



DECISION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – *Fire Fighting Industry Award 2010*

(AM2014/202)

Fire fighting services

JUSTICE ROSS, PRESIDENT
SENIOR DEPUTY PRESIDENT O'CALLAGHAN
COMMISSIONER WILSON

MELBOURNE, 15 NOVEMBER 2016

4 yearly review of modern awards – Fire Fighting Industry Award 2010 – variation to permit part-time employment in public sector fire services and consequential variations – s.134 modern awards objective – objects of the Fair Work Act 2009 (Cth) – variation made.

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1. Introduction

[1] Section 156 of the *Fair Work Act 2009* (the Act) requires the Fair Work Commission (the Commission) to review all modern awards every four years (the Review). The 122 modern awards are being reviewed in four sequential stages. The *Fire Fighting Industry Award 2010* (the *Fire Fighting Award*) is in Group 2 and this decision deals with some proposed variations to that award in respect of the availability of part-time work and the introduction of a day shift roster.

[2] Clause 10 of the *Fire Fighting Award* states:

‘An employer in the public sector may only employ a person in a classification in this award on a full-time basis. A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.’

[3] Clause 10 confines employment by public sector employers to full-time employment and prevents employment on other bases, including part-time employment. By contrast, clause 11.1 expressly provides that private sector employers may employ a person in a classification specified in the award ‘on a full-time or part-time basis’. Clause 11.4 then defines part-time employment (as referred to in clause 11.1) in the following terms:

‘11.4 Part-time employment

- (a) A part-time employee is an employee who:
 - (i) works less than full-time hours of 38 ordinary hours per week;
 - (ii) has reasonably predictable hours of work; and
 - (iii) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.
- (b) At the time of engagement the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.
- (c) Any agreed variation to the hours of work will be recorded in writing.
- (d) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
- (e) All time worked in excess of the hours as agreed under clause 11.4(b) or varied under clause 11.4(c) will be overtime and paid for at the rates prescribed in clause 26—Overtime.
- (f) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the appropriate weekly rate prescribed in clause 16—Minimum wages—private sector.’

[4] The Metropolitan Fire and Emergency Services Board (MFB) and the Country Fire Authority (CFA) (collectively, the Victorian Fire Services) are seeking to vary the *Fire Fighting Award* to remove the existing prohibition against part-time employment in the public sector, and to make consequential changes to rostering provisions in the Award.

[5] The proposed variation seeks to amend clause 10, to mirror the provisions in clause 11 that apply to private sector employees, where part-time work is permitted. The proposed variation also includes a new clause 22.4 to provide for a day work shift roster, consistent with clause 23.3 of the modern award, which applies to private sector employees. Consequential amendments are proposed to clauses 22.2(a), 22.3, 22.5(b),¹ and 22.8(b) and (e),² and clauses 26.1, 27, and 28.3(a) of the modern award. The terms set out in the draft determination set is out at Attachment 1.

[6] The central issue between the Victorian Fire Services and the United Firefighters' Union of Australia (UFUA) is whether the proposed variations are 'necessary to achieve the modern awards objective', within the meaning of s.138.

[7] The Victorian Fire Services contend that the capacity to offer part-time employment is essential to ensure that the safety net of minimum terms and conditions of employment is fair and relevant. The inclusion of part-time work in the *Fire Fighting Award* is said to be necessary to meet the modern awards objective and the Victorian Fire Services rely on four main propositions in support of the proposed variation:

- (i) Part-time work arrangements are a community standard across the Australian workplace, and form part of the industrial standard in firefighting and emergency services.
- (ii) The Award in its current form does not achieve the modern awards objective because the availability of part-time work is a necessary element of the safety net of fair and relevant terms and conditions.
- (iii) The prohibition against part-time work could have a discriminatory effect.
- (iv) The prohibition against part-time work offends the principles in *Re AEU*.³

[8] It is convenient to note here that for reasons which will become apparent it is unnecessary for us to deal with propositions (iii) and (iv).

[9] The UFUA contends to the contrary – that having regard to the relevant award history and the evidence in the proceedings the variations are *not* necessary to achieve the modern awards objective.

[10] In the event that the Commission decided that it was necessary to vary the *Fire Fighting Award* to provide, in some form, for part-time employment in public sector fire services then the UFUA contended that the award term should be more limited than that sought by the Victorian Fire Services.

[11] We deal first with the legislative context before turning to some broader contextual issues.

2. The Legislative Context

2.1 General

[12] The legislative context for the Review is canvassed in more detail in the *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues Decision*⁴ (the *Preliminary Jurisdictional Issues Decision*), we adopt and apply that decision.

[13] Section 156 of the Act provides that the Commission must conduct a 4 yearly review of modern awards as soon as practicable after 1 January 2014. Subsection 156(2) deals with what must be done in the Review:

‘(2) In a 4 yearly review of modern awards, the FWC:

(a) must review all modern awards; and

(b) may make:

(i) one or more determinations varying modern awards; and

(ii) one or more modern awards; and

(iii) one or more determinations revoking modern awards.

(c) must not review, or make a determination to vary, a default fund term of a modern award.

Note 1: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

Note 2: For reviews of default fund terms of modern awards, see Division 4A.’

[14] Subsection 156(5) provides that in a Review each modern award must be reviewed in its own right, however, this does not prevent the Commission from reviewing two or more modern awards at the same time.

