

QUEENSLAND INDUSTRIAL RELATIONS COMMISSION

*Industrial Relations Act 1999 - s. 149 - arbitration if conciliation unsuccessful*

**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)**

DEPUTY PRESIDENT SWAN  
DEPUTY PRESIDENT BLOOMFIELD  
COMMISSIONER THOMPSON

12 July 2010

DECISION

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**A. GLOSSARY OF TERMS**

ACP	Advanced Care Paramedic
AFCOM	Ambulance and Fire Communications Centre
AIRC	Australian Industrial Relations Commission
ATO	Australian Taxation Office
AWP	Averaged Weekend Penalty
CART	Clinical Audit Review Tool
COMMS	Communications Room
CSO	Clinical Support Officer
FBT	Fringe Benefits Tax
HUET	Helicopter Underwater Escape Training
ICP	Intensive Care Paramedic
IPAP	Isolated Practice Area Paramedic
IPP	Isolated Practice Paramedic
LHMU	Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees
LSL	Long Service Leave
MCEP	Management of Continuing Education Program

MOA	Memorandum of Agreement
M Scale	Management Scale
PTO	Patient Transport Officers
QAS	Queensland Ambulance Service
QASSS	Queensland Ambulance Service Superannuation Scheme
QCAIR	Queensland Case Information Reporting System
QCESA	Queensland Combined Emergency Services Academy
QCU	Queensland Council of Unions
QIRC	Queensland Industrial Relations Commission
RSDU	Regional Staff Development Unit
SARAS	Study and Research Assistance Scheme
TOIL	Time Off In Lieu
WCRA	<i>Workers' Compensation and Rehabilitation Act 2003</i>

## B. PREAMBLE

- [1] Section 149 of the *Industrial Relations Act 1999* (the Act) [Arbitration if conciliation unsuccessful], is applicable if the Commission determines that conciliation between two parties, pursuant to s. 148 of the Act [Assistance in negotiating by conciliation], has been unsuccessful on stated grounds. In this instance, the [then] Department of Emergency Services (now the Department of Community Safety) requested help from the Commission (on behalf of the QAS) pursuant to s. 148(1)(a) of the Act to make a certified agreement with the LHMU. This request was made on 27 October 2008 after the peace obligation period had expired on 8 October 2008.
- [2] Pursuant to s. 148(1)(a) of the Act, two conciliation conferences (31 October 2008 and 4 November 2008) were held before the Commission without resolution. The matter was then referred to a Full Bench of the Commission on 5 November 2008 for Determination.
- [3] Directions hearings before the Full Bench commenced on 6 November 2008 and then proceeded before a single Member of the Full Bench by way of programming reports up until 1 May 2009. After hearing the matter, and prior to final submissions being heard by the Full Bench, further programming reports occurred on 4 June 2009, 31 July 2009 and 5 August 2009.
- [4] The programming reports considered matters which included the identification of the issues in contention between the parties, the order of proceedings, inspections by the Full Bench of various workplaces, filing and responses of witness evidence, nomination of locations at which evidence would be taken, amongst other issues and, on 4 June 2009, the proposed format of the Determination to be made by the Commission.
- [5] At the commencement of proceedings on 25 November 2008 the Full Bench (as then constituted) noted the Government's offer of a 4% interim wage increase to LHMU. This offer was accepted by LHMU and as of 1 October 2008 this wage increase became operative. On 18 December 2009 the Full Bench awarded a further interim increase of 4% or \$34 per week, whichever is the greater, operative from 1 December 2009.
- [6] The constitution of the Full Bench altered on 9 March 2009 to the Full Bench as presently constituted.
- [7] At the commencement of the hearing, two paramedics employed by QAS, Messrs Collier and Evans, sought to put submissions to the Commission on behalf of a number of ambulance officers. Messrs Collier and Evans did not seek to be involved during the course of the proceedings, but rather to make written submissions at the finalisation of the hearing.
- [8] Both QAS and LHMU opposed leave being granted. However, in a separate decision<sup>1</sup>, the Commission determined to grant limited rights to Messrs Collier and Evans in the following terms:
  - "1. That the material proposed to be tendered to the Full Bench (currently held by the Industrial Registrar of the Commission) be released to the Full Bench and the parties to this hearing.
  2. That only those parts of that material which are relevant to the issues which have arisen during the negotiations for the proposed agreement (s. 149 of the Act) will be considered by the Full Bench.
  3. That the Full Bench will attribute limited weight to any assertions or claims made in this material for the following reasons:
    - Messrs Collier and Evans are not representing a registered organisation of employees.

<sup>1</sup> *Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees v Department of Community Safety (formerly the Department of Emergency Services) and Another* (2009) 191 QGIG 90.

- *Messrs Collier and Evans have not taken part in the whole of the proceedings before the Commission. Having said that, we would state that it would have been unlikely that this Full Bench would have permitted leave (which was not sought) to be granted to these persons to be involved in the entire case and specifically to engage in calling witnesses and/or undertaking cross-examination of other witnesses called by QAS and LHMU.*
- *Any views expressed in the material do not represent sworn evidence and have not been subjected to cross-examination by either QAS or LHMU.*
- *There is no leave granted to Messrs Collier and Evans to orally address their material at the time of making final submissions by the parties.*
- *There is no leave granted to Messrs Collier and Evans to put further material before the Commission as a result of any submissions made by QAS and LHMU in these proceedings.*

*In exercising its discretion in this manner, the Full Bench is no way permitting free rein for any person or party to seek to be heard at any time in similar proceedings of this nature. This decision relates to the circumstances of this matter only.*

*The leave that the Full Bench has granted in these proceedings is very limited, as it has to be because of the constrained ambit of s. 149 of the Act and, significantly, because there is a duly registered organisation of employees, the LHMU, which represents employees of QAS."*

### **C. GENERAL STATUS OF THE DETERMINATION**

- [9] The Determination sought will be known as the *Queensland Ambulance Service Determination 2009* (the Determination). The parties agree that the Determination will operate to the exclusion of the *Ambulance Service Employees' Award - State 2003* (the Award) during the life of the Determination. In addition, QAS proposes that the Determination replaces and operates to the exclusion of all previous agreements. For clarity, the Determination would cancel the following certified agreements:

*Queensland Ambulance Service Enterprise Partnership Certified Agreement 2005;*  
*Queensland Ambulance Service Enterprise Partnership - Certified Agreement 2002;*  
*AFCOM Enterprise Partnership - Certified Agreement 2000;*  
*Queensland Ambulance Service Enterprise Partnership Certified Agreement 1999;*  
*AFCOM Interim - Certified Agreement 1999;*  
*Queensland Ambulance Service Interim - Certified Agreement 1998;*  
*AFCOM Brisbane Enterprise Partnership Certified Agreement 1997;* and  
*Queensland Ambulance Service Workplace Reform Agreement 1995 - Certified Agreement.*

- [10] LHMU proposes that the Determination shall be read and interpreted wholly in conjunction with the Award provided that where there is any inconsistency the provisions of the Determination shall take precedence. LHMU is agreeable to a consolidation of existing Certified Agreements so as to remove obsolete, redundant or superseded clauses but is not agreeable to removing or altering any current conditions or entitlements.
- [11] We have decided that the Determination should replace all previous Certified Agreements and operate to the exclusion of those documents. The Award will continue to operate but the Determination shall take precedence to the extent of any consistency.
- [12] Both parties intend the Determination to be a "Closed Determination". QAS submits that the Determination will be the final settlement of "all Union and employee claims relating to employee rights and entitlements. Accordingly, and subject to clause 1.6.2, the Union or employees cannot pursue any extra claims, nor take any industrial action concerning such matters." [Exhibit 5, p. 2, point 1.6.1]
- [13] Notwithstanding that the Determination is a "closed Determination", the parties have agreed to review its terms as follows:

*"Review of determination*

- (a) The parties commit to a process of review during the life of the determination. This review will be undertaken through the Partnership Steering Committee.*
- (b) The parties undertake to commence negotiations for a replacement certified agreement at least six months prior to the expiry of this determination."*

#### D. INSPECTIONS UNDERTAKEN

- [14] The parties each submitted preferred locations for inspections by the Full Bench. Inspections were carried out by the Full Bench and the parties as follows:

Brisbane - 16 March 2009

Brisbane Region Rosters Department, Spring Hill  
AFCOM Communications Centre, Spring Hill  
Fleet Coordination Centre, Hamilton

Brisbane - 17 March 2009

QCESA Training Centre, Lytton  
South-East Regional Training Centre, Springwood  
Woodridge QAS Station

Brisbane - 18 March 2009

Princess Alexandra Hospital Emergency Department, Buranda  
Spring Hill QAS Station  
Ashgrove - QAS call out to an incident

Brisbane - 19 March 2009

Royal Brisbane Hospital Emergency Department, Herston  
Dayboro QAS Station

Rockhampton - 14 April 2009

CAPCOMM Communications Centre, Rockhampton  
Rockhampton South QAS Station  
Rockhampton North QAS Station

Rockhampton - 15 April 2009

Central Region Staff Development Unit, Rockhampton  
Emu Park QAS Station

Duaringa, Blackwater and Emerald - 16 April 2009

Duaringa QAS Station  
Blackwater QAS Station  
Emerald QAS Station

#### E. ISSUES IDENTIFIED FOR DETERMINATION

- [15] Detailed below are the issues for Determination by the Commission:

Date and effect of Determination (and provisions)  
Nominal expiry date (duration)  
Base wage rates increases

Communication centre classifications/increments/wage rates  
PTO classification structure/increments/wage rates  
ACP classification structure/increments/wage rates  
ICP classification structure/increments/wage rates  
Specialist professionals allowance (ICP's, IPAP's, flight paramedics)  
Mentoring Allowance  
M Scale employees' wages/classification structure  
Educators/CSO's wages/classification structure  
Higher Education Incentive (recognition of qualifications) for M Scale employees and Educators  
Maintenance of skills allowance for Educators and M Scale employees

Professional development payment for Educators and M Scale employees (tertiary fees and charges)  
Paid study leave for Educators and M Scale employees  
TOIL for Educators and M Scale employees

Fatigue breaks: max 16 hours to be worked in any 24 hour period, fatigue break to be a minimum 12 hours  
Fatigue payment (to be time paid in addition to prescribed rate for any given day)  
Accrued time (flexibility in accessing single shifts)  
On call restricted to codes 1 and 2A call outs  
On call allowance increase from 15% to 30%

Minimum recall payment three hours pay  
 Limit of on call worked to be a maximum of seven days in 14 with every second weekend free  
 Removal of on call from category 5 stations  
 Fatigue break interruptions to be compensated  
 Meal allowances to be paid when recalled

Meal management and the provision of a "meal window"

Composite rate of pay  
 Addressing anomaly re: AWP when a public holiday falls on a weekend  
 Monitoring of penalty payments and ordinary hours worked  
 "Negative balance" reconciliation where average weekly pay exists.

FBT (government reimbursement policy)  
 Salary packaging generally

Superannuation (increase employer contribution)  
 Superannuation to be paid on regular allowances  
 Additional options for salary continuance insurance

Sick leave management provisions  
 Sick leave - increase to 120 hours paid sick leave

Long service leave pay rate to include projected shift penalties  
 Long service leave at half pay

Vehicles (introduction of maximum serviceable life)

WorkCover "top up" pay  
 WorkCover "keeping job open"

Patient Transport Services double-time for all overtime  
 Patient Transport Services "no contracting out" job security clause

Rural and remote incentives (station classifications) travel and relieving allowances

36 hour week

New part-time employment provisions  
 Casual employment cap  
 Temporary employee arrangements

Increased shift allowance

Roster notification period

[16] The above issues can be conveniently grouped under general headings as follows:

- Classifications, wage increases, increments, allowances;
- Fatigue, on call, call back and overtime;
- Meal Management and a "meal window";
- Composite rate of pay;
- Fringe benefits tax/Salary packaging;
- Superannuation;
- Sick leave;
- Long service leave;
- Operational vehicles;
- Workers' compensation;
- Patient transport officers - overtime rate;
- Employment Security;
- Flexible work arrangements; and
- Rural and remote issues.

## F. OTHER CONSIDERATIONS

[17] Before determining these issues, the Full Bench is required to set the framework within which the application will be considered. Within this context, the following matters have been raised by the parties for consideration:

- (i) Legislative considerations;
- (ii) General principles;
- (iii) Work value;
- (iv) Interstate comparisons;
- (v) Staff attraction and retention considerations;
- (vi) Identification of "matters at issue";
- (vii) Operation of the Determination - commencement and nominal expiry date; and
- (viii) Interim wage increases.

### **(i) Legislative Considerations**

[18] The Commission is required to exercise its arbitration powers in accordance with s. 149 of the Act.

#### ***"149 Arbitration if conciliation unsuccessful"***

(1) *This section applies if -*

(a) *the commission considers conciliation has not been successful because industrial action -*

(i) *has been protracted; or*

(ii) *is threatening, or has caused, significant damage to -*

(A) *the economy or local community, or part of the economy; or*

(B) *a single enterprise; or*

(C) *employees; or*

(iii) *is threatening to endanger, or has endangered, the personal health, safety or welfare of the community or part of it; or*

(b) *the commission considers it is not likely that further conciliation will result in the matter being settled within a reasonable time, considering, among other things, the history of industrial relations in the enterprise or industry to which the proposed agreement is to relate; or*

(c) *all the negotiating parties consider conciliation has been unsuccessful and ask the commission to determine the matter by arbitration.*

(2) *To determine the matter by arbitration -*

(a) *the commission has the arbitration powers that it would have under section 230 if that section applied to certified agreement negotiations instead of industrial disputes; and*

(b) *the commission may give directions or make orders of an interlocutory nature.*

(3) *Industrial action organised, or engaged in, while the commission determines the matter by arbitration is not protected industrial action for section 174.*

(4) *In exercising the arbitration powers, the commission must limit its consideration to the matters at issue during negotiations for the proposed agreement.*

(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) *the likely effects of the commission's determination on the community, economy, industry generally and on the particular enterprise or industry concerned;*

*(d) the extent to which the negotiating parties have negotiated in good faith.*

- (6) The commission must publish its reasons when determining a matter under this section.*
- (7) The reasons must address each of the things the commission considered under subsection (5).*
- (8) The full bench may establish principles about the arbitration of certified agreements.*
- (9) After the principles have been established, the commission must exercise its power to arbitrate in a way that is consistent with the principles.*
- (10) Unless all the negotiating parties agree, the commission as constituted for the conciliation can not exercise the arbitration powers mentioned in this section."*

[19] Section 149(4) of the Act requires the Commission to limit its consideration to the matters at issue during the negotiations

[20] As well, in considering the matters at issue, the Commission must at least consider:

- The merits of the case (s. 149(5)(a) of the Act).
- The likely effects of the Commission's proposed Determination, and any matters agreed before the arbitration, on employees and employers who will be bound by the proposed Determination (s. 149(5)(b) of the Act).
- The public interest (s.149(5)(c) of the Act), and to that end the Commission must consider:
  - (i) the objects of the Act (s. 149(5)(c)(i) of the Act); and
  - (ii) the likely effects of the Commission's Determination on the community, economy, industry generally and on the particular enterprise or industry concerned (s. 149(5)(c)(ii) of the Act); and
  - (iii) the extent to which the negotiating parties have negotiated in good faith (s. 149(5)(d) of the Act).

[21] Section 3 of the Act [Principal object of this Act] reads:

**"3 *Principal object of this Act***

*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 living standards, low inflation and national and international competitiveness; and*
- (c) preventing and eliminating discrimination in employment; 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*
- (h) promoting participation in industrial relations by employees and employers; and*
- (i) encouraging responsible representation of employees and employers by democratically run organisations and associations; and*
- (j) promoting and facilitating the regulation of employment by awards and agreements; and*
- (k) meeting the needs of emerging labour markets and work patterns; and*
- (l) promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs; and*

- (m) providing for effective, responsive and accessible support for negotiations and resolution of industrial disputes; and
- (n) assisting in giving effect to Australia's international obligations in relation to labour standards; and
- (o) promoting collective bargaining and establishing the primacy of collective agreements over individual agreements."

**(ii) General Principles**

- [22] Most case law upon the question of tribunals exercising jurisdiction to intervene in the bargaining process has arisen out of the [then] AIRC and the operation of section 170MX of the *Workplace Relations Act 1996*. Section 170MX bears some similarity to s. 149 of the Act. It has been put that the triggers which enliven the Queensland jurisdiction (s. 149 of the Act) are less onerous than those which confronted the AIRC pursuant to s. 170MX.
- [23] It is proposed by QAS that the Full Bench should consider the history of bargaining between the parties and ensure that, through the arbitration and Determination of the matter, there remains a sound basis for further bargaining between the parties.<sup>2</sup>
- [24] LHMU opposes this submission stating that there is no requirement for the Commission to take into consideration the future bargaining prospects of the parties.
- [25] LHMU states that it was QAS which abandoned the bargaining process. LHMU says that QAS should not be rewarded with a Determination "*which fits with the Government's fixed bargaining and funding position, because this would be an incentive for them to maintain fixed bargaining positions in the future and a disincentive for QAS to negotiate in the future, or indeed negotiate in good faith.*". [Exhibit 94, p. 3]
- [26] LHMU says that QAS has been an inflexible employer which ultimately abandoned negotiations and referred the matter to the QIRC. [Exhibit 94, p. 3] Within that context, LHMU says that the question of "disincentive to bargaining" is not applicable to the present set of circumstances.
- [27] Having considered both propositions, it appears clear that while the respondent in *CPSU v Australian Protective Service*, *ibid*, submitted that the AIRC should give consideration to the position of future bargaining of the parties, the Full Bench did not adopt that proposition, but stated:
- "[16] *It may often be that the effect of an award made under section 170MX is that it will provide a stable basis for future bargaining. However, there is in our view no provision in the Act that can properly be construed as requiring that the relatively clear and comprehensive direction in subsection 170MX(5) should be read down. The exercise of arbitral discretion under section 170MX is not subjugated to making an award of any particular character. Characteristics of the kind that the Commonwealth would have read in would restrict the exercise of discretion under subsection 170MX(5). In our view it is neither necessary nor appropriate to add a gloss or purposive overlay to the matters and considerations to which a Full Bench must have regard under subsection 170MX(5). The Commission is required to exercise the discretion in a manner that accords significance in the decision making process to each of the matters and considerations listed. Having regard to the nature and width of that discretion, the best approach to the exercise of the power is to have regard to those matters and considerations on a case-by-case basis that takes account of all the circumstances.*"
- [28] In our view, there is no statutory obligation upon this Full Bench in deciding a matter pursuant to s. 149 of the Act to exercise caution in determining an outcome which might encourage other negotiating parties to forsake enterprise bargaining.
- [29] This Full Bench accepts that it is not its role to make a bargain for the parties, but to decide an outcome that is consistent with the requirements of the Act and in particular the Statutory direction to the Commission to act with equity, good conscience and the substantial merits of the case [s. 320(3) of the Act].
- [30] It should be noted that the issues in contention in this matter are considerable and it is unfortunate that the parties have not been able to resolve many of those issues. Notwithstanding that, the parties are both experienced negotiators and it is acknowledged by the Commission that from time to time aberrations do occur in the course of negotiations. The Act envisages such occasions and provides a means for their resolution. The Commission does not believe that the outcome reached in this Determination would, because of its own discrete circumstances, create a disincentive to the parties to continue bargaining in the future.

