

Fair Work Commission  
Level 10, Terrace Tower, 80 William Street  
EAST SYDNEY NSW 2011  
Via email: [AMOD@fwc.gov.au](mailto:AMOD@fwc.gov.au)

16 November 2018

**Re: AM2014/202 Fire Fighting Industry Award 2010**

## **BACKGROUND**

1. A conference between interested parties to the *Fire Fighting Industry Award 2010* (**Award**) was held before Justice Ross on 7 November 2018.
2. Representatives of the Australian Workers' Union (**AWU**) and the United Firefighters Union (**UFU**) attended the conference.
3. At the conference, the Fair Work Commission provided an agenda that discussed three outstanding issues relating to the Award.
4. After indicating their respective positions in relation to these outstanding issues, both the AWU and the UFU undertook to file further written submissions on two of the issues by 16 November 2018.
5. The submissions of the AWU are below.

## **SUBMISSIONS**

### **1. Rate of pay – public sector employees on day work**

6. Clause 22.4 of the Award states:

***“22.4 Day work***

*Employees may be employed on day work in which they may be required to work up to 10 ordinary hours per day, between the hours of 7.00 am*

*and 6.00 pm, Monday to Sunday. If the employer and a majority of affected employees agree, up to 12 ordinary hours per day may be worked.”*

7. Clause 22.4 was inserted into the Award subsequent to a successful application by the Metropolitan Fire and Emergency Services Board (**MFB**) and the Country Fire Authority (**CFA**) to vary the Award to permit public sector employers to employ people on a part-time basis<sup>1</sup>.
8. Also inserted into the Award as a result of the above Decision was clause 10.3, which relevantly states at paragraph (f):

*“(f) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38<sup>th</sup> of the appropriate weekly rate prescribed in clause 15—Minimum wages—public sector.”*

9. The AWU understands that the decision to introduce the part-time provisions for public sector employees in the Award was made to ensure that the Award met the modern awards objective<sup>2</sup>, with specific regard to three considerations<sup>3</sup>: the promotion of social inclusion through increased workforce participation, (particularly by women); the promotion of flexible modern work practices; and the reduction of employment costs<sup>4</sup> (specifically in regard to the prospect of retaining staff as training new staff is considered costly<sup>5</sup>).
10. The resultant amendments to the Award ensured that part-time employees could be employed in the public sector. However, as the Award provision that was inserted to specifically address the hourly rate for part-time public sector employees effectively mirrors the part-time clause for *private* sector employees that already existed in the Award, there is currently some confusion regarding the rate of pay to which a part-time public sector employee is entitled.
11. The AWU submits that the “appropriate weekly rate” referred to in clause 10.3(f) of the Award is the *total weekly wage* for the relevant classification of the part-time public sector employee, found at clause 15.1 of the Award.

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<sup>1</sup> [2016] FWCFB 8025; PR587553

<sup>2</sup> [2016] FWCFB 8025 at [216]

<sup>3</sup> *Fair Work Act 2009*, s.134

<sup>4</sup> [2016] FWCFB 8025 at [140]

<sup>5</sup> *Ibid* at [139]

12. The AWU notes that in the public sector, the basis on which a full-time employee's weekly wage is calculated is according to a 10/14 roster. This is true even for full-time public sector employees not working a 10/14 roster<sup>6</sup>; the Award stating at clause 22.3(d):

*“(d) Full-time employees (other than recruits) not working a 10/14 roster, will receive the same total weekly wage as employees on a 10/14 roster.”*

13. Relevantly, and consistent with at least most part-time provisions in modern awards, the part-time provision in the Award for public sector employees states at clause 10.3:

*“(a) A part-time employee is an employee who:*

*...*

*(iii) receives, on a pro-rata basis, equivalent pay and conditions to those full-time employees who do the same kind of work.”*

14. Consistent with the above, a part-time public sector employee is entitled to a rate of pay that is equivalent to the rate of pay a full-time public sector employee is entitled to for the same kind of work, on a pro-rata basis.

15. Because all full-time employees in the public sector, regardless of roster (except recruits), are entitled to the *total weekly wage* for their respective classification, it follows that any hourly rate for a part-time public sector employee must be based on the relevant *total weekly wage* as set out in clause 15.1 of the Award.

16. The AWU submits that the above conclusion is entirely logical and consistent with the general approach to determining the rate of pay for part-time employees.

17. The AWU notes that the exclusion of recruits from clause 22.3(d) is not relevant to the determination of rates of pay for part-time employees as the Award does not permit recruits to be employed on a part-time basis<sup>7</sup>.

18. The AWU submits that having regard to the specific modern award considerations that the Full Bench in the Decision<sup>8</sup> determined were in favour of introducing part-time provisions for public sector employees covered by the

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<sup>6</sup> [2009] AIRCFB 945 at paragraph [49]

<sup>7</sup> *Fire Fighting Industry Award 2010*, clause 10.1(b)

<sup>8</sup> [2016] FWCFB 8025

Award, it would be inappropriate to conclude that the rate of pay for part-time employees in the public sector is anything other than an hourly rate of pay based on the equivalent *total weekly wage*.

## **2. Definition of overtime – private sector**

19. At the conference, it was noted that the AWU and UFU were in agreement regarding this item, and as a result would jointly propose a clause to be inserted into the Award to determine when overtime rates are payable to private sector shiftworkers not working a 10/14 roster.

20. The clause proposed by the AWU and UFU will replace the current sub-clause 20.3(b)(ii) of the Exposure Draft for the Award, and is as follows:

*“(ii) For a shiftworker not working on a 10/14 roster, overtime is any time required to be worked:*

- in excess of a rostered shift; or*
- in excess of 38 hours per week.”*

Yours Faithfully,



Zachary Duncalfe  
**NATIONAL LEGAL OFFICER**  
**The Australian Workers' Union**