[15] We accept that the requirement in s.156(5) to review each modern award ‘in its own right’, is intended to ensure that the Review is conducted ‘by reference to the particular terms and the particular operation of each particular award rather than by a global assessment based upon generally applicable considerations’.⁵ However, while the review of each modern award must focus on the particular terms and operation of the particular award, this does not mean that the review of a modern award is to be confined to a single holistic assessment of all of its terms.⁶ In these proceedings we are considering whether the *Fire Fighting Award* achieves the modern awards objective in relation to the manner in which it deals (or does not deal) with certain matters relating to part-time employment and rostering arrangements.

[16] In addition to s.156 a range of other provisions in the Act are relevant to the Review: s.3 (objects of the Act); s.55 (interaction with the National Employment Standards (NES)); Part 2-2 (the NES); s.134 (the modern awards objective); s.135 (special provisions relating to modern award minimum wages); Divisions 3 (terms of modern awards) and 6 (general provisions relating to modern award powers) of Part 2-3; s.284 (the minimum wages objective); s.577 (performance of functions and exercise of powers of the Commission); s.578

(matters the Commission must take into account in performing functions and exercising powers); and Division 3 of Part 5-1 (conduct of matters before the Commission).

[17] The general provisions relating to the performance of the Commission's functions apply to the Review. Sections 577 and 578 are particularly relevant in this regard. Section 577 states:

'FWC must perform its functions and exercise its powers in a manner that:

- (a) is fair and just; and
- (b) is quick, informal and avoids unnecessary technicalities; and
- (c) is open and transparent; and
- (d) promotes harmonious and cooperative workplace relations.

Note: The President also is responsible for ensuring that FWC performs its functions and exercises its powers efficiently etc. (see section 581).'

[18] Section 578 states:

'In performing functions or exercising powers, in relation to a matter, under a part of this Act (including this Part), FWC must take into account:

- (a) the objects of this Act, and any objects of the part of this Act; and
- (b) equity, good conscience and the merits of the matter; and
- (c) the need to respect and value the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.'

[19] As stated in s.578(a), in performing functions and exercising powers under a part of the Act (including the Review function under Part 2-3 Modern Awards) the Commission must take into account the objects of the Act and any particular objects of the relevant part. The object of Part 2-3 is expressed in s.134, the modern awards objective. The object of the Act is set out in s.3, which provides, relevantly for present purposes:

'3 Object of this Act

The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:

- (a) providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations;...
- (d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements; and ...'

[20] In conducting the Review the Commission is able to exercise its usual procedural powers, contained in Division 3 of Part 5-1 of the Act. Importantly, the Commission is not bound by the rules of evidence and procedure (s.591) and may inform itself in relation to any matter before it in such manner as it considers appropriate (s.590(1)). Pursuant to those procedural powers the Commission published a [Background Paper](#) on 20 May 2016 to assist the parties. The Background Paper deals with, among other things, the relevant arbitral history; a review of part-time provisions in modern awards; some data on part-time employment generally and a synopsis of some research articles.

[21] The Review is to be distinguished from *inter partes* proceedings. Section 156 imposes an obligation on the Commission to review *all* modern awards and each modern award must be reviewed in its own right. The Review is conducted on the Commission's own motion and is not dependent upon an application by an interested party. Nor is the Commission constrained by the terms of a particular application.⁷ The Commission is not required to make a decision in the terms applied for (s.599) and, in a Review, may vary a modern award in whatever terms it considers appropriate, subject to its obligation to accord interested parties procedural fairness and the application of relevant statutory provisions, such as ss.134, 138 and 578.

[22] The scope of the Review was considered in the *Preliminary Jurisdictional Issues Decision* and the following propositions are drawn from that decision:

- (i) The Review is broader in scope than the Transitional Review of modern awards completed in 2013.
- (ii) In conducting the Review the Commission will have regard to the historical context applicable to each modern award.
- (iii) The Commission will proceed on the basis that *prima facie* the modern award being reviewed achieved the modern awards objective at the time it was made.
- (iv) Variations to modern awards should be founded on merit based arguments. The extent of the argument and material required will depend on the circumstances.

[23] We note here that the historical context applicable to the *Fire Fighting Award* is a matter of contention between the parties. We deal with this dispute later, in section 4. We now turn to the relevance of the 'modern awards objective' to the Review.

2.2 *The Modern Awards Objective*

[24] The modern awards objective applies to the performance or exercise of the Commission's modern award powers, which are defined to include the Commission's functions or powers under Part 2-3 of the Act. The Review function is set out in s.156, which is in Part 2-3 and so will involve the performance or exercise of the Commission's modern award powers. It follows that the modern awards objective applies to the Review.

[25] The modern awards objective is set out in s.134 of the Act. It states:

‘134 The modern awards objective

What is the modern awards objective?

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the modern awards objective.

When does the modern awards objective apply?

(2) The modern awards objective applies to the performance or exercise of the FWC’s modern award powers, which are:

- (a) the FWC’s functions or powers under this Part; and
- (b) the FWC’s functions or powers under Part 2-6, so far as they relate to modern award minimum wages.

Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the minimum wages objective also applies (see section 284).⁷

[26] The modern awards objective is to ‘ensure that modern awards, together with the NES, provide a fair and relevant safety net of terms and conditions’, taking into account the particular considerations identified in paragraphs 134(1)(a) to (h) (the s.134 considerations). The objective is very broadly expressed.⁸ The obligation to take into account the s.134

considerations means that each of these matters, insofar as they are relevant, must be treated as a matter of significance in the decision making process.⁹ No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.