<sup>2</sup> *CPSU v Australian Protective Service* [2001] AIRC 1124.

**(iii) Work Value**

- [31] Both parties submit that the process to be adopted by the Commission in framing its Determination does not encompass a work value claim. In fairness, the matter has not been pursued by either party within the parameters of a work value claim. It therefore requires no further comment, save to state that had it been pursued on a work value basis, then the wage fixing principles relative to work value increases should have been applied. In these circumstances, the submissions are academic.

**(iv) Interstate Comparisons**

- [32] LHMU says that it is not attempting to link its wage outcomes to that of its interstate counterparts. Rather, LHMU believes that interstate comparisons are relevant considerations which the Full Bench should take into account in conjunction with a range of other issues in deciding remuneration levels to be paid to ambulance officers.

- [33] There is little distance between the parties as it goes to the question of the significance of interstate comparisons in this arbitration. QAS states:

*"In these proceedings we implore the Commission to adopt the approach in other proceedings in that interstate comparison might be a matter of some persuasion but should by no means be considered as the sole justification for any increase, lest impediments be placed in the way of further bargaining."* [Exhibit 95, point 33]

and LHMU states;

*"..., there's not a need, in our respectful submission to the Bench, that this Commission needs to accept or reject any argument about whether Queensland Ambulance employees' wage rates need to be linked to interstate rates as QAS have described it. But it's not, in our view, appropriate for the Commission to ignore the rates either, ..."* [Transcript, p. 19-10]

- [34] We are mindful of varying decisions, primarily from the AIRC, which consider this matter. In *Queensland Department of Health and Mater Misericordiae Health Service Brisbane Limited*<sup>3</sup> (a s. 170MX arbitration) a Full Bench of the AIRC stated:

*"[93] ... It is appropriate, almost necessary, to have regard to the market rates applying to nurses as reflected in the enterprise bargains which cover them. ..."*

- [35] We have already expressed our views on the question of "future bargaining" between the parties. However, we believe that whilst we will consider the matter of interstate comparisons, it is but one issue which will be addressed during the course of our deliberations and it will not be viewed as either a predominant or an insignificant matter to be considered.

**(v) Staff Attraction and Retention Considerations**

- [36] LHMU submits that the question of interstate comparisons has a linkage to issues of staff attraction and retention in QAS. This position has been submitted through various witnesses called by LHMU.

- [37] By contrast, QAS questions whether staff attraction and retention issues exist for its workforce in general and has referred the Commission to general principles applied to such questions in previous industrial tribunal considerations:

*"[59] The AIRC in exercising its discretion to grant a wage claim would not as a general proposition do so on the basis of attraction and retention for particular classes or categories of employees. It has long been established within federal arbitral jurisprudence that arbitral tribunals consider it should be left within the province of the employer to determine such incentives in accordance with its policy settings. ..."*<sup>4</sup>

- [38] We accept QAS's submission that service delivery models and associated classification and remuneration systems differ across the Australian States. [Exhibit 95, point 38]

- [39] Overall, we respectfully adopt the proposition posed by the Full Bench in the ANF matter.

<sup>3</sup> *Queensland Department of Health v Mater Misericordiae Health Service Brisbane Limited* [2003] AIRC 518

<sup>4</sup> *Ibid* at paragraph 59.

**(vi) Identification of "Matters at Issue"**

- [40] LHMU submits that two specific matters raised by QAS during the course of the hearing should not be considered by the Full Bench in making this Determination as they were not "matters at issue during the negotiations".
- [41] It is contended by QAS that the question of what constitutes a "matter at issue" was considered by the Industrial Court in *Sun Metals Corporation Pty Ltd and The Australian Workers' Union of Employees and Others*<sup>5</sup>.
- [42] In that decision, Hall P rejected submissions that the "matters at issue" were confined to the matters at issue at the conclusion of the negotiating phase or "marked out" by the "combined log of claims" as the submissions did not give adequate weight to the preposition "during". The President also concluded that "the expression 'during negotiations of the proposed agreement' is wide enough to encompass any 'matter' which was an issue at any time during the course of the negotiations", with the exception of matters which were later agreed.
- [43] The Full Bench believes that the issue concerning "matters at issue" in this case is not on all fours with the views expressed by Hall P in the Sun Metals case. There is no question in this matter that the general issues referred to by both parties were "matters in issue" between the parties during the course of their negotiations and that those matters were never resolved. However, the question to be considered here is whether what is now proposed in this hearing as a solution to the issue/s was ever raised in the negotiations between the parties.
- [44] LHMU submits that two issues under the general heading of "Deployment" and "Meal Windows" were not matters at issue during the negotiations.
- [45] LHMU states that the detail around these two issues is as follows:
- QAS has claimed that employees should be able to relieve in stations within a 45 km radius of their normal residence or usual place of employment; and
  - QAS has sought to abolish meal windows entirely.
- [46] QAS submits that, were the Full Bench to decide that the two matters detailed by LHMU could not be considered during this hearing, then QAS would raise four issues which it believed LHMU had pursued which could fall into the same category. These issues were:
- *"The proposed counter claim regarding the classification structures sought by the union for Emergency Medical Dispatchers.*
  - *The percentages sought by LHMU for a higher education incentive allowance for educators and M Scale employees. LHMU only ever discussed allowances of 3.5% for relevant post graduate Certificate/Diploma or second Degree and 5% for relevant Post Graduate Masters/PhD (Exhibit 4, p. 8-9 - the claim and the proposed clauses are not the same).*
  - *The proposed counter claims regarding the arrangements proposed for 'Primary Care Officers' (Certificate IV employees).*
  - *Exclusion of the use of SARAS for professional development of educators and M Scale employees. (Refer to Exhibit 4, page 10-11 - the claim and the proposed clauses are not the same)".* [Exhibit 96, p. 6]
- [47] Evidence has been given around the two issues raised by LHMU. Mr K. Day (LHMU) [Exhibits 17, 18 and 19] gave evidence that QAS's claim to abolish meal windows entirely was never a matter at issue between the parties during negotiations. [Exhibit 17, point 273] Evidence given by Mr M. Patterson (Senior Project Officer - Workforce Modelling, Information Support Unit, Office of the Deputy Commissioner, QAS) [Exhibits 43 and 44] was that QAS's position advanced in negotiations did not include the complete abolition of meal windows. [Transcript, p. 10-23] Further, the evidence of Mr C. Emery (Regional Director of Operations, North Coast Region, QAS) [Exhibits 47, 48, 49 and 50] confirms that QAS suggested only to "widen" the meal window. [Transcript, p. 11-55]
- [48] QAS submits that both matters were pursued "*in the context that any offer reached above the government wages offer is in return for efficiency and service delivery improvements.*". [Exhibit 96, point 28]
- [49] Having considered the evidence before the Commission, there is no question that the global issue of "meal windows" was a "matter at issue" between the parties during the course of negotiations. It is accepted that within that global approach, the specific detail concerning "abolishing" meal windows was not explored at that time and has only arisen during the hearing.

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<sup>5</sup> *Sun Metals Corporation Pty Ltd and The Australian Workers' Union of Employees and Others* (2003) 173 QGIG 662

- [50] In our view, the general issue of seeking to "expand" meal windows is a completely different question to that of "abolishing" meal windows. We have determined that the claim to abolish meal windows was not within the ambit of the negotiations undertaken by the parties during the course of their negotiations.
- [51] Mr Day gave evidence that the specific claim regarding the 45 km radius was never discussed during the negotiations between the parties. [Exhibit 17, paragraph 298]. Similar evidence was given by Ms C. Axelby [Exhibits 25 and 26] around the question of relieving in stations within 45 km radius of the normal residence or usual place of employment for an employee. This evidence was that the specific issue was not raised during the course of negotiations. [Transcript, p. 6-36, lines 38-47]
- [52] This issue therefore suffers the same fate as does the previous issue in that it was outside of the ambit of what was discussed between the parties in their negotiations.
- [53] The decision upon these two matters has been made on the basis of evidence adduced around the points during the hearing.
- [54] As noted above, QAS submits that if LHMU's position on these two points is accepted by the Full Bench, then it would raise the other issues it has identified and claim that those matters should not be addressed by the Commission. In this respect, QAS points to references within an exhibit [Exhibit 4] before the Commission stating that what is included in that exhibit and what is now claimed by LHMU is different and should not be considered by the Commission.
- [55] The difficulty with this proposition is that there is no evidence before the Commission around these other issues within the context of whether they had been specific issues raised during the course of the negotiations between the parties. In addition, the references mentioned by QAS concerning two of the points in contention (i.e. Exhibit 4, p. 8-9 for the percentages relating to the Post Graduate Certificate/Diploma and Masters/PhD and Exhibit 4, p. 10-11 for the "exclusion of the use of SARAS for professional development of educators and M Scale employees") do not show any commentary around those points at all.
- [56] For those reasons, none of the matters raised by both parties will be considered by the Full Bench.

**(vii) Operation of the Determination - Commencement and Nominal Expiry Date**

- [57] LHMU submits that the nominal expiry date for the Determination should be 30 September 2011 (see s. 150(1) of the Act). LHMU says that this date would represent three years following the nominal expiry date of the currently operating certified agreement. In the alternative, were the Commission to determine that a longer period is applicable, LHMU submits that a Determination should have a nominal expiry date of 30 September 2012, together with another 6% increase in base rates.
- [58] The primary claim from LHMU is:
- a further 2% increase to be paid in addition to the increase of 4% applied by administrative action of QAS, operative from 1 October 2008;
  - a 6% base wage increase as from 1 October 2009;
  - a further 6% increase in base wages from 1 October 2010;
  - total base wage increases above the current certified agreement rates, taking into account the 4% administrative increase, would be 18% (or 24% if the Determination were to have a nominal expiry date of September 2012); and
  - four increments of 3% each payable to all operational staff after completion of agreed criteria.
- [59] QAS claims that the Determination should apply for a period of three years, operative from the date of the issuing of the Determination, with wage increases of 4.5% in the first year of the Determination, followed by two annual increases of 4%, less the 4% applied by administrative action operative from 1 October 2008. The *rationale* behind this submission is:
- that the quantum of wage increases reflect the Queensland Government's current (at the time of the hearing) wages policy and is reasonable in the prevailing and forecast economic climate;
  - the duration of three years from the date of issuing the Determination is consistent with the "standard" duration of Queensland Government certified agreements, i.e. three years;
  - section 150(1) of the Act provides for a maximum duration of three years after the date on which the Determination is made under s. 149 of the Act;
  - a longer duration provides certainty of wage outcomes for both employees and the employer; and
  - the parties need a suitable and realistic timeframe to implement the Determination.

- [60] The Full Bench has determined that the operative date for the matters covered by this Decision, unless elsewhere specified in the Decision, will be the date upon which the Determination is issued and the Determination will continue until 30 September 2012.
- [61] In making this decision, the Full Bench is conscious of the time which has been expended by the parties in the course of their negotiations and the conduct of these proceedings. However, that of itself is not sufficient reason for the Full Bench to depart from a normal course which would be adopted in these circumstances.

**(viii) Interim Wage Increases**

- [62] The LHMU referred to part of the QAS submission that there could be up to a three month lead-in period during which QAS would need to re-configure various pay systems to ensure appropriate capture and payment of entitlements. With this in mind, LHMU submitted that:
- A wage increase ought to be paid no later than 1 October 2009, "even if such an increase is provided in advance of the final Determination of all other matters (including overall quantum of wages)". [Exhibit 94, point 20]
  - There is no legislative embargo against the Commission granting such an increase. "If required such an interim wage increase will avoid those issues arising from a wage freeze, which influenced the October 2008 interim wage increase.". [Exhibit 94, point 20]
- [63] As it transpired, and previously cited in this decision, a further 4% increase, or \$34 per week whichever is the greater, was awarded by the Commission operative as from 1 December 2009.

**G. DETERMINATION OF ISSUES**

**(i) Approach adopted in relation to the Determination**

- [64] With respect to LHMU and those Members on whose behalf the multitude of claims listed above have been pressed, the pursuit of such a large number of individual claims has made it extremely difficult for this Full Bench to appreciate the relative priority of any one claim *vis a vis* others. Further, some claims, for example a 36 hour week, were pressed in circumstances where they were extremely unlikely to be granted. In addition, the Full Bench is constrained by ss. 149(5)(a) and 149(5)(c)(ii) of the Act insofar as it must consider the merit of each claim as well as likely effect of its Determination on the particular enterprise or industry concerned.
- [65] In this regard, the Commission would be abrogating its statutory duty if it did not, somehow, limit its consideration of the matters at issue such that the overall outcome was confined to those matters having merit considered in the context of QAS's ability to manage the financial impact involved.
- [66] Accordingly, in reaching our decision in this matter we have focused our attention on those issues which LHMU, in turn, appeared to focus on through the course of its evidence, examination of witnesses and submissions.
- [67] We have given each of these matters serious consideration, even where we might not have approved LHMU's claim either in whole or in part. Where we have not recorded a specific outcome against a specific claim, either by LHMU or QAS, this does not signify that we have not considered that matter in the course of our deliberations. It simply indicates that we have viewed such claim as being relatively unmeritorious, compared to those others we have considered, **and** that we have decided to reject such claims. In those circumstances, and in order to make the decision more manageable and meaningful, we have not recorded an individual outcome for a number of those items we have decided to refuse.

**(ii) Classifications, Wage Increases, Increments, Allowances**

**(a) Claim for Wage Increases and Increments**

- [68] As noted above (see paragraph [58]) LHMU has claimed:
- an additional 2% wage increase in base rates, operative from 1 October 2008;
  - a 6% increase in base rates from 1 October 2009;
  - a further 6% increase in base rates from 1 October 2010;
  - a further 6% increase in base rates from 1 October 2011 if the Commission decided the Determination should operate beyond 30 September 2011.
- [69] In addition, LHMU seeks additional wage increases, in the form of increments, to apply above and beyond those increases mentioned immediately above for Patient Transport Officers, Communications employees,

Paramedics, Advanced Care Paramedics, Intensive Care Paramedics, Educators and employees classified at the M Scale level, respectively.

[70] By contrast, QAS proposes increases of 4.5%, 4% and 4%, less the 4% applied by administrative action in 2008, which reflect the Queensland government's wages policy (at the time of the hearing). QAS did not make any submission concerning the quantum of increase in 2011 if the Commission decided the Determination should operate beyond 30 September 2011.

[71] In respect of its claim for general wages increases, (see the amounts claimed above) LHMU argued it had advanced substantial witness evidence to justify such claim, including:

- substantial work intensification;
- increased complexity in work;
- an increase in responsibilities and skill levels - especially as a result of developments in pharmacology;
- the granting of the authority to ACPs and ICPs to declare life extinct (in 2007);
- introduction of new procedures and practices, such as ICPs now being able to administer the Thrombolysis procedure, which (it was argued) was previously reserved for cardiologists;
- an increase in both mandatory and non-mandatory training in order to maintain a higher level of skill;
- increased community expectations; and
- changes in conditions under which work is performed, especially increased exposure to patients who have consumed drugs or alcohol.

[72] LHMU also argued that the wage rates received by Ambulance Officers in Queensland suffer as compared to the wage rates received by Ambulance Officers in other States and Territories due to the absence of a contemporary incremental structure. In this respect, it was argued that the more advanced increment structure in other States and Territories recognised the increased skills gained by Paramedics through experience.

[73] LHMU argued that experience gained through service as a Paramedic was substantial and improved service delivery, community outcomes and the quality of mentoring and training to less experienced Officers.

[74] QAS disputed this submission, arguing that the CART system did not indicate any difference in the clinical competencies of lesser experienced Paramedics compared to more experienced Ambulance Officers.

[75] In turn, this submission was challenged by several LHMU witnesses, most particularly Mr M. McDonald. Mr McDonald (Exhibit 56, paragraphs 66 - 73) cited several articles which he said confirmed that clinical competencies improved over time as the Practitioner gained further experience. In particular, the literature confirmed that an experienced Clinician made decisions more rapidly based on their knowledge, skills and experience. For novices, judgements were often rigid and uncompromising, being largely driven by established protocols.

[76] The evidence and submissions presented by LHMU touched on a variety of matters, including:

- changes in the nature of the work performed;
- changes in the conditions under which the work is performed;
- interstate comparisons;
- intrastate comparisons; and
- comparative wage justice.

but also recognise that these proceedings were conducted in accordance with s. 149 of the Act and not under the wage fixation principles.

[77] Similarly, while QAS responded to the various elements of LHMU's case (as immediately above), it also acknowledged that these proceedings were being conducted pursuant to s. 149.

[78] The task confronting this Full Bench is to determine, *inter alia*, a wages outcome based upon the evidence and arguments presented within the constraints imposed upon it by s. 149(5) of the Act (see paragraph [18] above).

[79] After carefully considering all of the evidence and submissions placed before us, we have decided to introduce new wage levels for all employees to be covered by the proposed Determination, other than Non-Managerial Scale employees, based upon a relativity we have determined for each classification of employee *vis a vis* the Paramedic classification at a new wage rate of \$48,250 per annum (previously \$47,576), to apply from 1 July 2010.

