic Level Statements – Communications Stream", and inserting the following in lieu:**

Progression within this level

This level contains 3 paypoints.

New appointees will commence at paypoint 1.

Progression through the paypoints in this level is to be based on qualifications outlined in the Communications Training Professional Development Plan and twelve months' satisfactory performance at each paypoint.

Employees who progress to paypoint 3 must demonstrate highly developed skills and knowledge, beyond those expected for lower paypoints in this level.

Progression within this level will see a number of changes in the way in which the employee carries out their responsibilities:

- **increased proficiency in application of advanced techniques;**
- **effective management of communications centre resources including staffing and budget matters;**
- **increased ability to effectively assign work to, and check the work of, other employees, as well as carrying out staff training; and**
- **evidence of capacity to effectively co-ordinate activities.**

All employees in this classification will be required to continue skills and knowledge maintenance, assessment and appraisal.

Similarly, regardless of length of service at this level, when any new skills or knowledge are introduced, every employee will be required to undertake training and demonstrate the appropriate understanding required.

- 37. By deleting Schedule 4.**
- 38. By updating the Table of Contents to reflect the changes made to Part 9 and Part 10 and the deletion of Schedule 4.**
- 39. The variation to the Award will operate on and from 29 September 2020.**