[27] Further, it is not necessary to make a finding that the modern award under review has failed to satisfy at least one of the s.134(1) considerations.¹⁰ As the Full Federal Court said in *National Retail Association v Fair Work Commission*:

‘It is apparent from the terms of s 134(1) that the factors listed in (a)–(h) are broad considerations which the FWC must take into account in considering whether a modern award meets the objective set by s 134(1), that is to say, whether it provides a fair and relevant minimum safety net of terms and conditions. The listed factors do not, in themselves, however, pose any questions or set any standard against which a modern award could be evaluated. Many of them are broad social objectives. What, for example, was the finding called for in relation to the first factor (“relative living standards and the needs of the low paid”)? Furthermore, it was common ground that some of the factors were inapplicable to the SDA’s claim.’¹¹

[28] While the Commission must take into account the s.134 considerations, the relevant question is whether the modern award, together with the NES, provides a fair and relevant minimum safety net of terms and conditions. Fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question. So much is evident from the s.134 considerations themselves, which focus on the perspectives and interests of the employees (e.g. s.134(1)(a) and (da)) and the employers (e.g. s.134(1)(d) and (f)).¹²

[29] In the context of s.134(1) we think the word ‘relevant’ is intended to convey that a modern award should be suited to contemporary circumstances. As stated in the Explanatory Memorandum to what is now s.138:

‘527 ... the scope and effect of permitted and mandatory terms of a modern award must be directed at achieving the modern awards objective of a fair and relevant safety net *that accords with community standards and expectations*.’¹³ (emphasis added)

[30] Section 138 of the Act is also relevant, it emphasises the importance of the modern awards objective in these terms:

‘A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.’

[31] To comply with s.138 the terms included in modern awards must be ‘necessary to achieve the modern awards objective’.

[32] What is ‘necessary’ in a particular case is a value judgment, taking into account the s.134 considerations to the extent that they are relevant having regard to the submissions and evidence directed to those considerations.¹⁴

[33] In the present proceedings the UFUA contends that, *prima facie*, the *Fire Fighting Award* achieved the modern awards objective at the time it was made and at that time the Commission had made a determination that part-time employment should *not* be a feature of public sector fire services. It is in this context that the UFUA submits that: ‘... the Commission’s jurisdiction under s.156 is necessarily focussed on changed circumstances’¹⁵.

[34] The UFUA’s submission – and in particular the use of the language of jurisdiction – was the subject of some modification during the course of closing oral argument.¹⁶ The basis on which the proposition is now put is not precisely clear. If it is put that the historical context is generally relevant to the exercise of the Commission’s discretion in the Review, then we accept that proposition – though as we shall see the historical context to these proceedings is of limited relevance.

[35] However, to the extent the UFUA is contending that in order to enliven its discretion to vary a modern award in the Review the Commission must first be satisfied that since the making of the modern award there has been a change in circumstances such that the modern award is no longer meeting the modern awards objective, we reject that proposition. It is not supported by the terms of s.156 or the statutory context.

[36] The relevance of the historical context was the subject of some debate in the proceedings which led to the *Preliminary Jurisdictional Issues* decision. In that decision the Full Bench said:

‘The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a ‘stable’ modern award system (s.134(1)(g)). The need for a ‘stable’ modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI’s submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.

In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Part 10A of the *Workplace Relations Act* 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see Item 4 of Schedule 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Part 10A process is, in a number of important respects, identical or similar to the modern awards objective in s.134 of the FW Act.¹⁷ In the Review the Commission will proceed on the basis that *prima facie* the modern award being reviewed achieved the modern awards objective at the time that it was made.

Although the Commission is not bound by principles of *stare decisis* it has generally followed previous Full Bench decisions. In another context three members of the High Court observed in *Nguyen v Nguyen*:

“Where a court of appeal holds itself free to depart from an earlier decision it should do so cautiously and only when compelled to the conclusion that the earlier decision is wrong. The occasions upon which the departure from previous authority is warranted are infrequent and exceptional and pose no real threat to the doctrine of precedent and the predictability of the law: see *Queensland v The Commonwealth* (1977) 139 CLR 585 per Aickin J at 620 et seq.”¹⁸

While the Commission is not a court, the public interest considerations underlying these observations have been applied with similar, if not equal, force to appeal proceedings in the Commission.¹⁹ As a Full Bench of the Australian Industrial Relations Commission observed in *Cetin v Ripon Pty Ltd (t/as Parkview Hotel) (Cetin)*²⁰:

“Although the Commission is not, as a non-judicial body, bound by principles of *stare decisis*, as a matter of policy and sound administration it has generally followed previous Full Bench decisions relating to the issue to be determined, in the absence of cogent reasons for not doing so.”²¹

These policy considerations tell strongly against the proposition that the Review should proceed in isolation unencumbered by previous Commission decisions. In conducting the Review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so.²²

[37] It is apparent from the above extract that the adoption of the *prima facie* position that the modern award being reviewed achieved the modern awards objective at the time it was made is but an example of the general proposition that previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so.

[38] As observed by the Full Bench in the *Preliminary Jurisdictional Issues decision*, while it is appropriate to take account of previous decisions relevant to a contested issue arising in the Review it is necessary to consider the context in which those decisions were made. The particular context may be a cogent reason for not following a previous Full Bench decision, for example:

- the legislative context which pertained at that time may be materially different from the Act;
- the extent to which the relevant issue was contested and, in particular, the extent of the evidence and submissions put in the previous proceeding will bear on the weight to be accorded to the previous decision; or
- the extent of the previous Full Bench’s consideration of the contested issue. The absence of detailed reasons in a previous decision will be a factor in considering the weight to be accorded to the decision.