[80] The new relativities established for each current classification will result in different levels of increase for different employees, depending upon their individual classification and length of experience. The increases

range between 1.07% and 2.64%, operative from 1 July 2010. The new rates are to be rounded to the nearest \$10 on an annualised basis.

- [81] The wage rates of Station Officers will also increase from 1 July 2010 to reflect the previously agreed relationship between Station Officers who hold Paramedic, Advanced Care Paramedic and Intensive Care Paramedic qualifications, respectively, and their non-Station Officer counterparts. In this regard, the parties are directed to confer within 14 days to agree the actual rates to be paid to Station Officers from 1 July 2010, and beyond, in light of the increases we have determined for other levels of Paramedic (as above). If the parties are unable to agree about the new rates to apply then the Full Bench is to be informed. A course of action to resolve the matter will then be determined.
- [82] We have not reviewed the relativities of the handful of employees classified as "Non-Managerial Scale" employees. This is because there was insufficient evidence about the nature of the duties of such employees to allow us to reach any considered decision about their duties or the adequacy of their remuneration *vis a vis* the base Paramedic classification.
- [83] The Full Bench has also decided to increase wage levels generally, including for Station Officers and Non-Managerial Scale employees, by 4% from 1 November 2010 and by a further 3% from 1 October 2011, with these rates to be rounded to the nearest \$10 on an annualised basis.
- [84] We have also decided to introduce an additional Pay Point level (Pay Point 3) for Advanced Care Paramedics and Intensive Care Paramedics, respectively. Based upon the new relativities for each of these new Pay Points, and the relatively substantial costs associated with their introduction, we have decided to phase in the new pay point level over a 16 month period. Advanced Care Paramedics (an extra 2.5%) and Intensive Care Paramedics (an extra 3.5%) with eight or more years' service as at 1 July 2010 will move to the new Pay Point 3 as at that date. ACPs and ICPs with greater than seven years' service as at 1 November 2010 will move to the new Pay Point level from that date, with ACPs and ICPs with six or more years' service as at 1 October 2011 moving to the new Pay Point as at that date. Thereafter, ACPs and ICPs would move from Pay Point 2 to Pay Point 3 after completing six years' service.
- [85] The outcome of the proceedings will thus result in Ambulance employees receiving the following increases:
- 4% from 1 October 2008, by administrative action;
  - 4% or \$34 per week, whichever is the greater, from 1 December 2009 as a result of this Full Bench's interim Decision issued on 18 December 2009;
  - Increases of between 1.07% and 2.64% from 1 July 2010;
  - 4% from 1 November 2010; and
  - 3% from 1 October 2011,

with more experienced (greater than six years' service) Advanced Care Paramedics and Intensive Care Paramedics being able to access an additional 2.5% and 3.5% respectively, subject to phase-in (see paragraph [84]).

- [86] The new relativities and wage levels we have determined for all classifications except Station Officers (see paragraph [81]) and Non-Managerial Scale employees, together with the wage rates which will apply from 1 July 2010, 1 November 2010 and 1 November 2011, respectively, are set out in **Appendix 1**.

**(b) Claims for new allowances**

- [87] In addition to wage increases and additional increments (see paragraph [58] above) LHMU seeks the introduction of a number of new allowances as follows:
- An all-purpose "Specialist Skills Allowance" of 5% of their ordinary rate of pay payable to Intensive Care Paramedics, Flight Paramedics and Isolated Practice Area Paramedics for maintaining such qualification. Where an employee is required to have more than one speciality an allowance of 10% is sought.
  - An all-purpose "Maintenance of Skills Allowance" (\$42.90 per fortnight for advanced care qualifications and \$242.90 per fortnight for intensive care qualifications) payable to M Scale employees and Educators\* for maintaining clinical competencies. (\*The inclusion of Educators in the claim seems to have been an error because Educators already have access to the clinical allowance).
  - An all-purpose "Higher Education Incentive" of 3.5% of their ordinary rate of pay payable to M Scale employees who hold a Graduate Certificate, Diploma or Degree in a relevant field, with the allowance increasing to 5% if the employee holds a Post Graduate Masters Degree or PHD.

- An all-purpose "Mentor Allowance" of \$2.50 per hour payable to employees who perform duties as a mentor to another officer or student, as determined by an education program or performance contract requiring clinical supervision or mentoring.

### Specialist Skills Allowance

#### *Intensive Care Paramedics*

- [88] The evidence clearly establishes that Intensive Care Paramedics are trained to a higher level than Advanced Care Paramedics and are called upon to deliver clinical competencies at a different level to ACPs. They are also able, because of their training, to administer additional medications and drugs beyond those permitted to be administered by an ACP.
- [89] However, the additional clinical skills possessed and utilised by Intensive Care Paramedics and the different regime of drugs administered, when compared to Advanced Care Paramedics, is already recognised in the higher remuneration levels they receive. An Intensive Care Paramedic receives an additional \$4,165 per annum (at Pay Point 1) and \$6,284 per annum (at Pay Point 2) in excess of the rates payable to an Advanced Care Paramedic, Pay Point 2.
- [90] In the Full Bench's view the level of additional remuneration payable to Intensive Care Paramedics - considered in conjunction with the new relativities introduced as part of this Decision - adequately recognises the additional levels of skill, responsibility and clinical scope of practice of ICPs compared to ACPs. Accordingly, we reject this aspect of LHMU's claim.

#### *Flight Paramedics*

- [91] QAS has a total of 26 Flight Paramedic roster positions spread across the State. Although there are no particular clinical competencies that must be achieved, Paramedics employed on the Flight Paramedic roster are required to hold current certification in Helicopter Underwater Escape Training (HUET), aircraft familiarisation and helicopter rescue winch training.
- [92] While 63 Officers are currently certified to operate as part of the Flight Paramedic roster, 16 of these are now employed in a Station Officer classification and are no longer available to be placed in a Flight Paramedic roster position.
- [93] The remaining 47 Officers comprise nine Officers classified as Advanced Care Paramedic (four at Pay Point 1 and five at Pay Point 2) and 38 classified as Intensive Care Paramedic (10 at Pay Point 1 and 28 at Pay Point 2).
- [94] The method of appointment of Paramedics to a Flight Paramedic roster position varies across the State. Some regions appoint Flight Paramedics on a permanent basis while others operate a rotation system, whereby suitably qualified personnel rotate through the designated Flight Paramedic position.
- [95] Even where Flight Paramedics are appointed to a position on a permanent basis, QAS still undertakes a rotational arrangement between Flight Paramedic duties and on-road duties. This is due to the fact that the workload of Flight Paramedics is thought to be insufficient to maintain clinical acumen.
- [96] Importantly, Flight Paramedics are drawn, as volunteers, from the ranks of both Advanced Care Paramedics and Intensive Care Paramedics, respectively. This is because, apart from the requirement to hold current certification in such areas as HUET and helicopter rescue winch training (see above), Flight Paramedics are not required to possess, or utilise, any additional skills above and beyond those which might be held or exercised by similarly classified Paramedics undertaking on-road duties.
- [97] In such circumstances, and notwithstanding that Officers who volunteer for Flight Paramedic duties undertake their work in an environment which carries different risks to those faced by other Paramedics, the Full Bench is not persuaded by the evidence presented in these proceedings that the nature of the duties undertaken by Flight Paramedics, compared to their on-road colleagues, is so different as to warrant any additional payments or loadings.

#### *Isolated Practice Area Paramedics*

- [98] A different situation arises in the case of persons undertaking the role of Isolated Practice Area Paramedic. The evidence establishes that approximately a dozen employees are currently working in geographical locations in which a suitably qualified employee is authorised by the *Health (Drugs and Poisons) Regulations 1996* and other protocols to administer and/or dispense certain medications and perform minor clinical procedures, as documented in the Queensland Health Primary Clinical Care Manual.

- [99] Detailed evidence about the additional training received by Isolated Practice Paramedics, and the nature of the roles they perform, was provided by Mr C. O'Connor (Exhibit 69, Transcript 14-3 to 14-11). He said that, of the dozen Paramedics located in remote communities, four persons, from an earlier training program from which 36 Paramedics graduated, currently practice as Isolated Practice Area Paramedics. These Paramedics work co-operatively with other health professionals to enhance the level of care available in remote communities, especially to Indigenous persons, by utilising their additional training in a way permitted by the relevant regulations and protocols.
- [100] Our assessment of the nature of the different duties performed and the responsibilities assumed by Isolated Practice Area Paramedics leads us to conclude that such employees should be paid an additional all-purpose loading equivalent to 2.5% of the base rate of a normal Paramedic. This all-purpose loading, to apply from 1 July 2010, is to be paid in addition to each Isolated Practice Area Paramedic's substantive classification and pay point level.

#### Maintenance of Skills Allowance

- [101] This claim seems to originate from QAS's practice of paying a clinical allowance to Station Officers who continue to hold qualification as an Advanced Care Paramedic (\$42.85 per fortnight) or Intensive Care Paramedic (\$242.94 per fortnight). These payments arose as a result of negotiations between the parties which led to the *Queensland Ambulance Service Enterprise Partnership Certified Agreement 1999* and the *Queensland Ambulance Service Enterprise Partnership - Certified Agreement 2002*, respectively. Importantly, the allowance is only payable if the Station Officer is required during the course of their duty to undertake clinical duties **on a regular basis** and continues to hold a relevant qualification.

#### *M Scale Employees*

- [102] Several LHMU witnesses provided evidence said to be in support of LHMU's claim for payment of this allowance to M Scale employees who maintained their clinical competencies at an Advanced Care Paramedic or Intensive Care Paramedic level. However, this evidence did not assist the claim as presented.
- [103] The single M Scale witness who gave evidence to the effect he was still utilising his clinical skills on a regular basis, Mr A. Mountford (Exhibit 71, paragraph 30), stated that such duties were performed during the course of an additional (overtime) shift he worked on a weekly basis as a Paramedic.
- [104] Mr W. Martin's evidence (Transcript 9-21 to 9-24) was that he primarily performed a management role, even where he took charge of an accident scene or, for example, travelled to a hospital to assist to overcome ramping issues by facilitating the transfer of patients from one ambulance to another or by transferring patients into the care of hospital staff.
- [105] Mr D. Burgess (Exhibit 63, paragraphs 13 - 38) gave evidence that in his role as a Clinical Support Officer between 2005 and 2008, he was provided with a Commodore wagon fitted with an emergency response pack. During that three year period he estimates he would have been directed to attend emergency situations by QAS approximately two dozen times. He had also been flagged down by members of the community about a half a dozen times. The type of jobs he was directed to would generally be those normally allocated to Intensive Care Paramedics because they involved trauma of a more serious nature than would ordinarily be attended by an Advanced Care Paramedic. Examples of the jobs he was allocated to were potential heart attacks, high risk pregnancies, major trauma as a result of traffic accidents, multi-case incidents and high risk medical cases. On one occasion, when he was off duty, he was contacted by AFCOM who directed him to attend a motor cycle accident close to his home address. He was directed to be the ICP backup at this accident scene.
- [106] Mr Burgess also recalled being contacted in the evening at his home and directed to attend a multi-vehicle accident due to the number of injured persons and their various traumas. Part of his role on that occasion was to conduct scene management and scene control as a Senior Officer responsibility.
- [107] Mr N. Lentakis (Exhibit 79, paragraphs 33 - 37) said that when he was a Clinical Support Officer (at an SO1 Level) he utilised a QAS vehicle to travel to and from work for approximately one year. During this time he regularly came across accident scenes at which he rendered medical assistance. In his role as Clinical Deployment Supervisor in AFCOM he observed that Clinical Support Officers, particularly in the northern parts of Brisbane, were dispatched "*almost on a daily basis*" to attend cases in order to meet the workload.
- [108] However, all of the examples proffered by Mr Lentakis and Mr Burgess relate to Clinical Support Officers, at the SO1 Level, rather than M Scale employees.
- [109] The evidence disclosed that QAS does not require M Scale employees to possess any clinical qualifications higher than "Paramedic". The evidence also showed that where M Scale employees desire to maintain clinical

competencies above the level of Paramedic, for their own self-satisfaction or other reasons, QAS facilitates their re-certification at the higher level.

- [110] After considering the role and duties of M Scale employees, and after noting QAS does not require its M Scale employees to have a "hands-on" clinical role at either an ACP or ICP level in their performance of their duties, we have decided to reject this aspect of LHMU's claim.

#### *Educators*

- [111] As noted above, the inclusion of Educators in this aspect of the claim seems to have been an error. However, LHMU sought substantial increases in the remuneration levels of all Educators and presented considerable evidence and submissions in support of such claim. Having regard to our decision on this matter we are content to deal with the claim for increased remuneration generally under this heading.
- [112] There are presently 73 positions within QAS designated as "Educator", "Clinical Support Officer", "Senior Educator", and "Learning and Development Officer", respectively. Of these, 56 positions (Educators and Clinical Support Officers) are classified at Station Officer Level 1 (54 at Pay Point 1 and two at Pay Point 2), while 17 positions (Senior Educators and Learning and Development Officers) are classified at Station Officer Level 4, Pay Point 1. Five of the 73 positions are currently vacant.
- [113] Mr Lentakis (Exhibit 79, paragraphs 10 - 19), currently a Senior Clinical Educator of Brisbane Region, Regional Staff Development Unit (RSDU), gave evidence about the nature of the duties of Clinical Support Officers, Educators and the recent introduction of what are described as Regional Ambulance Educators.
- [114] Mr Lentakis indicated that the work of Educators had become increasingly technical, especially over the last three - five years. In addition to noting that they had been required to acquire new IT knowledge to write, administer and manage courses online, he gave examples of the introduction of a range of additional drugs and advanced skills which Educators must be fully familiar with in order to instruct other Paramedics, prior to assessing their competency.
- [115] Mr Lentakis also gave evidence that he was finding it difficult to recruit persons to fill education positions because of the salary levels on offer. He indicated he had held specific conversations with a number of persons who informed him they couldn't afford to step into an Educator role, even though they would have liked to, because they would lose too much money.
- [116] Mr McDonald (Exhibit 55, paragraphs 49 - 62) gave similar evidence. He said that a former Advanced Care Paramedic, who had become an Educator, had lost between \$7,500 and \$10,000 per annum by moving into that role. An Intensive Care Paramedic he had spoken to had lost approximately \$15,000.
- [117] However, all these claimed differences in earnings seem to relate to lost shift allowances, weekend penalties and overtime, rather than any loss in base salary.
- [118] The following table identifies the number of "Educators" classified at each of the respective Station Officer Levels, their base pay levels and the pay differential between Educators so classified and other Paramedics who do not enjoy Station Officer status.

<b>Classification Level and Pay Point</b>	<b>Number of "Educators"</b>	<b>Pay Level (\$ p.a.)</b>	<b>Difference to equivalent non Station Officer Paramedic (\$ p.a.)</b>	<b>Difference if Clinical Allowance included (\$ p.a.)</b>
Station Officer Level 1 PP1	1	61,369	13,262	13,262
Station Officer Level 1 PP1 Advanced Skills	1	63,237	13,333	13,333
Station Officer Level 1 PP1 Advanced Care pp1	2	63,237	12,215	13,329
Station Officer Level 1 PP1 Advanced Care pp2	20	64,498	12,212	13,326
Station Officer Level 1 PP1 Intensive Care pp1	2	62,237	6,995	13,311
Station Officer Level 1 PP1 Intensive Care pp2	25	65,359	6,998	13,314
Station Officer Level 4 PP1	1	70,503	22,045	22,045
Station Officer Level 4 PP1 Advanced Skills	1	72,363	22,108	22,108
Station Officer Level 4 PP1 Advanced Care pp1	1	72,363	20,990	22,104
Station Officer Level 4 PP1 Advanced Care pp2	4	73,627	20,990	22,104
Station Officer Level 4 PP1 Intensive Care pp1	1	72,363	15,770	22,086

<b>Classification Level and Pay Point</b>	<b>Number of "Educators"</b>	<b>Pay Level (\$ p.a.)</b>	<b>Difference to equivalent non Station Officer Paramedic (\$ p.a.)</b>	<b>Difference if Clinical Allowance included (\$ p.a.)</b>
Station Officer Level 4 PP1 Intensive Care pp2	7	74,490	15,778	22,094
Station Officer Level 1 PP2				
Station Officer Level 1 PP2 Advanced Skills				
Station Officer Level 1 PP2 Advanced Care pp1				
Station Officer Level 1 PP2 Advanced Care pp2*	1	66,110	13,761	14,875
Station Officer Level 1 PP2 Intensive Care pp1				
Station Officer Level 1 PP2 Intensive Care pp2*	1	66,993	8,569	14,885

\*Station Officers at Pay Point 2 receive additional remuneration (of approximately 2.5%) because they have completed a Management of Continuing Education Program (MCEP). Educators, as such, do not have access to Pay Point 2.

[119] The clinical allowance is \$42.85 per fortnight for Educators with Advanced Care qualifications and \$242.94 per fortnight for Intensive Care qualifications. Such allowances are paid when an Officer is on sick leave, annual leave and long service leave as well as being taken into consideration when determining superannuation payments. The allowance is not taken into account for periods of on call or overtime.

[120] Taking into account the respective clinical allowances which are payable to Educators with Advanced Care or Intensive Care qualifications respectively, the difference between the ordinary weekly wage rate of an Educator and a person undertaking normal on-road duties as a Paramedic, Advanced Care Paramedic or Intensive Care Paramedic, is relatively significant.

[121] Notwithstanding the higher base salary paid to Educators, Mr McDonald, in his role as Acting Regional Manager of Staff Development for South East Region of QAS, indicated he was experiencing considerable difficulty in recruiting Paramedics with the necessary skills and aptitude to fulfil Educator roles. The principle reason for this was that Paramedics joining the education department lost a considerable amount of money when not doing shifts on the road (see paragraphs [115] to [116] above).

[122] Mr McDonald also said that QAS did not seem to recognise the difficulties associated with recruiting and training Educators when the demands and expectations were so high but the remuneration was comparatively low. He said "*[e]ducators are required to develop additional high level vocational knowledge and experience, but also have to maintain all their current clinical competencies. ... there is no additional remuneration for the higher developed educational competency, or acknowledgement of their role in providing the best learning environment for students so that they consequently provide the best care ... the people who are the best Educators have great knowledge, experience, attitude and skills and thus to attract these people with a loss of money is difficult but to retain them is even harder.*" (Exhibit 55, paragraphs 54 - 56).