[39] It seems to us that the proposition advanced by the UFUA may seek to elevate what are policy considerations which favour generally following previous Full Bench decisions to the level of a statutory requirement. Such a view is erroneous. It seeks to place a constraint on the discretion conferred by s.156(2)(a)(i) which is not warranted by the terms of s.156 or the relevant statutory context and purpose. Such an approach would impose a datum point (when the modern award was made) against which any proposal to vary the award is to be measured. If adopted that test would require the proponent of a variation to establish that there has been a material change in circumstances since the modern award was made. There is no such express or implied requirement in s.156. Further, the qualified discretion to vary modern award minimum wages for work value reasons (see s.156(3) and (4)) does not contain a datum point requirement and it would be somewhat incongruous to imply such a requirement into s.156(2)(a)(i).

[40] To unnecessarily focus on whether there has been a change since the *Fire Fighting Award* was made would obfuscate the Commission's primary task in the Review, determining whether the modern award achieves the modern awards objective. To adopt such a test would be to add words to the test of s.156 in circumstances where it is not necessary to do so in order to achieve the legislative purpose. The adoption of the proposed test would also be an unwarranted fetter on the exercise of what the legislature clearly intended would be a discretionary decision.

[41] We now turn to deal with some general contextual issues relevant to the matters before us.

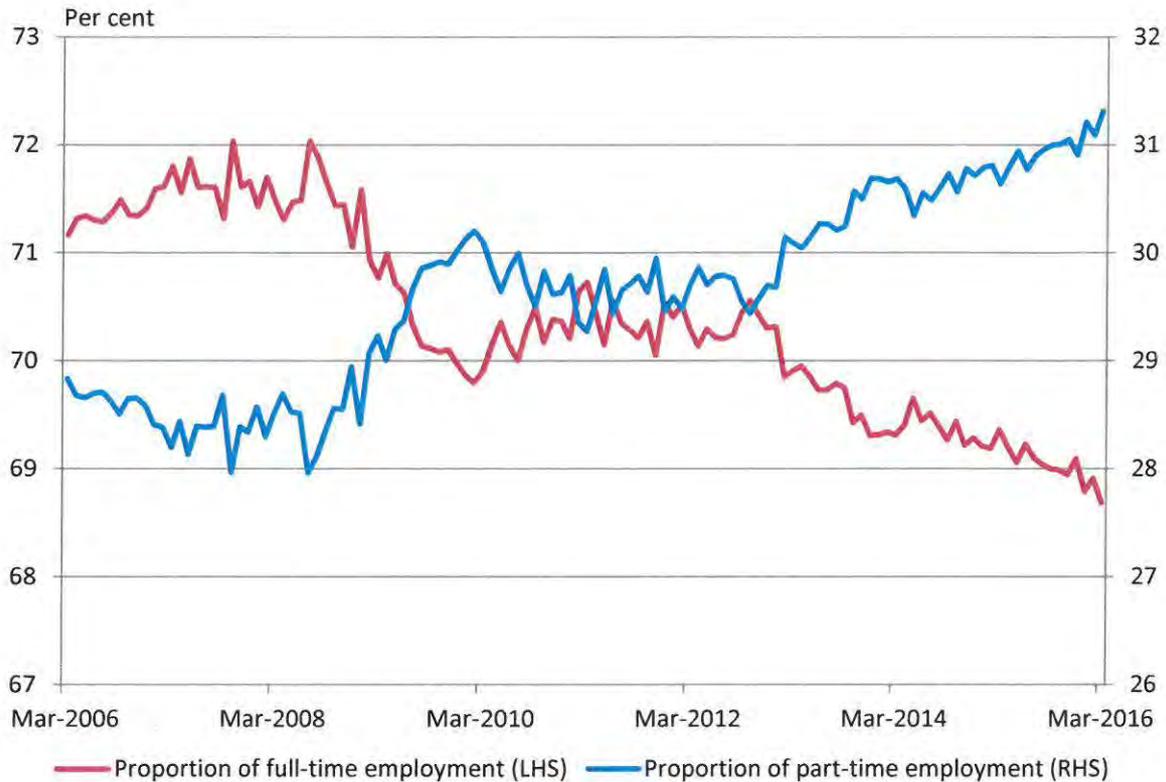
3. The General Context

3.1 Trends in part-time work

[42] Definitions of part-time employment vary depending on the data source used. According to the ABS, part-time employment is defined as when a person usually works less than 35 hours a week, in all jobs.²³ Full-time employment is defined by the ABS as when a person usually works 35 hours or more in a week, in all jobs. In contrast, the OECD defines part-time employment as when a person usually works less than 30 hours a week, in their main job.²⁴

[43] Changes in the proportions of full-time and part-time employment of total employment are shown in Chart 1. Over the last decade, full-time employment decreased from 71.2 per cent of total employment in March 2006, to 68.7 per cent in March 2016. This was offset by an increase in the proportion of part-time employment, which rose from 28.8 per cent of total employment in March 2006 to 31.3 per cent of total employment in March 2016.

Chart 1: Proportions of full-time and part-time employment, March 2006 to March 2016

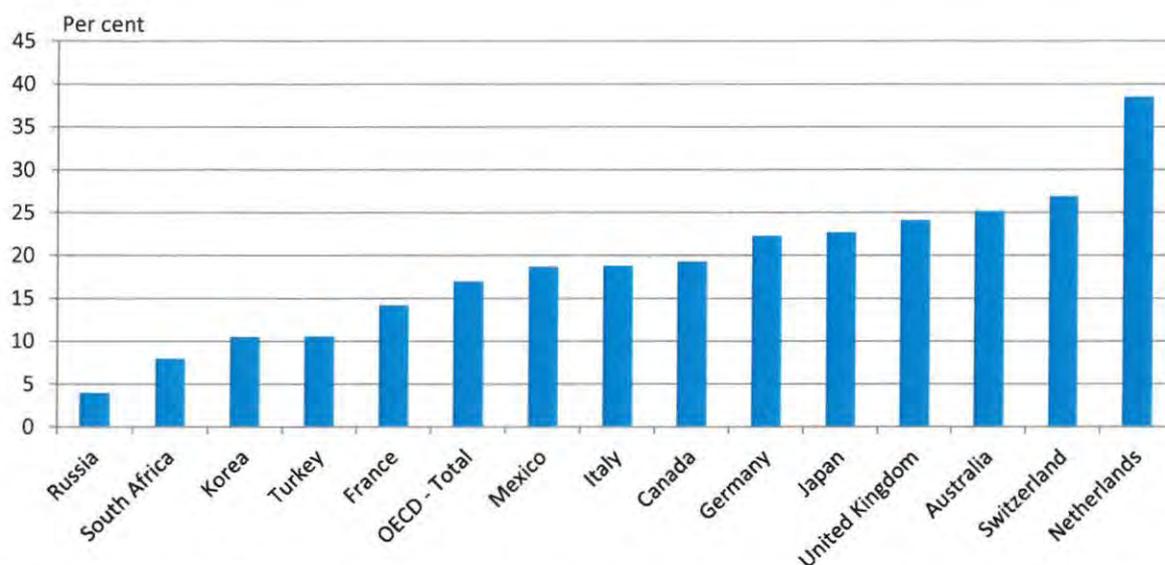


Note: Data used are seasonally adjusted.

Source: ABS, *Labour Force, Australia*, Mar 2016, Catalogue No. 6202.0.

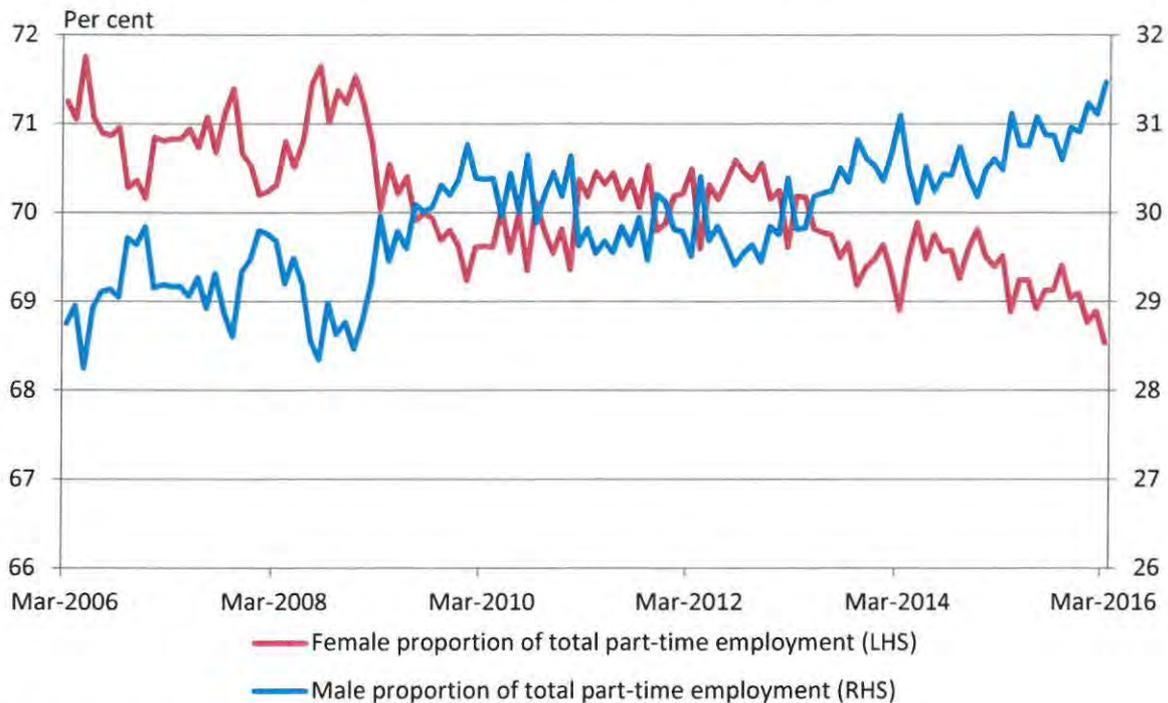
[44] The proportions of part-time employment to total employment from selected countries in the OECD in 2014 are shown in Chart 2. Australia had the third highest proportion of part-time employment (25.2 per cent) out of all countries in the OECD, with only Switzerland (26.9 per cent) and the Netherlands (38.5 per cent) having higher proportions of part-time employment. When limited to G20 countries, Australia had the highest proportion of part-time employment. Compared with the OECD average, the proportion of part-time employment in Australia was 8.2 percentage points higher.

Chart 2: OECD part-time employment proportions of total employment, 2014, selected countries



Source: OECD, *Labour Market Statistics: Full-time part-time employment*, OECD Employment and Labour Market Statistics (database), 2014.