[123] Elsewhere in his evidence Mr McDonald said (Exhibit 55, paragraphs 49 - 50):

*"Educators are specialists in providing education to students, qualified paramedics both Advanced Care and Intensive Care to assist them to be the best clinician they can be. Educators have a passion for the development of knowledge, skills and providing the enthusiasm for people to learn. They are role models for what an Advanced Care and Intensive Care Paramedic should be and this encompasses the best knowledge, skills, experience and attitude so that the people they come in contact with have a benchmark to base their own practice on.*

*Educators are the gatekeepers on what are the standards that equate to a student paramedic throughout their training, what the standards are for an Advanced Care and Intensive Care Paramedic standards are and the expected practice they should do."*

[124] Mr McDonald also gave evidence (Exhibit 55, paragraph 58) that the workload and responsibilities of Educators had increased significantly over the past three - five years, but most significantly in the last 18 months with the introduction of a new Diploma program. This had resulted in the mean workload having gone up 40 - 50%, course preparation time decreasing, the need to mark exams out of normal work hours and minimal downtime between courses, or when conducting courses.

[125] After considering all of the evidence presented, and notwithstanding that Educators already enjoy a significant base wage differential when compared to on-the-road Paramedics, the Full Bench has decided that Educators are deserving of some additional, modest, increase in total remuneration.

[126] Rather than introduce a new allowance, which only adds further complexity to an already complex classification and wages structure, we have decided that all "Educators" (whether they be classified as Educator, Clinical Support Officer, Senior Educator or Learning and Development Officer, etc) should be reclassified at one pay point higher than currently (i.e. the relevant Station Officer Pay Point 2 or Pay Point 3 Level instead of Pay Point 1 or Pay Point 2) as from 1 July 2010. As per current practice, all Educators will continue to have access to the appropriate clinical allowance based upon their individual qualifications.

#### Higher Education Incentive

[127] Although a number of LHMU witnesses gave evidence about University and other high level courses they had undertaken, or were undertaking, much of that evidence was related to LHMU's claim for a professional development payment and/or paid study time. (See, for example, the evidence of: Mr McDonald, Exhibit 55; Mr Lentakis, Exhibit 79, paragraphs 23 - 27; Mr I. Rizzoli, Exhibit 82, paragraphs 40 - 43).

[128] Several other witnesses indicated that QAS was, in effect, requiring its management staff to possess higher level qualifications by indicating in its advertisements for vacant positions that applicants with particular qualifications would be "highly regarded", or words to that effect. Because of this it was suggested that the holding of the qualification was an implied requirement of the position.

[129] Be that as it may, no direct evidence was brought before the Full Bench to substantiate the claim as presented. In particular, there was no evidence whatsoever to suggest that M Scale employees who held a particular qualification were required to hold that qualification by QAS, or brought particular skills and knowledge to the role beyond that required by the position description itself, which would justify payment of any allowance.

[130] In any event, several witnesses (see, for example, Mr R. Galeano, Exhibit 45, paragraph 13), indicated or accepted that on-the-job training and experience also enabled Ambulance Officers to progress to Management positions and Managers to progress to even higher level positions. In other words, the holding of a particular qualification of the type mentioned in LHMU's claim was not a pre-requisite to advancement, nor essential to be able to perform any particular management role.

[131] Mr Emery provided uncontradicted evidence (Exhibit 47, paragraphs 45 - 53) to the effect that QAS provides financial and other support where M Scale employees desire to obtain additional qualification and QAS believes that such additional qualification would be beneficial to the Officer concerned as well as itself. This included support to Managers to participate in courses for their benefit and/or their future development. Mr Emery also gave several examples (paragraph 53) of M Scale Officers who have been supported to complete post-graduate qualifications.

[132] Given all of the above, we refuse LHMU's claim in this area.

#### Mentor Allowance

[133] As noted above, LHMU seeks the introduction of an all-purpose Mentor Allowance of \$2.50 per hour payable to employees who perform duties as a mentor to another Officer or student.

[134] More LHMU witnesses gave evidence about this particular topic than any other. LHMU's primary witness, Mr Day, explained the background to, and the merits of, the claim in the course of his evidence as follows:

*"... the actual nature of mentoring itself has changed and evolved over the last few years. The structure now applied to mentoring has become far more rigid than it was when I first became a mentor. There is certainly a lot more administrative duties, such as signing off on skills, providing feedback to the student. There is certainly the requirement now to attend learning achievement phase meetings with the OIC and with the CSO, the Clinical Support Officer, which has been introduced over the last few years. Additionally, you'll note that there's been a number of additional skills added to the skills set of Paramedics, both the Intensive Care Paramedics and Advanced Care Paramedics, such as in morphine and expanded use of adrenaline, and skills of that nature. Those are additional skills which require mentoring, which weren't there a few years ago."* (Re-examination of Mr Day at Transcript 6-24)

[135] Mr Day also recorded that during those periods where QAS had rostered him to perform mentoring duties with other Officers he felt increasingly fatigued and stressed and found it was difficult to complete his normal work requirements and that of mentoring at the same time. (Exhibit 17, paragraph 182)

[136] The extent of involvement in mentoring activities by Paramedics is recorded in the LHMU Ambulance Officer Survey Report, undertaken by Dr J. Bailey from Griffith University, mentioned in more detail below (see paragraph [154]). At page 17 of her (February 2009) Report Dr Bailey records:

"Nearly three quarters of respondents indicate that they mentor other Ambulance Officers (74%), with 35% of respondents assigned as a mentor on a daily basis .... Of those who are required to mentor others, 60% report that it 'sometimes' affects their ability to complete their normal duties, and 25% indicate that it 'usually' or 'always' does. Only 15% say mentoring has no impact on whether they complete their normal duties. The impact on fatigue levels presents a similar pattern to those respondents who undertake mentoring responsibilities."

- [137] The involvement of all levels of Paramedics in mentoring activities has undoubtedly increased in recent years, reflecting the increased intake of student Paramedics and other recruits as a result of Government decisions in response to public pressure, as well as pressure from Ambulance Officers themselves through LHMU.
- [138] Notwithstanding that the number of persons requiring mentoring, as well as the number of persons providing that mentoring, has increased in recent years, virtually every witness accepted that the obligation to provide mentoring assistance had been an accepted part of the duties of a Paramedic over many years. What was argued to be different, however, was that the magnitude of mentoring and the way that the mentoring was now provided, in the form of more paperwork to complete and more face-to-face meetings between the mentor, the "student" and the Officer in Charge, was significantly more onerous than previously. The difference was said to be so pronounced as to justify the introduction of a mentoring allowance.
- [139] In addition to arguing that mentoring was part of the ordinary role of a Paramedic, QAS also pointed to the obligation imposed on Paramedics to mentor others by virtue of the provisions of Clause 1(d) of Appendix 2 - Pay Point Progression of the *Queensland Ambulance Service Enterprise Partnership Certified Agreement 2005* which provides:

"(d) *It is expected that the level skill and experience of each Officer will increase as they move through the pay points. At each level, Officers are expected to share their skills with other Officers and assist other Officers in achieving excellence.*"

- [140] It is the Full Bench's experience that there is a fundamental and underlying obligation on all qualified persons to assist in the training and/or mentoring of others entering into the profession or trade in which they themselves are engaged. Such obligation, and the duties and responsibilities associated with the performance of that obligation, are taken into account in the assessment of an appropriate level of remuneration for the professionals/tradespersons concerned. In this instance, the provisions of the current Certified Agreement to which QAS has referred us (see above) reinforce that obligation.
- [141] After carefully considering all of the evidence and arguments presented, the Full Bench has decided to reject LHMU's claim for a mentoring allowance *per se*. Nonetheless, the change to previous mentoring obligations, including its affect on the nature of the work of all levels of Paramedics, and the environment in which that work is performed, has been taken into account in the setting of new relativities and wage levels elsewhere in this decision.

**(c) New classifications**

- [142] QAS sought two changes to the existing classification structure. Firstly, the amalgamation of the current classifications of "Ambulance Attendant" and "Certificate IV Training" into a single clinical level and wage rate. Secondly, the alteration of progression arrangements for the classification of "Emergency Medical Dispatcher" to enable, in select locations, for some employees to be engaged in a "Call Taker" role only.
- [143] LHMU proposed changes to the Patient Transport Officers' classification structure which would have allowed PTOs (at level 4) to acquire, and utilise, appropriate paramedic qualifications. LHMU also proposed a classification structure for Communication room staff which would have allowed staff to progress to a Call Taker role, an Emergency Medical Dispatcher role or a combined role.
- [144] QAS opposed both of LHMU's claims on the basis they, firstly, did not enhance flexible work arrangements and, secondly, provided employees with their own career path options which were not supported by QAS. This was particularly so in the case of LHMU's proposal to allow PTOs to move to a Paramedic role, where QAS stated that if a PTO wished to develop their clinical skills the appropriate way to do that was to become a Student Paramedic.
- [145] After considering the submissions in relation to these two matters we have decided to approve the proposals advanced by QAS and to refuse the proposals advanced by LHMU.
- [146] An introduction of a "Call Taker" classification will enhance workplace flexibility and allow staff who only wish to undertake such role to perform those duties without the need to also train to perform the Medical Dispatcher role.

- [147] The amalgamation of the two classifications at the same clinical level and wage rate, namely Ambulance Attendant and Certificate IV Training, also seems eminently reasonable.
- [148] On the other hand, the proposal advanced by LHMU to allow PTOs to advance to a Paramedic role seems to be a significant departure from the current method of training staff to undertake that role. In that regard, we concur with QAS that the appropriate course of action for PTOs wishing to become Paramedics is for them to transition to a student Paramedic role where they can receive the necessary tuition, supervision and instruction.

**(iii) Fatigue, On Call, Call Back and Overtime**

- [149] LHMU's claim encompasses the following issues:

- A definition of what constitutes an "emergency situation" with respect to the provision of on call services is required.
- "Recall to duty" needs to be defined as any break to a fatigue period initiated by QAS.
- A meal allowance should be paid for a recall to duty during such times when a meal would ordinarily be consumed.
- On call payments should increase from 15% (current) to 30%.
- Recall to duty should be paid at a minimum of 3 hours at the appropriate overtime rate.
- On call duties should be limited to a maximum of 7 days in 14, and every second weekend should be free from on call duties.
- On call allowances should be projected into scheduled leave and paid at the appropriate rate.
- There should be a removal of on call duties in category 5 stations.

- [150] The LHMU has provided the proposed clause which would cover on call situations for employees. This clause is as follows:

*"The parties recognise that on call duty is essential at some stations for the provision of pre-hospital emergency care. Accordingly, an employee may be required to be on call to perform overtime work in relation to Code 1 and 2A cases during a specified period of time outside normal rostered hours.*

*During the on call period an employee must be immediately contactable by telephone, pager or radio in order to facilitate out of hours patient care in emergency situations within acceptable response times. An acceptable response time will normally be ten minutes, however other arrangements can be determined for specific rural locations to maintain continuity of service coverage within the community expectation of service delivery.*

*Employees may perform on call from their home or a previously notified location and during the on call period are to be available to immediately return to work.*

*Employees performing on call duties agree to utilise an appropriate ambulance vehicle to enable such officers to respond to emergency situations immediately, subject to local arrangements.*

*An employee placed on call shall be paid 30% of the hourly base rate applicable to the employee for each hour of on call duty performed with a minimum payment of ten hours for each on call period.*

*There is no requirement to be on call prior to the commencement of the first shift after or immediately prior to commencing rostered days off or annual leave. If an employee agrees to provide coverage during these periods they shall be paid as follows:*

*For the period that falls on the normal working day - the 30% on call payment.*

*For the period that falls on a rostered day off - double time (except in instances of a full 24 hour period).*

*For the period that falls on an annual leave day - re-crediting of a day of annual leave (7.6 hours).*

*No employee shall be placed on call for more than seven days in any continuous two week period. An employee shall be free from on call duty every second week end.*

*Employees recalled for duty during any normal meal time in off-duty hours shall be paid a broken meal allowance for each such recall. Provided that, for the purposes of clause 4.4(h) only, normal meal times shall be deemed to be 7.00 a.m. to 8.00 a.m., 12.00 p.m. to 2.00 p.m. and 5.30 p.m. to 7.00 p.m. each day.*

*No employee rostered in a category 5 station will be required to perform on call duties.*

*Employees who perform on call duties as part of their routine roster shall be entitled to the projection of on call allowances for the purposes of calculating scheduled leave payments." [Exhibit 93, p. 32-33]*

[151] The LHMU's proposed clause for "break from duty" is as follows:

- "(a) All employees will be given an uninterrupted break from duty of at least twelve consecutive hours between the cessation of a rostered shift and the commencement of the following rostered shift.*
- (b) The twelve hour break from duty need not apply where an employee requests a change of rostered shift.*
- (c) Where an employee is required to undertake out of hours duty between the hours of 9.00pm and 5.00am, the twelve hour break shall commence upon the completion of such duty.*
- (d) Where an employee has not had an uninterrupted twelve hour break between the cessation of a rostered shift and the commencement of the following rostered shift, such employee shall not be required to commence duty until such time as an uninterrupted break of twelve hours has occurred. Such absence between the commencement of a rostered shift and the actual commencement of duty shall be paid as if duty commenced at the rostered starting time.*
- (e) If, on the instructions of the employer, such an employee resumes or continues work without having had twelve consecutive hours off duty, the employee shall be paid at the rate of double time until released from duty for such period and then shall be entitled to be absent for twelve consecutive hours off duty, without loss of pay for ordinary working time that has occurred during such absence.*
- (f) Employees who have worked 16 cumulative hours or more in any 24 hour period will be stood down from duty and will not be available to respond for a period of twelve hours.*
- (g) At all times, the employer shall pay cognisance to the health and safety of employees and the responsibility to the public to provide the best possible quality patient care.*
- (h) Any instances in which an employee is stood down must be reported to the Partnership Steering Committee."* [Exhibit 93, p. 33-34]

[152] For M Scale employees and Educators, the following hours of work clause is proposed by LHMU:

*"Reasonable hours of work for M Scale employees and educators, to be defined as no more than 13 hours per day inclusive of travel time, call out or any other activity directly attributed to a substantive position or organisational objective."* [Exhibit 93, p. 34]

[153] In supporting its claims with regard to fatigue leave, LHMU points to the following factors:

- The *rationale* for the clauses centre upon the effects of work intensification, fatigue and stress upon employees.
- The fatigue related claims focus on mitigating the adverse effects of fatigue on employees, *"thereby improving the lives of ambulance employees and the service to the community."* [Exhibit 93, p. 34]
- Together with significant witness evidence from ambulance employees, commissioned research from Griffith University was also tendered *"to measure the frequency of ambulance officers experiencing unreasonable and debilitating fatigue."* [Exhibit 93, p. 34]
- The on call working arrangements cause significant stress and fatigue for ambulance employees.
- LHMU's claim is that on call work should be limited to code 1 and code 2A emergency calls only.

[154] LHMU commissioned research be undertaken by Griffith University to measure the frequency of ambulance officers experiencing unreasonable and debilitating fatigue. Dr Bailey, Lecturer and Researcher in the Department of Industrial Relations at Griffith University, conducted the research and produced a report *"LHMU Ambulance Officer Survey: February 2009"*.