[45] Chart 3 shows the changes in the gender composition of part-time employment. While females account for the majority of part-time employment, the proportion of part-time employment made up by females has decreased over the past decade, falling 2.8 percentage points to 68.5 per cent in March 2016. This was offset by a rise in the proportion of male part-time employment, which increased by 2.8 percentage points to 31.5 per cent in March 2016. Although the levels of both part-time employment of males and females increased over the past decade, the increase was greater for males.

Chart 3: Male and female proportions of total part-time employment

Note: Data used are seasonally adjusted.

Source: ABS, *Labour Force, Australia*, Mar 2016, Catalogue No. 6202.0

[46] Table 1 presents the composition of part-time employment by age group, from March 2006 to March 2016. The proportion of part-time employment comprised of 25–34 year olds and those over 55 years increased over this period. The greatest increase reported was among those over 65 years, whose proportion of part-time employment increased by 3.3 percentage points.

[47] However, the top three age groups that account for the highest proportions of part-time employment (15–24 years, 35–44 years and 45–54 years) experienced a decline over the past 10 years, with the largest decrease occurring among 35–44 year olds, where the proportion of part-time employment decreased by 3.6 percentage points.

Table 1: Proportion of part-time employment by 10-year age groups, March 2006 and March 2016

Age group	March 2006	March 2016	Percentage point change
	(%)	(%)	(ppt)
15–24 years	27.4	26.4	–0.9
25–34 years	15.4	16.8	1.4
35–44 years	21.6	17.9	–3.6
45–54 years	18.9	17.0	–1.9

55–64 years	13.2	14.9	1.8
65 years and over	3.6	6.9	3.3

Note: Data used are original.

Source: ABS, *Labour Force, Australia, Detailed - Electronic Delivery*, Mar 2016, Catalogue No. 6219.0.55.001.

[48] Table 2 presents the share of part-time employment as a proportion of total part-time employment for each industry.

[49] Industries with the greatest increase in part-time employment were Accommodation and food services, Health care and social assistance and Public administration and safety. Industries with the greatest decrease in part-time employment were Retail trade, Manufacturing and Agriculture, forestry and fishing.

Table 2: Proportions of part-time employment by industry, February 2006 and February 2016

Industry	February 2006 (%)	February 2016 (%)	Percentage point change (ppt)
Agriculture, forestry and Fishing	3.8	2.6	-1.2
Mining	0.1	0.1	0.0
Manufacturing	5.0	3.6	-1.4
Electricity, gas, water and waste services	0.3	0.4	0.1
Construction	5.0	4.1	-0.9
Wholesale trade	2.1	1.6	-0.5
Retail trade	18.8	17.3	-1.5
Accommodation and food services	11.4	13.7	2.4
Transport, postal and warehousing	3.2	3.7	0.5
Information media and telecommunications	1.5	1.2	-0.3
Financial and insurance services	2.4	2.1	-0.3
Rental, hiring and real estate services	1.9	1.5	-0.4
Professional, scientific and technical services	5.5	6.1	0.6
Administrative and support services	4.9	5.0	0.1
Public administration and safety	3.2	3.9	0.7
Education and training	8.9	9.2	0.3
Health care and social assistance	15.4	16.9	1.5
Arts and recreation services	2.8	2.9	0.1
Other services	3.9	4.0	0.2

Note: Data used are original.

Source: ABS, *Labour Force, Australia, Detailed - Quarterly*, Mar 2016, Catalogue No. 6219.0.55.003.

[50] Table 3 presents the proportion of part-time employment by occupation. Five occupations experienced decreases in their share of total part-time employment, while it remained constant for Managers. Only Community and personal service workers and Professionals had increases in their proportions of total part-time employment.

Table 3: Proportions of part-time employment by occupation, February 2006 and February 2016

Occupation	February 2006	February 2016	Percentage point change
	(%)	(%)	(ppt)
Managers	5.6	5.6	0.0
Professionals	16.3	17.9	1.6
Technicians and trades workers	6.7	6.4	-0.3
Community and personal service workers	14.1	18.6	4.5
Clerical and administrative workers	19.7	16.5	-3.2
Sales workers	19.2	17.7	-1.5
Machinery operators and drivers	3.4	3.0	-0.4
Labourers	15.0	14.3	-0.7

Note: Data used are original.

Source: ABS, *Labour Force, Australia, Detailed - Quarterly*, Mar 2016, Catalogue No. 6219.0.55.003.

3.2 Research

[51] A list of research articles concerning part-time work is set out at Attachment 4.

[52] The research suggests that the proportion of part-time workers has risen steadily in Australia,²⁵ with part-time workers more likely to be women,²⁶ and more likely to work in low skilled occupations compared with full-time workers.²⁷ However, the growth of part-time work has increased for both male and female workers,²⁸ with Healy (2014) stating that a 'distinctive feature of the Australian labour market is a much higher prevalence of part time employment for both sexes'.²⁹

[53] Female workplace participation rates have increased in proportion to the growing availability of part-time employment.³⁰ Barriers to the increased availability of quality part-time work include gendered workplace cultures resistant to change, managerial skill deficits in managing part-time workers, and poor administrative processes and systems built around the template of full-time jobs.³¹

[54] Research is varied on the physical and cognitive effects of part-time work. One study suggests that when working hours are less than around 25 hours a week for employees over 40 years of age, there is a positive correlation with improved cognitive functioning.³² However, the paper by McDonald et al tentatively indicates that part-time emergency personnel, such as fire rescue workers, exhibit higher body mass index and body fat levels and

lower aerobic capabilities and strength compared to full-time personnel, which may affect rates and patterns of on-duty injuries.³³ We note here that the UFUA relies on the MacDonald et al study in opposing the variations sought by the Victorian Fire Services.

[55] The MacDonald paper is a literature review of six papers that compared physical characteristics and performance of part-and full-time tactical personnel. Of the six papers assessed, three reviewed physiological and performance measures of military personnel, and three concerned firefighters – two studies of male and female personnel in the Swedish Fire & Rescue Service, and one of male trainee firefighters as well as male and female civilians in the United Kingdom.³⁴ One of the Swedish studies involved a questionnaire and required subjects to self-assess their fitness levels; the other measured physiological responses using laboratory tests. The Swedish study that conducted laboratory tests found ‘no overall statistically significant differences between part-time and full-time firefighters’.³⁵

[56] The United Kingdom study assessed the fitness of recruit firefighters before and after the removal of a cardiorespiratory fitness standard as an entry standard to the UK Fire and Rescue Service, and found that lowering the standard led to worse health outcomes, regardless of the nature of employment.³⁶

[57] The authors of the MacDonald paper state that ‘caution should be applied in the interpretation and application of these findings to practice’³⁷ and, in any event, the publication of a single paper, studying a mix of professions, none of which include Victorian or Australian firefighters, that are described by the authors as containing ‘non-conclusive’ results, is of limited assistance.

[58] We also note that the UFUA relies on the June 2008 Productivity Commission Staff Working Paper.³⁸ The findings cited by the UFUA are not causative but correlative, and offered without explanation. The UFUA acknowledge that the conclusions in the Productivity Commission paper, and the MacDonald paper, are non-conclusive and not directed at Victorian firefighters, or emergency services in Australia at all.

3.3 *Part-time work and modern awards*

[59] The existing part-time provisions in many modern awards have their genesis in the Stage 2 implementation of the 1994 *Family Leave Test Case*³⁹ decision. In that decision the AIRC considered the issue of inserting part-time work provisions into federal awards,⁴⁰ noting that:

‘It is apparent from the evidence that part-time employees are an integral part of the labour force. Part-time employment is one of the ways in which families reconcile their work and family commitments. The evidence shows an employee preference for part-time work, particularly among women.’⁴¹

[60] The AIRC concluded that:

‘Upon application appropriate part-time work provisions should be inserted into awards which do not currently provide for part-time work. We have formed this view as a general proposition on equity and consistency grounds.’⁴²

[61] The AIRC set out the matters that should be taken into account in the development of ‘fair and equitable part-time work provisions’, namely:⁴³

- the need to ensure that part-time employees are provided pro-rata entitlements to benefits available to full-time employees, such as equitable access to training and career path opportunities;
- part-time work needs to be clearly distinguished from casual employment, and accordingly have regularity in working hours; and
- part-time work clauses in awards should include anti-discrimination provisions to ensure part-time employees are not discriminated against in relation to employment opportunities, training, personal development and career advancement.

[62] The table at Attachment 2 identifies the clauses providing for part-time work in all 122 modern awards, and whether or not those clauses contain detailed parameters around accessing part-time work entitlements. Four key elements which are generally present in the terms of the 116 modern awards which provide for part-time employment, namely, that a part-time employee:

- is engaged to work less than 38 hours per week;
- has reasonably predictable hours of work;
- receives pro rata pay and conditions; and
- has a written agreement as to the pattern of work.

[63] Of the 116 modern awards that permit part-time employment, only seven contain *some* additional qualification or industry-specific matter relating to part-time work.⁴⁴ The six modern awards which do *not* provide for part-time employment are:

- (i) *Road Transport (Long Distance Operations) Award 2010* (but does provide for casual employment);
- (ii) *Maritime Offshore Oil and Gas Award 2010* (but provides for relief or project-based employment);
- (iii) *Seagoing Industry Award 2010* (but does provide for casual employment);
- (iv) *Stevedoring Industry Award 2010* (but does provide for casual employment, and for less than full engagement);
- (v) *Mobile Crane Hiring Award 2010* (but does provide for casual employment, and part-time work for casual employees); and
- (vi) *Professional Diving Industry (Industrial) Award 2010* (but does provide for casual employment).

[64] In relation to awards (i)–(iv), it is likely that the nature of the work means that employees are away from home for long periods of time creating a practical impediment to the operation of part-time employment.

4. The *Fire Fighting Award*

[65] The *Fire Fighting Award* covers ‘national system’ employers and employees throughout Australia in the ‘fire fighting industry’, as defined.⁴⁵

[66] Relevantly, by virtue of sections 14, 30D and 30N of the Act, ‘national system employers’ include constitutional corporations, the Commonwealth and Commonwealth authorities, body corporates incorporated in a Territory (and persons who carry on an activity in a Territory of Australia)⁴⁶ and any State that has referred its legislative powers to the Commonwealth, but only to the extent those powers have been so referred (Referring States).⁴⁷ ‘National system employees’ similarly include individuals employed by one of the abovementioned employers.⁴⁸ Currently, Victoria is the only Referring State to have referred its powers with respect to State public sector employees to the Commonwealth (subject to certain limitations).⁴⁹

[67] It is common ground that the MFB and CFA are public entities under the *Public Administration Act 2004* (Vic) and that the public sector provisions contained in the *Fire Fighting Award* apply to the MFB and the CFA as public sector employers. The *Fire Fighting Award* also covers the MFB and the CFA by virtue of the fact that both entities are constitutional corporations.⁵⁰

[68] The *Fire Fighting Award* does not cover employees that are excluded from award coverage under the Act, or employers and employees covered by a modern enterprise award/instrument or a state reference public sector modern award/transitional award.⁵¹ It is common ground that the only public sector fire services currently covered by the *Fire Fighting Award* are those operating in Victoria and the territories. State industrial instruments currently govern the terms and conditions of employment for firefighters that are employed by public sector fire services operating in Queensland, New South Wales, Tasmania, South Australia and Western Australia. The parties in the present proceedings are not aware of whether any of these public sector fire services are, like the MFB and CFA, constitutional corporations and therefore covered by the *Fire Fighting Award*.