[155] The primary results from the report are as follows:

*"Working time issues of various kinds cause fatigue, stress and other impacts upon respondents to this survey. Working extended shifts of 16 hours, working extra shifts, interrupted fatigue breaks, being asked to continue duty after indicating they are fatigued and broken meal breaks are all significant areas where employees' control over working time has been significantly reduced, with self-reported effects on health and other personal aspects of their lives and presumed impacts upon service quality.*

*Overall, respondents identify that fatigue is much more likely to arise from organisational issues - particularly around various aspects of working hours - than from the nature of the work itself. This is a particularly important finding as fatigue has significant implications for service delivery and service quality.*

*The respondents' views are that 'system' issues, which can be addressed by changes in work organisation and industrial conditions, are vital in combating fatigue and its effects.*

*Changes in the projected roster would, in the views of the respondents to this survey, significantly affect them. A range of possible impacts were cited by many respondents, with child care being a major concern.*

*Recovery from additional hours of work is aided by recovery time that can be taken as close as possible to the working of those additional hours. While there was a terminology problem with the survey questions on this issue, the survey produced data that show that the capacity to take time owed in single shifts is valued by respondents; again, this is an issue of control over working time.*

*The taking of sick leave is a significant issue for some respondents, with fatigue inflexibility of rosters and stress all being reasons why respondents take sick leave. Respondents indicated that current sick leave provisions are not adequate for their needs, and the fact that penalties are not payable causes many employees to work when they are sick.*

*Missing meals is common, and respondents' perceptions are that the meals supplied by QAS are not healthy options.*

*'Pull factors', designed to attract and retain employees are identified by respondents as remuneration issues (including introduction of a composite rate of pay), increased superannuation, improved sick leave and improved WorkCover payments. Maintaining (or lengthening) current roster periods, better incentives for rural/remote work, improved management of fatigue breaks and improvements in access to meal breaks were each cited by more than 20% of respondents.*

*Current incentives for rural and remote work are seen as inadequate by respondents, with a large majority seeing key factors needing improvement as being remuneration, leave, removal of FBT liability and education assistance.*

*Mentoring is common with one third of respondents doing it on a daily basis. A very large majority of those who mentor indicate that having to mentor makes it difficult for them to finish their work tasks at least on occasions.*

*The operational standard of vehicles was canvassed, with a large number of respondents being in favour of limiting the kilometres travelled and the lifespan of vehicles." [Attachment "JB2", Exhibit 27, p. iii-iv]*

- [156] Considerable evidence was drawn from witnesses for LHMU who claimed that on call working arrangements caused significant stress and fatigue for ambulance employees. While QAS claims that employees currently are only called whilst being on call for genuine emergencies, LHMU witnesses stated that the evidence shows that members on call have been called out for non-emergencies, such as mistakes and administrative matters. LHMU says that the following evidence highlights this point.
- [157] Mr L. Cartledge (Officer in Charge, Kuranda ambulance station) [Exhibit 30] gave evidence that as the sole officer on duty and on call in a busy rural station, he would often be called on to work in excess of 16 hours in a single 24 hour period. This occurred at least twice monthly. Mr Cartledge stated that:
- "The effects of this fatigue on me is often a reduction in attention, impaired reasoning and thought patterns, lack of concentration while driving (often at speed), the necessity to check and recheck drug dosages to ensure accuracy and lapses in memory as to which particular procedures I have completed or not." [Exhibit 30, point 69]*
- [158] Mr Cartledge also submitted that the on call work often interfered with time spent with his family, his meal times and led to sleep deprivation. He also stated that his fatigue breaks were often interrupted by being required to attend to non-emergency cases such as casualty cases or standbys at other stations.
- [159] Mr B. Chalmers (Officer in Charge, Dalby ambulance station) [Exhibit 61] claimed that he is often rostered to be on call approximately four nights out of seven in any one week. This demand on his working hours has led to difficulties faced by him in relation to time spent with his family, and an inability to maintain a fitness regime.
- [160] Mr Chalmers stated that fatigue is not managed adequately by QAS. He stated that:
- "... Call outs often relate to bed/staff availability issues of Queensland Health, rather than medical emergencies. I often find hospital transfers contribute to my experience of fatigue. Hospital transfer call outs are an almost daily occurrence." [Exhibit 61, point 83]*

- [161] Mr Chalmers also believed that the issue of fatigue is compounded by mistakes by COMMS operators, such as COMMS officers not reading rosters correctly. [Exhibit 61, point 87]
- [162] Similar views to those expressed above were advanced by Mr M. Freeman (Advanced Care Paramedic, Sunnybank Hills ambulance station) [Exhibits 76, 77 and 78], Mr A. Harper (Intensive Care Paramedic and Flight Paramedic, Townsville Base of Emergency Management Queensland) [Exhibit 33] and Mr D. Jardine (Advanced Care Paramedic, Ingham ambulance station) [Exhibit 37].
- [163] Mr Freeman holds the position of LHMU delegate. In this role, he has had many discussions with ambulance employees which include presentations to new students and staff around issues such as the services provided by LHMU, the functions of union delegates, QAS industrial instruments and associated employee entitlements. His evidence around the question of fatigue was that the majority of shifts at Sunnybank Hills ambulance station were 12 hours in duration and there are regular shift extensions.
- [164] Mr Harper is also an LHMU delegate. Mr Harper's evidence was that his fatigue break was often broken and in the last 12 months it was broken on at least a dozen or more occasions. Mr Harper believed that QAS could have avoided certain incidences of fatigue by implementing a better rostering system. In his particular area of work, Mr Harper has found it difficult to do prolonged inter-hospital transfers on the way home from a paramedic flight particularly after the number of hours already worked. Mr Harper said:
- "The main effects of fatigue, all of which I have experienced as a result of my role with QAS, are relationship stress, decreased fitness, feeling generally tired and/or in poor health, poor diet as well as being generally cranky with co-workers and at home."* [Exhibit 33, point 164]
- [165] Mr Jardine's evidence was that officers who are rostered to be on call, and who are called out during a fatigue period, must have a 10 hour break before returning to duty. However, when those officers are on fatigue during the day, there is a short-fall in crewing which has to be taken up by the dayshift officers. Instances were cited of officers, who had worked at an on call station and who had completed their 10 hour shift, being required to re-attend work to undertake an extended job or Interfacility Transfer which can sometimes last for four hours. When this had been completed, officers can be tasked on jobs within their own town area. Mr Jardine stated:
- "I have experienced broken fatigue breaks, when for example, I have been called out and then I am supposed to be on an extended fatigue period which commences from the return of my first call out. It is not uncommon for me to receive a further call out during the rest period. I am supposed to be on a fatigue break, in fact it can happen 2 or 3 times."* [Exhibit 37, point 77]
- [166] QAS's response to the claims made by LHMU is that LHMU's evidence highlights that fatigue is a workplace health and safety issue and, as such, should be managed under a broader Fatigue Management Policy. QAS believed that the issue should not be addressed within the context of monetary payments.
- [167] QAS point out that current ordinary hours and shift patterns of work have been implemented at the request of the workforce and were supported by a valid majority of the workforce at ballot. There was significant support for shifts of a longer duration but with fewer shifts to be worked.
- [168] QAS stated:
- "The LHMU evidence shows that a typical paramedic, while working 10 or 12 hour shifts, does so on the basis of nine weeks free from duty each year on annual leave and accrued time, and of the 43 weeks at work, the paramedic averages at least 3 days off work out of every seven days. Employees are afforded adequate time for rest and recuperation."* [Exhibit 95, "Fatigue and related issues"]
- [169] There was further evidence from LHMU witnesses around the question of the physical, psycho-social, and familial effects of fatigue and on call working arrangements on ambulance employees. Witnesses Cartledge, Day, Freeman, Griffey, Harper, Jardine, Phillips, Roberts, Schultz and Youlden gave similar evidence around the effects associated with fatigue issues.
- [170] The thrust of the evidence, by way of example below, was that employees suffered by missing meals [Exhibit 61 - Schultz]; fatigue increased with age, being unable to access QAS dormitories to have a rest, difficulties with family responsibilities [Exhibit 62 - Youlden]; Central region being understaffed by 28 full-time vacancies, inability to access rostered days off, standing down of officers because excessive hours had been worked, increasing calls to employees' homes because of the number of roster vacancies and the need to fill those positions. [Exhibit 89 - Phillips]
- [171] Professor W. Dawson was called to give evidence by LHMU. Professor Dawson is the Director of the Centre for Sleep Research at the University of South Australia. Professor Dawson states that the Centre for Sleep Research

is an internationally recognised research group and is considered a world leader in the field of sleep research. [Exhibit 92, point 3]

[172] Professor Dawson's evidence can be summarised as follows:

- He has conducted extensive research and provided consultation for a large number of organisations in the areas of fatigue management, shiftwork training and education and the relationship between fatigue and key performance indicators.
- When considering fatigue issues in the workplace, a holistic focus is required taking into account not only hours worked, but shift and roster patterns, the nature of the work being performed, the environment in which work is performed and workforce demographic factors such as fitness and general health.
- A risk management approach to the issues of fatigue is required.
- He had been supplied with information from QAS to LHMU concerning fatigue issues and he had been asked to comment upon that correspondence.
- That correspondence, in the form of two letters to LHMU, contained information on a range of issues. These issues included commentary, by way of example, in the first piece of correspondence, upon a shift satisfaction survey; stand down from duty; rosters and assaults. The further information constituted Operational Circulars from QAS to employees touching upon areas such as: approval of overtime in excess of two hours; new Codes of Practice and Standard Operating Procedures; Scheduled Meal Break Management for On-Road Staff; Shift Handover Procedure, to name but a few.
- Against the background of material provided, Professor Dawson did not believe that the material contained within QAS correspondence to LHMU provided evidence of a comprehensive or satisfactory risk management approach to managing fatigue-related risk.
- Professor Dawson believed that QAS should have:
  - a clearly defined fatigue management policy;
  - a comprehensive, competency-based training program to minimise the risk of fatigue-related accidents, injuries and adverse patient safety needs;
  - an auditable system for ensuring employees were operating within the workplace at a safe level of alertness. This could be ensured by:
    - a. *implementing management practices to systematically analyse and report the level of sleep opportunity afforded employees through the proposed and actual rosters including overtime and on call requirements. This should be done using measures derived from standard risk assessment methodologies.*
    - b. *implementing systematic management processes to ensure employees are fit-for-duty with respect to fatigue. At a minimum I would expect the organisation to have clear policy guidelines on the amount of sleep/wake required in order to be fit-for-duty and risk-based guidelines on how to manage the risk associated with insufficient sleep or excessive wake.*
    - c. *developing systems for identifying and managing individuals who were exhibiting signs and symptoms of fatigue.*
    - d. *systematically identify the most common fatigue-related errors and to develop standard operating procedures to minimise the chance that a fatigue-related error would result in an adverse patient safety event or impact on the health or well-being of the employee of his/her co-workers.*
    - e. *implement incident reporting systems that enabled the organisation to identify errors or incidents that were fatigued-related.*
    - f. *implementing an auditable system for ensuring that all staff had complied with the fatigue-risk management system and instituted corrective action wherever there was evidence that the system had not performed appropriately.*" [Exhibit 92, point 10]

[173] Emeritus Professor A. Parker from the School of Human Movement Studies, Institute of Health and Biomedical Innovation, University of Technology, Kelvin Grove was called to give evidence by LHMU. Professor Parker's specific areas of interest include:

- Adaptation of the musculoskeletal system to loading and de-loading;
- Mechanisms of injury in the musculoskeletal system;
- Analysis of movement with particular reference to human gait and performance in sport, work and the arts;
- Workplace health promotion and workplace injury; and
- Professional developments in exercise and sports science.

[174] Professor Parker had, in 2003, been involved in a research project for QAS and produced a summary report entitled "A Review of the Work Practices, Workload and Health Profiles of Queensland Ambulance Service Operational Personnel: Implications for Resource Allocation and Health Management."

- [175] This Review highlighted 25 specific recommendations under six broad headings: "Resource Allocation", "Work Organisation", "Fatigue Management and Health Management", "Management Training", "Worker Relations" and "Research".
- [176] Under cross-examination by QAS, Professor Parker agreed that QAS had in fact implemented many of the recommendations made in that Review. QAS advised that it had developed the QCAIR system (Queensland Case Information Reporting System) which was described as *"a broad reporting system that takes into account a whole range of data that relates to employees' work performance, the number of hours they worked, the cases they attended to, and that information is put into the system and that's made available to managers of the ambulance service at 7 o'clock every morning with data that's up to date as at midnight the previous night."* [Transcript, p. 16-11]
- [177] In response to Professor Parker's comments that while it is important to gather information, it was more important to see what practical use was made of such information, QAS stated that the information was used to allocate resources to meet demand, to record data relevant to the hours that officers worked and as a means of ensuring that employees accessed appropriate fatigue leave according to the various industrial instruments which governed all parties. Debate ensued around the question of what had actually occurred during the six years which had expired since the commissioning of Professor Parker's Report. It is fair to state that Professor Parker believed that in the area of fatigue management, QAS and LHMU still had work to do. [Transcript, p. 16-31]
- [178] An option proffered by QAS was to reduce the duration of shifts. Notwithstanding this, QAS did not support this method of dealing with this situation, but submitted that it might be an option for the Full Bench to consider.
- [179] In response to LHMU witness evidence, QAS highlighted statistics which it said showed that *"of 1200 shifts a day, on average there are but 1.4 shifts within a 24 hour period that experienced a shift duration exceeding 16 hours."* [Transcript, p. 5-73] QAS submitted that Mr Day did not refute the accuracy of those statistics whilst giving his evidence.
- [180] Further to those statistics, QAS state that *"1.4 shifts out of approximately 1200 shifts in a 24 hour period does not even come close to demonstrating that any QAS officers are consistently being exposed to shifts exceeding 16 hours, the official records in fact demonstrate that shifts exceeding 16 hours are the exception rather than the rule that LHMU would have the Commission believe."* [Exhibit 96, point 136]
- [181] QAS viewed LHMU's claim as relating more to a claim for further monetary payments. QAS says that four of the eight claims made under the heading of "on call" involve the payment of money. QAS states that [Exhibit 96, point 150]:
- "The LHMU is seeking:*
- a. A 100% increase to the current on call allowances;*
  - b. A 50% increase to the minimum overtime payment to be received for a call out;*
  - c. The introduction of a new meal allowance to be payable to on call officers when recalled when a meal would ordinarily be consumed, (whatever that phrase may mean); and*
  - d. That the on call allowance be projected and paid when taking scheduled leave."*
- [182] After extensive submissions were made by the parties around this point, it appeared that the general consensus was that an alternative approach might be considered by the Commission rather than the Commission simply accepting one claim over the other.
- [183] LHMU's view was, as an alternative, that an order should be made requiring QAS to trial an extensive fatigue management policy in conjunction with LHMU. LHMU envisaged that the policy should *"at the very least limit the extent to which paramedics are called to codes 3 and 4 cases and have some minimum standards regarding hours of work (both rostered and actual)." [Exhibit 93, p. 35]*
- [184] Commenting upon LHMU's proposition, QAS stated:
- "In the QAS final submission, it too offered such a strategy as an alternative and we continue to see merit in the idea of a comprehensive policy to be adopted by the Commission as resolution of the fatigue related matters at issue as preferable to having the issue of fatigue forever tied into a determination which cannot be amended."* [Exhibit 96, points 156 and 157]
- [185] Primarily the parties supported the proposition that the "more effective and realistic option" to address any concerns about fatigue was the further development and enhancement of the QAS fatigue management policy, as provided for in the evidence of Professor Dawson and Professor Parker. [Exhibit 95, "Fatigue and related issues"]

- [186] The Full Bench has considered the submissions of the parties around this particular matter. It is our view that more work is required by the parties in order to implement a workable and successful fatigue management strategy.
- [187] The Full Bench acknowledges that the issue of fatigue management is of extreme importance to both parties. It is also a matter of significant public interest that employees performing the duties of paramedics within QAS have available to them the best methods of ensuring that fatigue is responsibly managed.
- [188] To this end, we propose to adopt the alternative propositions posed by both parties. In doing this, we determine that:
- the draft Fatigue Management Policy (contained within Exhibit 96, Attachment 1) should be utilised as the working document from which a comprehensive policy position should be adopted;
  - this Determination will not include provisions pertaining to Break from Duty (QAS proposed clause 5.7) or Rest Breaks after Extreme Working Hours (QAS proposed clause 5.8);
  - this Determination will not restrict the cases which can be available to on call officers and the stations in which on call can be undertaken.
  - a policy position on the question of fatigue should be developed within the auspices of workplace health and safety considerations.
  - as the categorisation of cases is currently a matter of QAS policy and not restricted by any provision within current industrial instruments, QAS is to retain the flexibility to consider, in consultation with LHMU, whether QAS policies and or systems, such as the categorisation of cases, or cases that are to be performed by officers undertaking on call duties, can or should be amended to complement elements within the fatigue management policy.

**(iv) Meal Management and a "Meal Window"**

- [189] QAS is seeking major amendments to the existing rest pause, crib break and meal break provisions which would have the effect of enabling it to direct emergency response operational employees to take a crib break at such times as would not interfere with operational duties and the continuity of work, as follows:
- for shifts between 6 and 10 hours duration - a crib break of not less than 30 minutes;
  - for shifts exceeding 10 hours duration - two crib breaks of not less than 30 minutes;
  - when an employee can demonstrate that operational requirements prevented the taking of a crib break at any time during their shift, the employee will be paid an additional 30 minutes at single time rates for each meal not taken.
- [190] The provisions of the *Queensland Ambulance Service Enterprise Partnership Certified Agreement 2005* provide a 2.5 hour "meal window". For shifts greater than 10 hours and up to 12 hours in duration, the first meal break is to be between 3.5 and 6 hours from the commencement of the shift with the second meal break to be taken between 7.5 and 10 hours from the commencement of the shift.
- [191] QAS indicated that it is difficult to manage the allocation of meal breaks within the 2.5 hours meal windows. Increased demand arising from population growth, especially in South-East Queensland, has resulted in more crews needing to be accommodated within the existing meal windows. In addition, the introduction of 12 hour shifts in recent years has involved the introduction of two 30 minute breaks as compared to one under the previous 10 hour shift arrangements.
- [192] Overall, these changes have made it *"impossible for the QAS to deliver meal breaks without reducing emergency coverage to levels (which are) inadequate to cope with the emergency workload."* (QAS final submissions, Exhibit 95, page 89)
- [193] QAS's claim was vigorously opposed by LHMU on the basis that its members did not believe that the alterations proposed by QAS would genuinely assist them to actually partake of a meal.
- [194] LHMU also said that the position advanced by QAS could lead to absurd situations like Ambulance Officers being directed to take a meal break basically as soon as they clocked on in circumstances where they would have no inkling as to when they might be directed to take their next meal. It could be within an hour or two of the first break or not until very late in the shift.
- [195] The evidence and submissions of both QAS and LHMU highlight a number of concerns about the present arrangements from both parties' perspective.
- [196] QAS is clearly concerned about its ability to arrange for its emergency response operational employees to access their meal breaks within the present 2.5 hour windows. Equally, LHMU and its members are concerned that the

same employees are often unable to access a meal break at a reasonable hour or regularly have their meal break interrupted to attend an emergency call out.

- [197] In all the circumstances, and after considering this matter at considerable length, we have decided not to interfere with the current provisions. That is not to suggest that there are no problems with existing arrangements. There clearly are.
- [198] However, the case presented by QAS was largely to the effect that the existing meal windows should be abolished which, for reasons cited in paragraphs [40] - [56,] we have decided not to consider because it was not a matter at issue between the parties during the course of their negotiations.
- [199] As a consequence, we have limited evidence and submissions before us about any other proposal by QAS as to how its present concerns might be addressed. Similarly, because most of LHMU's evidence and submissions was directed at responding to QAS's claim to abolish the meal window, we have very limited information about how its members' concerns about access to meal breaks might be resolved.
- [200] In those circumstances, we are not prepared to impose "a solution" on the parties because we have no way of appreciating the consequences of any decision we might make and whether it will assist to resolve the problems identified by each of QAS and LHMU, or exacerbate them.
- [201] In the circumstances, we would strongly recommend to the parties that this matter be the subject of ongoing discussions between them, perhaps as part of the fatigue management discussions we have directed occur (see paragraphs [186] - [188]), to see if a resolution can be agreed.
- [202] In the event the parties reach an agreement in relation to this matter during the course of operation of this Determination (i.e. before 30 September 2012) we propose to include what might normally be described as a "leave reserved" provision in the Determination in relation to this item. If the parties reach agreement around the issue, but only if the parties reach agreement, we are prepared to vary the Determination, in accordance with s. 150(2) of the Act, to include the agreed outcome.

#### **(v) Composite Rate of Pay**

- [203] LHMU, in making claim for a composite rate of pay, sought to have all regular, routine, predictable allowances and penalties rolled into a rate which, on its argument, would smooth out fluctuations in the fortnightly take home wages of employees.
- [204] It was not disputed that a composite rate, if established, would be payable for all purposes whereby penalty payments would be included in the payment of sick leave, annual leave, long service leave, and the like.
- [205] LHMU led evidence on this claim from a number of witnesses, including Mr Day, Mr Cartledge, Mr Jardine, Mr Paterson, Ms Dyson, Mr Griffy, Mr Schulz and Mr Freeman.
- [206] Mr Day stated that the provision of a composite rate of pay was a vital element in the log of claims that had been pursued by the Union.
- [207] The current system of payment, according to Mr Day, consisted of payment for flat hours worked, averaged weekend penalties (AWP), afternoon and night shift penalties and allowances for on call, when required.
- [208] A number of LHMU witnesses gave evidence to the effect that, under the current system, there were significant fluctuations in their fortnightly income which caused difficulties, in particular, with family budgeting.
- [209] Mr Jardine gave evidence that, when on sick leave or long service leave, his take home pay was at a lower rate and, whilst not having undertaken calculations in respect of the financial benefit of a composite rate, gave an account of discussions with LHMU which had indicated his current rate of \$25 per hour would increase to around \$30 per hour. [Transcript, p. 9-53, lines 49-51]
- [210] A number of interstate ambulance services were identified by the LHMU as having a composite rate operating in relation to employees of those services, some of which were said to be Victoria (metropolitan and rural), Australian Capital Territory, Tasmania, Western Australia, and the Northern Territory.
- [211] In LHMU's final written submissions an alternate arrangement was suggested if the Full Bench was not disposed to award the claim, as made, for a composite rate.
- [212] In essence, the alternative would be an extension of the current AWP system whereby regular shift penalties, on call allowances, and weekend penalties would be rolled up into an AWP composite rate.

- [213] QAS's response to the claim for a composite rate was that the claim in the first instance seemed unclear in that LHMU was seeking a rate that would apply to each individual employee and be subject to a recalculation each time an employee changed shift, work location or classification level.
- [214] The current arrangements in place had employees being in receipt of a base rate together with applicable penalty payments for working shift work and overtime.
- [215] The AWP was applied to officers working a shift roster of greater than two weeks duration, with the weekend penalties being averaged over a period of 12 months duration.
- [216] The QAS informed the Full Bench that composite rates generally applied within workplaces where all employees worked identical roster patterns and therefore attracted the same percentage component of penalty payments.
- [217] The nature of service demand and service delivery models relevant to QAS were said not to support the working of identical rosters at all ambulance stations across the State.
- [218] QAS argued that the witnesses from LHMU did not, in evidence, provide any clarity about the application of its claim, providing differing explanations of how a composite rate might be implemented.
- [219] QAS was of the view that the introduction of a composite rate was unfeasible, unworkable, and impracticable to administer on the basis that, in the end, there could be several hundred "personal" composite rates.
- [220] Mr Day, in evidence on the implementation of a composite rate, indicated that AWP was, at present, being applied at 220 individual stations across the State and that a composite rate could simply replace the AWP and, as such, be station-based. [Transcript, p. 5-46]
- [221] QAS had costed the introduction of a composite rate, suggesting that it would cost an additional \$73 million over a three year period and should be seen by the Full Bench as an additional wage claim on top of LHMU's claims for increases to base wage rates, new pay increments, and qualification allowances.
- [222] The alternate arrangements offered up by LHMU in its final written submissions to expand AWP into a composite rate was opposed by QAS on the same grounds as the original claim.
- [223] The Full Bench, in the Determination of whether a composite rate of pay should be accepted, as advanced by LHMU, has given consideration to a range of items including benefits (for the employees and employer), process of implementation and the financial cost to QAS.
- [224] In terms of benefits, a composite rate of pay, in theory, gives some certainty to employees in that they have a regular fortnightly wage and the employer also benefits, usually by a reduction in the administrative arrangements in the operation of payroll services.
- [225] On the aspect of implementation, there is ample evidence before the Commission that the service delivery models relied upon by QAS are of an individual nature that would detract from the normal benefits available to assist an employer in payroll administration when a composite rate of pay is introduced into the workplace.
- [226] To accept the argument as advanced by LHMU that a composite rate could be introduced into 220 ambulance stations, applying different terms and also to be implemented seamlessly, providing on-going benefit for employees and the employer is not a proposition that, on the evidence, can be entertained by the Full Bench.
- [227] The issue relating to the lack of a standard roster pattern is another important factor when assessing the viability of introducing a composite rate and, in this case, does not assist the claim.
- [228] On the matter of the financial cost, LHMU, at Schedule 2 of its final written submission, provided comparisons of composite rates as they apply in other States and Territories. However, LHMU did not give an indication as to the global cost involved with the introduction of a composite rate.
- [229] QAS submission that the cost would be an additional \$73 million over three years, with an obvious recurrent cost beyond that, was not subject to challenge.
- [230] There can be little doubt in the circumstances that the claim for a composite rate has little benefit other than increased remuneration for employees.
- [231] The Full Bench, on the evidence before it, is not of a mind to grant the claim for a composite rate of pay.
- [232] The Full Bench makes a similar finding for the alternate arrangement (AWP composite rate) proposed by LHMU for the same reasons as relied upon in relation to the claim for a composite rate of pay.

## **(vi) Fringe Benefits Tax/ Salary Packaging Generally**

### Fringe Benefits Tax

- [233] LHMU raised several instances where employees have been required to reimburse QAS for fringe benefits tax (FBT) liability in certain circumstances.
- [234] QAS often requests employees to accept short-term roster changes for placement in rural and remote locations. In accepting such placements, a number of employees have been faced with a FBT liability.
- [235] The evidence shows that, in many instances, employees were unaware of the potential for this to occur. This has caused financial difficulty for many employees.
- [236] LHMU state that the current arrangements provide a disincentive to employees to assist QAS by relieving at short notice. As the FBT liability is attached to a rural and remote incentive it erodes the value of that incentive to the point where the incentive has no benefit to the member. [Exhibit 17, point 218]
- [237] Material put to the Full Bench [i.e. "*Australia's Health Workforce*", Productivity Commission Research Report, 22 December 2005] by Mr Day identified a number of barriers to the recruitment of health professionals into the rural and remote setting. These included: increased travel and financial costs; professional demands; reduced flexibility in working hours; professional/geographical/social isolation; lack of access to educational and training opportunities; and limited professional and career opportunities.
- [238] While various State Government and Territory health bodies have (unsuccessfully) suggested changes to the FBT arrangements in order to facilitate the engagement of health care professionals to work in rural and remote areas, it remains the case that it is the Queensland Government's policy to seek reimbursement from employees for FBT liability as it is the employer which is liable for FBT under the FBT legislation. [Transcript, pp. 4-77, 4-78]
- [239] In responding to LHMU's claims, QAS stated:
- The Determination as to whether a particular benefit attracts FBT is made by the Federal Government.
  - The liability for providing fringe benefits is borne by QAS and is not passed on to employees.
  - The issue around reimbursement of FBT liabilities only arises through salary packaging/sacrifice, which is a private employee arrangement that is endorsed by the employer.
  - Salary sacrificing arrangements for most Queensland Government employees is limited to superannuation and other minor items that are deemed by the Federal Government as exempt benefits. These exempt benefits are open to QAS employees.
  - Salary sacrificing arrangements were made in consultation with the relevant public sector unions at the time.
  - Due to favourable taxation arrangements provided by the Federal Government to QAS through an FBT exemption cap, QAS has then provided additional benefits to employees by allowing employees to salary sacrifice items deemed appropriate by the Federal Government with the potential of reducing the employees' salary and, as a consequence, the level of income tax incurred.
  - Employees are required to reimburse any FBT liabilities incurred that are associated with their salary sacrificing arrangements where the total FBT liabilities exceed the exemption cap.
  - Employees have been strongly encouraged by the Queensland Government, QAS and RemServ (the salary sacrifice provider for the Queensland Government) to obtain financial advice prior to entering into any salary sacrificing arrangements.
  - QAS provides education sessions and additional literature to employees regarding salary sacrificing arrangements and potential FBT liabilities.
  - Against a background of legislative restrictions, QAS could commit to making the following improvements:
    - More detailed explanation of employees' rights and responsibilities regarding salary sacrifice arrangements.
    - Identification of potential FBT liability implications with regard to relieving activities.
    - Review of recruitment and selection material and processes to provide advice that some of the benefits may attract FBT and may impact on an employee's salary sacrificing arrangements.
    - Review the relieving arrangements to provide a limit to the time employees undertake relieving duties to minimise potential FBT liabilities.
    - Provide mandatory training and education and provide improved material, education and training to employees regarding salary sacrificing and possible FBT liability implications.

- While not its preferred option, QAS could also consider reducing the level of employee access to the FBT exemption cap, similar to other organisations which have an FBT exemption, to minimise or eliminate the potential for employees to incur an FBT liability.

[240] There are some very clear facts surrounding this issue. Firstly, the decision as to whether a benefit attracts an FBT liability is one for the Federal Government. Secondly, salary sacrifice arrangements were introduced to employees of QAS by agreement between the employer, employees and relevant unions. Thirdly, the only occasion upon which reimbursement of FBT must be made by an employee is when the total FBT liability exceeds the individual employee's exemption cap.

[241] Against that background, the Full Bench is conscious of the instances when FBT has been payable by unsuspecting employees who have taken up the requirement to work away from their home base primarily for the purpose of assisting the employer and the community. It is regrettable, that as a consequence of this, some employees have found themselves liable for FBT for which they would not have budgeted. However, this is not a problem of QAS's making.

[242] The Full Bench is of the view that more, however, should be done by QAS in providing relevant information to employees prior to such situations arising. To this end, QAS administration should, when rostering an employee away from their home base, provide information specifically to that employee as to possible FBT ramifications of such a move. To do otherwise would only serve as a disincentive to those employees who would otherwise be willing to assist QAS and the community.

[243] Therefore, while accepting the very real concerns raised by LHMU in this regard, we are left little option but to reject the specific claim awarded by LHMU.

#### Salary Packaging Generally

[244] QAS has proposed that the Determination include a re-written salary packaging provision to clearly articulate the arrangements under which the Queensland Government allows employees to salary sacrifice within relevant current Federal legislation and Australian Taxation Office rulings.

[245] Given the problems highlighted during these proceedings concerning employees' understanding of salary packaging and FBT implications, it would seem appropriate for the clause to be re-written to make it clearer. In those circumstances the Full Bench generally approves the thrust of QAS's attempt to re-write the provision but directs the parties to confer about the actual wording to be incorporated in the Determination with recourse to the Full Bench (see paragraphs [377] - [381]) if the ultimate provision cannot be agreed.

#### **(vii) Superannuation**

[246] LHMU has sought to increase superannuation payments to its members. The *rationale* for this claim is primarily found in the affidavits of Mr P. Griffey. [Exhibits 59 and 60]

[247] Mr Griffey is an Advanced Care Paramedic and has been employed by QAS since 1989. In 2000, Mr Griffey was appointed as Superannuation Project Officer for implementation of the enterprise bargaining agreement to oversee employees' choice of superannuation between the existing Queensland Ambulance Service Superannuation Scheme (QASSS) and QSuper.

[248] Mr Giffey made general commentary around the issue of superannuation, stating that:

- employees would "*require at least a minimum of 15% put into superannuation to be able to support (themselves) in their retirement*". [Exhibit 59, point 84]
- he was not confident that he had sufficient superannuation for his own retirement.
- he was concerned particularly about the situation for employees who had suffered a temporary or permanent disability. The insurance arrangements ensured that these employees received 75% of their base salary (inclusive of skills-based allowances and the on call allowance of 20%). This payment was made for two years or until the employee reached 60 years of age depending upon their particular type of cover. This was as opposed to 75% of their routine predictable roster wages which would include weekend penalties and higher duties allowances.
- specific attention was given to those employees who suffered from post traumatic stress disorders and those who suffered from manual handling injuries where there is a potential for employees to take early retirement on medical grounds.
- he was aware that Commonwealth Government superannuation contributions of higher than 15% were being afforded to university educators where those employees received employer contributions of 17%, with 7% employee contributions also being made.

- LHMU's claim is not in excess of other arrangements which have been made by the Queensland Government with regard to Queensland police officers who receive 18% employer contribution with an employee contribution of 6%.
- paramedics were similar to police officers in terms of the type of work in which both were engaged - i.e. exposure to physical and verbal abuse, working shift work and coming into contact with bodily fluids. Unlike most public sector employees, the work of a paramedic includes exposure to an unpredictable and unsafe work environment, often bringing those employees into contact with biohazards.
- QAS had historically paid higher employer contributions than the legal minimum required. [1995 Enterprise Bargaining Agreement, Clause 3.1]

[249] Further evidence was adduced from a number of LHMU witnesses who claimed that the current superannuation arrangements would be insufficient for them to retire or adequately fund their retirement.

[250] During the cross-examination of Mr Griffey, he was asked by QAS to consider the fact that Queensland Police officers received higher superannuation contributions in recognition of their compulsory retirement age, which was less than that of QAS employees. Notwithstanding that distinction, Mr Griffey believed that because of the stressful occupation of paramedics, particularly due to exposure to sickness, trauma and shift work, employees potentially faced a similar reduced retirement age.

[251] QAS stated that the superannuation arrangements available to QAS paramedics were reflective of the arrangements in existence for Queensland public sector employees generally. However, over and above those arrangements other enhancements were available to QAS paramedics. These were:

- employees of QAS prior to January 2002 were able to elect to maintain their income protection insurance from the previous scheme (QASSS). Since 1 January 2002 this arrangement has not been available to new employees or existing employees who availed themselves of the QSuper income protection insurance arrangements.
- QSuper employer contributions include some allowances that are not applicable to most other public sector employees, due to the transfer of QAS employees from QASSS to the QSuper scheme.

[252] In relation to LHMU's claim for increased superannuation contributions generally, QAS submitted:

- Queensland Police Service, due to the compulsory retirement age for commissioned officers, has a QSuper (not ordinary time earnings) employer contribution that is greater than other Queensland public sector employees.
- there are no compulsory retirement restrictions for QAS employees.
- since 2006, all Queensland public sector employees have had a guarantee that their employer superannuation contributions will, at a minimum, equal 9% of ordinary time earnings, as defined by the Australian Tax Office (ATO).
- QAS arrangements are greater than the current minimum standard and do provide employees with enhanced retirement savings.
- there has been no evidence from LHMU to show that there is a higher than average early retirement within QAS.
- LHMU claim for 15% employer contribution on ordinary time earnings will result in an additional increase for QAS budget of over \$5 million per annum.
- were other public sector employees to request similar consideration, the potential cost for the Queensland Government would be approximately \$300 million per annum.
- what is available to QAS employees is greater than the Australian Government's legislated minimum contribution and consistent with other public sector employees.
- QAS employees are able to salary sacrifice voluntary contributions, which are exempt from fringe benefit taxes, to enhance their retirement savings.

[253] We have considered the submissions in detail but are unable to support the application to have increased superannuation contributions made available to QAS employees, the subject of this Determination.

[254] The payments made to members of the Queensland Police Service are based upon an entirely different premise - i.e. that commissioned officers of the Queensland Police Service are statutorily required to retire by age 60. This is not the case for employees of QAS. While it may be the case that some members of QAS retire early due to various factors, LHMU, on its own evidence, did not believe those figures to be significant.

[255] The Full Bench has accepted that employees may be concerned about their financial situation upon retirement after reviewing the state of their superannuation balances as a consequence of the Global Financial Crisis. This, however, would most likely be the concern of many employees generally. Notwithstanding that, the Full Bench is unable to see any creditable reason why the level of superannuation payments paid to QAS members should be greater than those paid to all other public servants in the State.

[256] The evidence has shown that the superannuation arrangements for QAS employees are reflective of what applies to the Queensland public sector generally, but for many employees there is an enhanced factor. Employees of QAS prior to 1 January 2002 have been able to maintain their income protection insurance from the previous QASSS scheme. Further, due to the transfer of QAS employees from QASSS to the QSuper scheme, QSuper employer contributions include some allowances that are not applicable to most other public sector employees.

[257] We reject this component of LHMU's claim.

**(viii) Sick Leave**

[258] LHMU submits that the current sick leave entitlements for QAS employees are inadequate. Under the current regime, QAS employees often attend work whilst ill.

[259] Evidence was given by Mr Freeman, who had suffered from glandular fever and was classified a "high risk employee" under QAS's absence management program because he had taken a reasonable amount of sick leave. Mr Freeman believed that there was a greater potential for QAS employees to become sick because of constant exposure to ill patients. [Exhibit 76, points 64-67]

[260] Mr Day's evidence was that he had attended work when ill because to do otherwise would have involved losing projected penalties and allowances. [Transcript, p. 5-62]

[261] Material put before the Commission by Mr Day showed that QAS employees were entitled to 80 hours sick leave per annum, whilst interstate counterparts received, in some instances, substantially greater entitlements, with some exception for employees in Western Australia.

[262] The primary thrust of the evidence from LHMU members centred upon the loss of projected penalties and allowances during periods of sick leave. [Exhibit 86, point 57; Exhibit 37, point 57; Exhibit 59, points 59-63; and Exhibit 62, point 30]

[263] In terms of managing sick leave, QAS requires employees to obtain medical certificates in certain circumstances (see paragraph [266] below). LHMU members complain that in many instances it is very difficult to acquire an appointment with a medical practitioner at short notice. [Exhibit 76, point 68; Exhibit 17, point 88; Exhibit 59, point 59; and Exhibit 86, point 61]

[264] LHMU points to provisions contained within the *Ambulance Service Employees' Award - State 2003* which state:

*"7.2.5 The Queensland Ambulance Service reserves the right to require any employee claiming sick pay or in receipt of Workers' Compensation pay to be examined by a doctor nominated by the Queensland Ambulance Service."*

[265] LHMU says that QAS has never utilised these provisions.

[266] QAS responded to LHMU's claims by stating that it does not seek a doctor's certificate for every absence from work. QAS states that it seeks the right to require a certificate for single day absence after a process has been undertaken demonstrating the existence of an unacceptable pattern of absences.

[267] Having considered these submissions, the Commission is cognisant of the concerns being expressed by LHMU. It is simply a matter of fact that it is very difficult, on occasions, to access the services of a medical practitioner within a two day timeframe.

[268] In our view, the alternative proposition posed by QAS, concerning the management of sick leave, is reasonable in the circumstances. Clause 7.2.5 of the *Ambulance Service Employees' Award - State 2003* will be the appropriate clause for the management of sick leave of employees, the subject of this Determination.

[269] LHMU also proposes that sick leave entitlements be increased to 120 hours or 10 shifts per year and that projected penalties and allowances be paid to staff taking sick leave.

[270] After considering the submissions and evidence about this point we have decided to increase the quantum of sick leave entitlement for all staff to be covered by the Determination from 80 hours to 96 hours per annum.

[271] The quantum of sick leave determined represents the equivalent of 8 shifts at 12 hours per shift, compared to only 6.666 shifts when the quantum was 80 hours.

[272] The new sick leave entitlement of 96 hours per annum is to commence on 1 July 2010 with immediate effect. To accommodate this increase in entitlement, QAS is to calculate the *pro rata* additional entitlement available to

each employee by reference to the date of 1 July 2010 and the employee's next annual entitlement to sick leave credit. By way of example: an employee whose next anniversary for sick leave purposes is on 1 October 2010 will receive an additional credit of 4 hours on 1 July 2010 and 96 hours on 1 October 2010; an employee whose next anniversary for sick leave purposes is 1 April 2011 will receive an additional credit of 12 hours on 1 July 2010 and 96 hours on 1 April 2011.

**(ix) Long Service Leave**

- [273] The claim in respect of long service leave (LSL) was effectively a claim of some two parts. In the first instance, LHMU seeks to extend current LSL arrangements by ensuring the leave, when taken, is paid inclusive of all projected penalties and allowances thus providing employees with maintenance of their regular level of income.
- [274] The second part of the claim goes to the extension of the leave duration by allowing employees to take the leave at half payment, therefore doubling the period of time an employee would be absent from the workplace when on this form of leave.
- [275] In prosecuting the element of the claim relating to the payment of projected penalties and allowances, evidence was called by LHMU from a number of witnesses including Mr Griffey, Mr Jardine, Mr Lackey and Mr Mountford who, between them, had varying lengths of service with QAS from 11 to 32 years.
- [276] It was common ground that the witnesses, whilst having an entitlement to access LSL, had all declined to take such leave for reasons said to relate to affordability.
- [277] Concerns were expressed that the reduction of take-home pay that would occur due to the absence of projected penalties and allowances would leave significant shortfalls in their family budgets.
- [278] Evidence adduced from Mr Freeman and Mr Roberts gave an account from employees who had accessed parts of their LSL accrual to the detriment of the family budget.
- [279] Both witnesses informed the proceedings that it would be unlikely they would access further LSL for the reason of affordability.
- [280] LHMU, in submissions, indicated that the problems encountered by its members could be readily addressed by the inclusion of regular allowances in the LSL rate of payment.
- [281] QAS, in opposition to the claim, sought to rely on the fact that it was not unique in having a workforce that had 24 hour, seven day a week coverage, which attracted payments of shift penalties, weekend penalties and on call payments, with such payments not being included in the rate of LSL payment when that leave is taken.
- [282] QAS, in further opposing the claim, called evidence from Mr P. Casey, Executive Director Public Service Employee Relations, Department of Justice and Attorney-General, [Exhibits 7 and 8] who suggested that the granting of LHMU's claim had the potential to establish a precedent upon other public sector agencies which could then lead to a significant additional financial cost for the Queensland Government.
- [283] The evidence of Ms Axelby, Employment Relations Manager, Department of Community Safety, was that the inclusion of the projected penalties on LSL payments would add approximately \$1.5 million per annum to the QAS budget.
- [284] QAS, in its submissions, made reference to LHMU witnesses who had attested to their ability to make the necessary accommodation within their family budgets when previously accessing LSL.
- [285] QAS was therefore not supportive of the claim for reasons of additional costs to the Service and of concerns about setting a precedent that could flow to other public sector agencies.
- [286] The Full Bench, in consideration of this section of the claim, accepts that a financial impost would be felt by those employees taking LSL, in that there is an absence of projected penalties and allowance payments in the rate they receive at the time of taking such leave.
- [287] However, the reasons for the payment of the penalties and allowances in question must be taken into account when determining whether they should be added, in this case, to the LSL rate of payment.
- [288] Historically, the reasoning behind the inclusion of penalties and allowances into various forms of industrial instruments has been to compensate those employees who experience conditions of employment outside what might be deemed as usual or what may be described as normal.

- [289] The penalties and allowances in question for which QAS employees are in receipt are, in this instance, being made to deliberately compensate for the requirement to work a 24 hour, seven day a week roster and the inconvenience to family life and the like that comes with such arrangements.
- [290] When QAS employees presently access LSL, none of the inconveniences mentioned are being experienced and therefore it is difficult, on the evidence before the Full Bench, to conclude that the payment of the projected penalties and allowances should be added to the rate of LSL payment.
- [291] The financial cost to QAS in funding this claim is not at the higher end when consideration is given to the total overall budget of QAS, however the argument advanced in respect of precedent is of a different matter and must be taken into account.
- [292] The Full Bench is not of a view that the claim for the inclusion of projected penalties and allowances should succeed.
- [293] The LHMU, in evidence from Mr Day, informed the proceedings that complaints had been received from members that they were unable to access LSL at half pay and that they were of a belief they should have an entitlement to this provision.
- [294] Mr Day attached to his first affidavit [Exhibit 17] a Memorandum of Agreement (MOA) dated 30 September 2005 between the Queensland Government and the Queensland Council of Unions, representing unions that represent Queensland Government employees, in which additional benefits were provided to employees on the public payroll.
- [295] The section relied upon from the MOA was:
- "Pro-rata Long Service Leave for all Employees after Seven Years***
- Enhancements to the current arrangements to provide pro rata leave after 7 years service (but not the availability of cash equivalent on termination) and provide more flexible access to LSL. Other additional enhancements would include -*
- *LSL at half pay for double the period of time for any purpose (not just parental leave);*
  - *reduce minimum period of leave from two weeks to one week;*
  - *payment of LSL at employee's rate of pay prior to a voluntary reversion to a lower classification.*
- These enhancements would be achieved through amendments to Ministerial Directive 1/01 (Long Service Leave)". [Exhibit 17, Appendix 3]*
- [296] LHMU, in submissions, made reference to "other" Government agencies that allowed employees to take LSL at half pay which extended the period of their leave.
- [297] QAS indicated that the LSL provision for its employees was greater than currently prescribed in the Act, however it acknowledged that a significant difference between QAS employees and most other Queensland public sector employees was the ability to access LSL at half pay.
- [298] Previous negotiations between the parties were said to have resulted in access to LSL half pay not being pursued in favour of access to accrued time.
- [299] QAS had previously rejected that the entitlement referred to in the MOA tendered by Mr Day was applicable to QAS employees and, given the extent of the current leave arrangements, further submitted that the introduction of the half pay option would be inconvenient given those arrangements.
- [300] The current leave arrangements were identified as:
- 6 weeks and two days of annual leave; and
  - accrued time of 104 hours per annum, with the ability to take a negative 104 hours.
- [301] The need to provide a 24 hour, seven day a week roster combined with a range of restrictive rostering arrangements and practices were said by QAS to form the basis of the opposition to the claim.
- [302] The Full Bench, in consideration of the second part of the LSL claim, did not have the benefit of significant evidence from LHMU in support of its claim.
- [303] In fact, it would not be unreasonable to conclude that the evidence relied upon to support the claim for projected penalties and allowances, particularly as it related to the issue of affordability, was not of assistance in making the case for the introduction of a LSL at half pay entitlement.

[304] The Full Bench, having taken into account the current leave arrangements available to QAS employees and the obligation upon QAS to provide a 24 hour, seven day a week emergency service does not, at this time, deem it appropriate to implement an option for QAS employees to take LSL at half pay.

**(x) Operational Vehicles**

[305] LHMU raised as an issue the condition of older vehicles in QAS's fleet that were said to put at risk both employees and patients.

[306] Mr Day's evidence was that whilst operational vehicles were not highlighted in the original LHMU survey that identified matters for negotiations, he had received constant feedback relating to faults with aged vehicles.

[307] Further, in his evidence, Mr Day gave details of information relating to the status of the QAS Fleet that had been provided to LHMU for the period ending 31 January 2009.

[308] QAS's fleet was said to number 848 one or two stretcher vehicles. Eighty one (81) of those vehicles (9.55% of the fleet) were more than 9 years old and many had travelled distances greater than 400,000 kilometres.

[309] A number of employees, including Mr Lackey, Mr Freeman, Mr Youlden, Mr Roberts, Mr Mountford, Mr Houston and Ms Dyson, gave evidence with a common theme that aged vehicles were unsafe due to a variety of faults including:

- gearbox malfunction;
- braking;
- engine stalling;
- electrical issues;
- air-conditioning; and
- suspension.

[310] Evidence from Mr Freeman specifically identified four vehicles (Vehicle Identification Numbers provided) which were said to have major faults.

[311] Mr Roberts, in his role as an (Acting) Regional Operations Co-ordinator estimated he was aware of ongoing problems with vehicles that could well number "*in the hundreds*".

[312] Some vehicles operating in the Gold Coast region were, according to the evidence of Mr Youlden, unsafe and not capable of providing functional service to the community.

[313] LHMU also, through the evidence of Mr Mian and Ms Dyson, questioned the safety and servicing arrangements of patient transfer vehicles.

[314] Operational vehicles were said to constitute essential equipment for ambulance officers.

[315] The serviceability of vehicles was, in the view of LHMU, an "industrial matter" pursuant to Schedule 1-19 of the Act:

*"The subject matter of an Industrial dispute, and a matter that has caused, or the court or commission considers is likely to cause, disagreement or friction between employers or employees."*

[316] Operational vehicles form part of the relationship between QAS and its employees and were considered by LHMU to be as an essential component of equipment for an employee as are uniforms.

[317] LHMU refuted QAS's submission to the effect that the provisions sought in respect of vehicles could not be included in the Determination.

[318] In terms of funding associated with the purchase of new vehicles, LHMU, at page 35 of its final written submissions, stated:

*"In the cross-examination of Arthur O'Brien, Mr O'Brien confirmed that the QAS does have capacity to seek additional funding from the state government, should the tribunal order the implementation of the LHMU's vehicles claim. Mr O'Brien also discusses the other revenue sources of the QAS, such as commercial contracts (first aid and training), special events, commercial arrangements with mine sites ... ."* [Transcript p. 5-18, line 10]

- [319] QAS rejected LHMU's position on the grounds that the management of the QAS ambulance vehicle fleet falls within the realms of managerial prerogative and, as such, is not a matter that could be pursued as an industrial issue.
- [320] QAS also rejected assertions regarding LHMU's assessment of its vehicle fleet's viability and safety.
- [321] QAS said it was currently upgrading its fleet, relying on a process that involves consultation with LHMU through the State-Wide Equipment and Vehicle Committee.
- [322] QAS undertakes a regular maintenance program of vehicles and believed that the majority of LHMU's evidence related to incidents that occurred a number of years prior to the introduction of QAS's vehicle replacement program.
- [323] QAS's outline of submissions, at page 147, referred to evidence from Mr D. Eeles, Assistant Commissioner, Service Planning and Resourcing for QAS, which went to information relating to the replacement and proposed replacement of vehicles between 1 July 2007 and 30 June 2011, as follows:
- between 1 July 2007 and 21 April 2009 QAS commissioned 222 new stretcher vehicles and by 30 June 2009, QAS would have commissioned between 270 and 285 new stretcher vehicles, i.e. in the 2008/2009 financial year, QAS will have replaced 25% of its fleet.
  - in the two year period between 1 July 2009 and 30 June 2011 QAS estimates that a further 300 to 315 new stretcher vehicles will be commissioned. Therefore, over a four year period commencing on 1 July 2007 QAS will commission approximately 570 to 600 new stretcher vehicles, such that about 65% will then be less than 4 years old, continuing an increase of between 57% to 66% on the previous 4 year period.
- [324] Mr Eeles gave further evidence that went to the level of funding for vehicle replacement that had been secured by QAS for the financial year 2009-2010 and onwards.
- [325] The variety of operational vehicle faults identified by LHMU witnesses were, in the course of Mr Eeles' evidence, subject to either explanation or challenge.
- [326] The servicing of operational vehicles featured in the evidence of Mr Eeles with a table detailing services undertaken on QAS vehicles in the Brisbane region for the month of March 2009 being attached to his affidavit of evidence.
- [327] QAS submitted that if LHMU's claim for a maximum serviceable life of operational ambulances was accepted, the cost for QAS would be in the region of \$23.46 million over a three year period.
- [328] In discounting LHMU's argument on the condition of certain vehicles, QAS argued that no evidence had been provided that the vehicles in question did not meet either the operational or minimum legal requirements for those vehicles to be driven on Queensland roads.
- [329] In opposing the inclusion of vehicles in the Determination, QAS relied upon a decision of President Hall<sup>6</sup> where the President stated:
- "There is nothing in the Industrial Relations Act 1999 to suggest an intention that industrial matters which do not belong to the relationship between the employer as such and the group of employees as such might be included within an agreement otherwise falling within s. 141(1)."*
- [330] The Full Bench acknowledges that the argument advanced by LHMU in respect of operational vehicles being an industrial matter is not without merit.
- [331] That conclusion would seem to be supported by the consultation process utilised by the parties through the State-Wide Equipment and Vehicle Committee.
- [332] The evidence from LHMU witnesses relating to faults particularly in aged vehicles did not appear to be disingenuous and, in the view of the Full Bench, faults are more likely to occur in vehicles of advanced years than a more recent addition to QAS's fleet.
- [333] Governments generally have policies that allow for replacement of vehicles within a time frame much shorter than appears to be the case with QAS operational vehicles.

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<sup>6</sup> *Australian Workers' Union of Employees, Queensland v Skills Training Mackay* (2001) 169 QGIG 172

- [334] The reason that operational vehicles of QAS are kept for longer periods obviously relates to the cost of fitting out such vehicles, which is significant, and it would not be prudent for ambulances to be turned over in the same manner as other Government vehicles due to the cost factors involved.
- [335] However, the retention of vehicles for longer periods does bring with it the need for the maintenance and upkeep of those vehicles to be closely monitored by QAS as well as those officers who are required to operate the vehicles on a day-to-day basis.
- [336] The evidence of Mr Eeles in relation to servicing arrangements, at least in the Brisbane region, indicated a pattern of regular A and B type services that would clearly meet manufacturers' standards.
- [337] The Full Bench accepts QAS's position that the evidence before the proceedings did not identify operational vehicles that fell below the legal minimum requirements for vehicles to be operated on Queensland roads.
- [338] The Full Bench is of a view that the QAS vehicle replacement program that has operated from 1 July 2007 has done much towards modernising its fleet and provided that the program continues to operate as outlined the community should have little reason for concern.
- [339] Inherent in the vehicle replacement program is the continued involvement of LHMU through the relevant committee.
- [340] The Full Bench is not prepared, in this Determination, to interfere with the current arrangements, provided that those arrangements continue as proposed by QAS during these proceedings.

**(xi) Workers' Compensation**

- [341] LHMU has sought to improve members' access to WorkCover "make-up" pay in two respects, as follows:
- (a) that QAS "top-up" workers' compensation payments so that an injured worker would, while incapacitated, receive the same amounts as the worker would have received had the worker remained at work during the period of the incapacity; and
  - (b) that QAS "keep open" the worker's job while the worker is eligible for workers' compensation payments.
- [342] The issue of projected penalties and allowances is the key factor in LHMU's submissions around this point. [Exhibit 62, points 72-74]
- [343] QAS opposes the adoption of this clause because it believes that the Commission is prohibited from granting the LHMU claim because of the operation of s. 107D of the *Workers' Compensation and Rehabilitation Act 2003* (WCRA), which reads as follows:

***"107D Entitlements to compensation under industrial instrument generally prohibited and void***

- (1) *The industrial commission can not include in an industrial instrument made by it, or approve for an industrial instrument submitted to it, a provision for accident pay, or other payment, on account of a worker sustaining an injury.*
  - (2) *The registrar of the industrial commission is not to register an industrial instrument submitted to the registrar that provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.*
  - (3) *Despite subsections (1) and (2), an industrial instrument, other than an award under an Industrial Act, may provide for an amount to be payable as a weekly rate of wages (however described) to a worker if the worker becomes incapacitated.*
  - (4) *A provision of an industrial instrument, other than a provision mentioned in subsection (3) that contains an amount that has been approved by the Authority's board under section 107E, is of no force or effect to the extent that it provides for payment of accident pay, or other payment, on account of a worker sustaining an injury."*
- [344] It is submitted by the parties that a "Determination" made by the Commission pursuant to s. 149 of the Act sits outside of s. 107D of the WCRA because of its definition contained within schedule 5 [Dictionary] of the Act. An "industrial instrument" incorporates the following:
- "industrial instrument means an award, certified agreement, QWA, industrial agreement, EFA, code of practice under section 400I or order under chapter 5, parts 5 and 6."***
- [345] Notwithstanding that, LHMU says that the Workers' Compensation Regulatory Authority could approve, upon request by the employer under s. 107E of the WCRA, an amount to be payable as a weekly rate of wages to a worker if the worker becomes incapacitated.

[346] After considering the submissions of the parties around this point, it is our view that any decision made with regard to Workers' Compensation "top up" payments is a matter for negotiation between the parties and subsequently with the relevant Government authorities.

**(xii) Patient Transport Officers - Overtime Rate**

[347] Currently, Patient Transport Officers (PTOs) receive overtime payments calculated on the basis of time and a-half for the first three hours and double-time thereafter, with each day standing alone. All other operational staff are paid at the rate of double-time for all overtime.

[348] LHMU alleges that this differential creates anomalies whereby employees working essentially beside each other are paid at different rates for performing the same work, for example when an Advanced Care Paramedic works overtime within the Patient Transport Services section.

[349] LHMU also cites the further "anomaly" where PTOs are paid at the rate of double-time when they work on their accrued rostered days off but at the rate of time and a-half for the first three hours on shift extensions.

[350] LHMU argues that the current situation is inequitable and a source of frustration to PTOs. For this reason, as well as merit, it proposes that all overtime should be paid at the rate of double time throughout QAS.

[351] In the Full Bench's view this claim has no merit and is refused. Those Paramedics, and other operational staff, who are being paid overtime at the rate of double-time enjoy that benefit because they are shift workers (see the provisions of s. 9A(3)(a) of the Act). However, this is not the situation with PTOs who essentially only work day work.

**(xiii) Miscellaneous Matters**

**Employment security generally**

[352] QAS and LHMU both seek changes to the existing provisions of Clause 2.3 - Employment Security and 2.4 - Permanent Employment, of the *Queensland Ambulance Service Enterprise Partnership Certified Agreement 2005* (2005 Certified Agreement). In particular, LHMU seeks the inclusion of a provision to the effect that QAS will not outsource the patient transport function.

[353] Material provided to the Full Bench during the course of proceedings was to the effect that the then Director-General of the Department of Emergency Services informed the LHMU in October 2008 that non-urgent medically authorised patient transport services would not be privatised or made a contestable part of QAS's operations. At around the same time, the then Minister for Emergency Services announced publicly that the "government has decided that QAS will continue to provide this important service for the people of Queensland." [Exhibit 95, page 140]

[354] In the absence of any agreement or any substantial argument around the particular provisions pressed by both QAS and LHMU, we have determined that the existing provisions at Clauses 2.3 and 2.4 of the 2005 Certified Agreement should continue.

[355] Accordingly, the existing provisions are to be incorporated into the new Determination.

**M Scale/Educators paid study time and professional development payment**

[356] LHMU sought the introduction of a number of provisions which would have required QAS to reimburse M Scale employees and Educators for the costs incurred in attending approved professional development courses. In addition, LHMU sought for such employees to be granted two weeks per annum paid professional leave, non-cumulative.

[357] All employees of QAS are presently entitled to the benefits of the Government's SARAS policy, but the evidence given by a number of LHMU witnesses during these proceedings suggests that the provisions of that policy are being applied inconsistently. The (alleged) inconsistent approach has led to different employees, in apparently identical circumstances, being treated differently to other employees in a different area or region of QAS.

[358] The Government's SARAS policy gives different levels of entitlement, by way of course reimbursement costs and study leave, depending upon whether the particular employee's manager believes that participation in a particular course is:

- Essential - that is, an integral part or requirement of the employee's duties;
- Highly Desirable - that is, directly relevant to the employee's current position; or,

- Desirable - that is, it is relevant to the employee's future career goals within QAS.

- [359] QAS opposed LHMU's claims and argued for the retention of the existing SARAS arrangements. In doing so, QAS highlighted the financial and other support a number of LHMU's witnesses had received in relation to their participation in particular courses, where the individual's concerned had received reimbursement of 75% of their statutory course fees on the basis their participation in the program was assessed as being "Highly Desirable" under the SARAS policy.
- [360] QAS also took issue with the evidence given by several witnesses for LHMU who referred to other "unnamed course participants" who had allegedly received 100% reimbursement of their course fees, noting that it was impossible to respond to these types of allegations.
- [361] QAS also submitted that the SARAS policy "*recognises that funds are finite and any decision is also to take into consideration the finance available, however employees do have access to the grievance procedure if unhappy with any decision.*". (Exhibit 95, page 41)
- [362] We acknowledge the concerns raised by LHMU, and a number of its witnesses, in relation to the apparent inconsistent application of the SARAS policy in different areas within QAS. At the same time, we acknowledge that all employees do have an entitlement to assistance under the SARAS policy depending upon whether their participation in any particular course is deemed to be "Essential", "Highly Desirable" or "Desirable".
- [363] In the circumstances we have decided that the present arrangements should continue **subject to** several minor amendments.
- [364] In our view, based upon the evidence presented, the SARAS policy needs to be applied in a more consistent manner than is presently the case. The Determination is to include a provision to the effect that all QAS approvals for benefits under the Government's SARAS policy are to be handled, and approved, through a central location. Applications for benefits under the SARAS policy will continue to be submitted by individual employees with a recommendation from the relevant manager as to the level of assistance proposed, to be included with the application. Consideration of all such applications at a single location will help to ensure that a consistent approach is adopted in the approval process.
- [365] Naturally, any employee who might be dissatisfied with the level of assistance approved will continue to be able to challenge such decision through the existing grievance and dispute resolution processes.

#### Travelling and relieving allowances (and other monetary allowances)

- [366] LHMU seeks to maintain the value of relevant monetary allowances by increasing them in line with CPI increases. In the alternative, LHMU proposes that the parties adopt the monetary allowances reflected from time to time in Government Directives.
- [367] For its part, QAS proposes an entirely new "allowances" clause which seems to include a number of provisions which appeared in different parts of previous Certified Agreements, Agreements and the Award. The intention seems to have been to gather all of these monetary allowances into a single clause to make them easier to locate.
- [368] We agree with the general thrust of the provisions proposed by QAS. Indeed, we note that a number of the proposed provisions are agreed between the parties.
- [369] We also share LHMU's concerns that there needs to be some mechanism to ensure that monetary allowances retain their relative value during the life of the Determination.
- [370] In those circumstances, we direct the parties to confer about QAS's proposal and to update all of the monetary allowances at the same time to reflect either CPI movements until 30 June 2010 or current Government Directives if they are more relevant. The Determination is also to include a provision to the effect that monetary allowances reflected in Government Directives should be increased, in the future, in the same manner, and at the same time, as provided for in the relevant Directive.

#### 36 hour week

- [371] The submissions around the consideration of a 36 hour week for QAS employees has not been supported by an in-depth analysis by either party. Were the claim to be seriously pursued, the Commission would have required significant supporting submissions, evidence, costs and re-arrangements to working terms and conditions relative to introducing a shorter week. This has not occurred and there is no need for the Commission to consider the matter further save to state that the claim is refused.

Part-time work

[372] QAS has sought to develop greater flexible working arrangements for its employees. QAS states that the rationale for seeking these arrangements is as follows:

- *"provide a working environment that balances service delivery needs with employees' aspirations and personal circumstances;*
- *build a workforce capable and adaptable to changing demand patterns;*
- *provide a potential reserve capacity to meet competing demands of relief and avoidance of fatigue whilst ensuring full coverage of unpredictable demands and needs of the public;*
- *accommodate educational placements and internships; and*
- *build capacity in remote, low workload communities in an efficient and cost effective manner."* [Exhibit 95, page 105]

[373] LHMU agreed in principle to the proposition posed by QAS. It appears from the submissions made that the parties were working towards an agreed position but that the discussions ceased for no reason which has been put to the Commission.

[374] As a consequence of the non-continuation of these discussions, LHMU put forward a counter-claim. The counter-claim is as follows:

*"Part-Time Employees*

*A part-time employee works a predictable set pattern of ordinary hours as agreed in writing with the employer.*

*The predictable set pattern of ordinary hours may be changed periodically with mutual consent.*

*Part-time employees shall work not less than 20 and not more than 70 ordinary hours per fortnight.*

*All hours worked outside of, or in excess of, the predictable set pattern of ordinary hours shall be paid at overtime rates.*

*Part-time employees are entitled to pro-rata entitlements and conditions of employment as apply to full-time employees.*

*A full-time employee may convert to part-time employment, or a part-time employee may convert to full-time employment, with the consent of the employer.*

*If employees convert from one form of employment to another all accrued entitlements will be maintained and service is continuous.*

*Part-time employees must be provided with equal access to training and promotional opportunities.*

*Casual employees who regularly work in excess of 20 hours per fortnight may request to have their engagement converted to part-time. The employer must not unreasonably refuse such a request."* [Exhibit 3, p. 24]

[375] We are aware that there is little between the parties on this particular point. In our view, the clause proposed by QAS is the more adaptable and workable clause. As such this is the preferred clause and will be incorporated within the Determination.

## **H. FINALISATION OF THE DETERMINATION**

[376] Exhibit 5 in these proceedings records those matters discussed by the parties in the course of their (failed) negotiations for a new enterprise bargaining agreement. In particular, the Exhibit records the matters the parties agreed, those matters which were agreed in principle and those matters where the parties failed to agree.

[377] We hereby direct the parties to confer during the next 21 days to finalise the terms of the Determination to be issued by this Full Bench which is to reflect the outcome of their earlier discussions as well as the various decisions we have made (above) in relation to the contested issues. The parties are also directed to attempt to finalise the wording of those matters they have agreed in principle so that they, too, can be included in the Determination.

- [378] The parties are to report back to this Full Bench at **9.30 a.m. on Tuesday 3 August 2010** about the results of their discussion(s).
- [379] At such report back the parties are directed to be in a position to present arguments in relation to any matters they might have been unable to agree during the course of their discussions.
- [380] The Full Bench reserves the right to settle any such matters without the need to hear any further submissions from the parties based upon what the parties will present at the report back proceedings.
- [381] A final Determination, including brief reasons in relation to any matters not ultimately agreed between the parties, will be issued relatively promptly after the report back proceedings with the Determination to come into effect, except for matters having a different operative date as recorded elsewhere in this Decision, from the date of its issue.
- [382] For clarity, we summarise those matters which will commence operation from a different operative date:

- **From 1 December 2009**

- 4% or \$34 per week, whichever is the greater, as a result of this Full Bench's interim decision on 18 December 2009 (*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) - Report on Decision <http://www.qirc.qld.gov.au>*).

- **From 1 July 2010**

- General increases (except for Non Managerial Scale employees) ranging between 1.07% and 2.64% with Advanced Care Paramedics and Intensive Care Paramedics with more than eight years' service as at that date being entitled to be classified at Pay Point 3, which includes an additional 2.5% and 3.5%, respectively.
- Educators receiving access to the wage increase specified above plus an additional (approximately) 2.5%.
- Isolated Practice Area Paramedics receiving access to the general wage increases specified above plus an additional all purpose payment of 2.5%.

- **From 1 November 2010**

- A general wage increase of 4.0% payable to all classifications.
- ACPs and ICPs with in excess of seven years' service as at that date being able to access the new Pay Point 3.

- **From 1 October 2011**

- A general wage increase of 3.0% payable to all classifications.
- ACPs and ICPs with in excess of six years' service as at that date being able to access the new Pay Point 3.

- **After 1 October 2011**

- ACPs and ICPs will be able to access the new Pay Point 3 as they reach six years' service.

#### **Sick Leave**

- **From 1 July 2010**

- All employees are to have a pro-rata adjustment to their sick leave credit to reflect an increase from 80 hours to 96 hours annual entitlement. By way of example: an employee whose next anniversary for sick leave purpose is on 1 October 2010 will receive an additional credit of four hours on 1 July 2010 and 96 hours on 1 October 2010; an employee whose next anniversary for sick leave purpose is on 1 April 2011 will receive an additional credit of 12 hours on 1 July 2010 and 96 hours on 1 April 2011.

- **After 1 July 2010**

- All employees are to receive an annual sick leave entitlement of 96 hours.

[383] Order accordingly.

D.A. SWAN, Deputy President.

A.L. BLOOMFIELD, Deputy President.

J.M. THOMPSON, Commissioner.

*Hearing Details:*

2008 6, 24, 25 November

2009 5, 6, 7, 8, 11, 12, 13, 14, 18, 19, 20, 21,  
26, 28, 29 May

31 July (Written submissions)

10 August (Written submissions-in-reply)

18 December

2010 3 February (Written responses)

Released: 12 July 2010

*Appearances:*

Mr J. Spreckley, of the Liquor Hospitality and Miscellaneous Union, Queensland Branch, Union of Employees.

Mr M. Hawkins, of the Department of Community Safety (formerly the Department of Emergency Services) and Deputy Commissioner R. Bowles, of the Queensland Ambulance Service.

Mr R. Clarke, of the Department of Justice and Attorney-General (formerly the Department of Employment and Industrial Relations).

## APPENDIX 1

Classification	Rate as at 1/12/2009 (4% or \$34 increase)	New Relativity as at 1/7/2010	New Rate as at 1/7/2010 (to nearest \$10)	4% 1/11/2010 (to nearest \$10)	3 % 1/10/2011 (to nearest \$10)
Ambulance Attendant/Certificate IV Training	\$39,272	82.5	\$39,810	\$41,400	\$42,640
Patient Transport Officer pp1	\$39,272	82.5	\$39,810	\$41,400	\$42,640
Patient Transport Officer pp2	\$42,311	89	\$42,940	\$44,660	\$46,000
Patient Transport Para/Cert IV Qualified	\$47,576	100	\$48,250	\$50,180	\$51,690
Paramedic Student pp1	\$39,272	82.5	\$39,810	\$41,400	\$42,640
Paramedic Student pp2	\$42,311	89	\$42,940	\$44,660	\$46,000
Paramedic Student pp3	\$44,034	92.5	\$44,630	\$46,420	\$47,810
Paramedic Student pp4	\$45,520	96	\$46,320	\$48,170	\$49,620
Paramedic	\$47,576	100	\$48,250	\$50,180	\$51,690
Paramedic Advanced Skills	\$49,371	105	\$50,660	\$52,690	\$54,270
Advanced Care Paramedic pp1	\$50,533	107.5	\$51,870	\$53,940	\$55,560
Advanced Care Paramedic pp2	\$51,797	110	\$53,080	\$55,200	\$56,860
Advanced Care Paramedic pp3*		112.5	\$54,280	\$56,460	\$58,150
Intensive Care Paramedic pp1	\$55,962	118.5	\$57,180	\$59,470	\$61,250
Intensive Care Paramedic pp2	\$58,081	122.5	\$59,110	\$61,470	\$63,310
Intensive Care Paramedic pp3*		126	\$60,800	\$63,230	\$65,130
	* with 8 + years service at 1/7/2010				
	* with 7 + years service at 1/11/2010				
	* with 6 + years service at 1/10/2011				
Communications Officer pp1	\$40,387	85	\$41,010	\$42,650	\$43,930
Communications Officer pp2	\$43,453	91	\$43,910	\$45,670	\$47,040
Communications Officer pp3	\$47,054	99	\$47,770	\$49,680	\$51,170
Communications Officer pp4	\$48,761	102.5	\$49,460	\$51,440	\$52,980
Communications Officer pp5	\$50,604	106	\$51,150	\$53,200	\$54,800
Communications Centre Supervisor Level 1	\$64,755	136	\$65,620	\$68,240	\$70,290
Communications Centre Supervisor Level 2	\$66,674	140	\$67,550	\$70,250	\$72,360
Communications Centre Supervisor Level 3	\$68,581	144	\$69,480	\$72,260	\$74,430
Communications Centre Supervisor Level 4	\$70,497	148	\$71,410	\$74,270	\$76,500
Baby Capsule Fitter	\$34,773	75	\$36,190	\$37,640	\$38,770
Senior Ambulance Officer	\$44,114	92.5	\$44,630	\$46,420	\$47,810
<b>Managerial Scale</b>					
M6 PP1	\$77,338	162.5	\$78,410	\$81,550	\$84,000
M6 PP2	\$79,180	166	\$80,100	\$83,300	\$85,800
M6 PP3	\$81,018	170	\$82,030	\$85,310	\$87,870
M6 PP4	\$82,851	175	\$84,440	\$87,820	\$90,450
M7 PP1	\$86,712	182.5	\$88,060	\$91,580	\$94,330
M7 PP2	\$88,834	187.5	\$90,470	\$94,090	\$96,910
M7 PP3	\$90,961	192.5	\$92,880	\$96,600	\$99,500
M7 PP4	\$93,083	197.5	\$95,290	\$99,100	\$102,070
M8 PP1	\$96,218	202.5	\$97,710	\$101,620	\$104,670
M8 PP2	\$98,095	207.5	\$100,120	\$104,120	\$107,240
M8 PP3	\$99,966	211.25	\$101,930	\$106,010	\$109,190
M8 PP4	\$101,842	215	\$103,740	\$107,890	\$111,130

<b>Classification</b>	<b>Rate as at 1/12/2009 (4% or \$34 increase)</b>	<b>New Relativity as at 1/7/2010</b>	<b>New Rate as at 1/7/2010 (to nearest \$10)</b>	<b>4% 1/11/2010 (to nearest \$10)</b>	<b>3 % 1/10/2011 (to nearest \$10)</b>
<b>Non Managerial Scale</b>					
Level 1 PP 1	\$28,888			\$30,040	\$30,940
Level 1 PP 2	\$30,869			\$32,100	\$33,060
Level 1 PP 3	\$32,852			\$34,170	\$35,200
Level 2 PP 1	\$37,410			\$38,910	\$40,080
Level 2 PP 2	\$38,382			\$39,920	\$41,120
Level 2 PP 3	\$39,418			\$40,990	\$42,220
Level 2 PP 4	\$40,452			\$42,070	\$43,330
Level 2 PP 5	\$41,491			\$43,150	\$44,440
Level 2 PP 6	\$42,525			\$44,230	\$45,560
Level 2 PP 7	\$43,282			\$45,010	\$46,360
Level 2 PP 8	\$44,652			\$46,440	\$47,830
Level 3 PP 1	\$47,474			\$49,370	\$50,850
Level 3 PP 2	\$49,368			\$51,340	\$52,880
Level 3 PP 3	\$51,261			\$53,310	\$54,910
Level 3 PP 4	\$53,129			\$55,250	\$56,910
Level 4 PP 1	\$56,411			\$58,670	\$60,430
Level 4 PP 2	\$58,324			\$60,660	\$62,480
Level 4 PP 3	\$60,243			\$62,650	\$64,530
Level 4 PP 4	\$62,165			\$64,650	\$66,590
<b>Station Officers</b>					
<p>The wage rates of Station Officers will increase from 1 July 2010 to reflect the previously agreed relationship between Station Officers who hold Paramedic, Advanced Care Paramedic and Intensive Care Paramedic qualifications, respectively, and their non-Station Officer counterparts.</p> <p>The parties are to confer within 14 days to agree the actual rates to be paid to Station Officers from 1 July 2010, and beyond, in light of the increases we have determined for other levels of Paramedic (as above).</p>				4% on rates as at 1/7/2010	3 % on rates as at 1/11/2010