[69] Given the above, it appears that there are four public sector fire services currently covered by the *Fire Fighting Award*, that is:

- (a) the MFB;
- (b) the CFA;
- (c) the Australian Capital Territory Fire & Rescue (ACTFR); and
- (d) the Northern Territory Fire & Rescue Service (NTFRS).⁵²

[70] The MFB is a statutory authority constituted under the *Metropolitan Fire Brigades Act 1958* (Vic) (the MFB Act). Its functions include providing for fire suppression and fire

prevention services in the metropolitan district; providing for emergency prevention and response services in the metropolitan district; and carrying out any other functions conferred on the Board.⁵³

[71] The MFB currently employs approximately 1,909 firefighters who provide a 24 hour response to emergencies across the Melbourne metropolitan fire district. The MFB also provides community protection, education services and emergency response from strategically located fire stations and specialist departments.

[72] The CFA is a statutory body set up under the *Country Fire Authority Act 1958* (CFA Act) and it carries out similar services in regional and country areas and Melbourne's outer urban areas to those provided by the MFB in metropolitan areas. The CFA has a general duty to take all necessary steps for the prevention and suppression of fires, the protection of life and property in case of fire and the general control of all stations and brigades in the country area of Victoria.⁵⁴

[73] Currently, the CFA has approximately 1,025 operational employees, 879 of which are full-time career firefighters based at one of the CFA's 34 integrated stations. The CFA also has approximately 55,341 volunteers; 35,793 of which are operational volunteers.

[74] Each of the four public sector fire services currently covered by the *Fire Fighting Award* is covered by an enterprise agreement. MFB operational employees who are covered by the modern award are covered by the *Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement 2010* (MFB Agreement). The terms and conditions of CFA operational employees who are covered by the modern award are covered by the *Country Fire Authority/United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010* (CFA Agreement).

[75] Each of these agreements provides that employees cannot be employed on a part-time basis other than by agreement with the UFUA.⁵⁵ The agreements also provide for a process of extensive consultation between the MFB and the CFA, and the UFUA, before any change to the employment relationship is implemented.⁵⁶

[76] Recently, the *Emergency Management Act 2013* (Vic) established Emergency Management Victoria which is tasked with, among other things, maximising the ability of the emergency management sector to work together. The MFB and CFA increasingly work together, and with other emergency services agencies, to ensure maximum and effective use of systems and resources. Smaller private sector employers also provide discrete services throughout Victoria with employees who are also covered by the Award.

[77] Part-time work in the ACTFR is permitted in the circumstances prescribed by clause 12, Section J, and clause 147 of the *ACT Public Service Act Fire & Rescue Enterprise Agreement 2013–2017*.

[78] Part-time work in the NTFRS is permitted in the circumstances prescribed by clauses 42.15(a)(ii) and 57 of the *Northern Territory Public Sector Fire and Rescue Service 2011–2013 Enterprise Agreement*.

[79] Other states and territories have their own publicly funded fire fighting services as well as a number of private operators. The nature of the fire fighting services in each state is broadly similar to those provided in Victoria. However, the manner in which employees of the various fire fighting services are employed, and their terms and conditions of employment, differ with respect to part-time work. We deal with those differences later.

[80] As mentioned earlier, the historical context relevant to the *Fire Fighting Award* is a matter of contention in these proceedings.

[81] The *Fire Fighting Award* was created by the Australian Industrial Relations Commission (AIRC) during the award modernisation process. Before the commencement of the modern Award, there was no firefighting services industry award operating across Australia. In Victoria, the *Victorian Firefighting Industry Employees Interim Award 2000* (VFIE 2000 Award) covered most employees and employers in the firefighting industry throughout Victoria, including the MFB and CFA and, from 1 January 2005, private sector employers. The predecessor award to the VFIE 2000 Award was the *Victorian Firefighting Industry Employees Interim Award 1993* (VFIE 1993 Award).

[82] The VFIE 1993 Award only provided for employees to be engaged on a 38 hour week, over a roster cycle of eight weeks, being two 10 hour day shifts followed by two 14 hour night shifts. This shift pattern is known as the 10/14 Roster. The 10/14 Roster has been the standard method for arranging the work of most firefighters in the various public sector fire services in Australia, although most state fire fighting services provide some flexibility in hours of work.

[83] Item 49(8)(b) of Schedule 5 of the *Workplace Relations and Other Legislation Amendment Act 1996* (the WROLA Act) required the Commission to review all awards during the interim period to determine that, where appropriate, each award “contains provisions enabling the employment of regular part-time employees”. A similar provision was contained in Item 51(7)(b) of Schedule 5 of the WROLA Act that applied after the end of the interim period.

[84] The AIRC set down a number of principles to be considered during the Award Simplification process. Relevantly, principle 4 stated:

‘4. When varying an award pursuant to these principles, the Commission will seek to ensure that at the end of the process the award has the following characteristics:

...

- where appropriate, it includes provisions enabling the employment of regular part-time employees; ...⁵⁷

[85] The inclusion of part-time provisions in the VFIE 1993 Award was considered during the Award Simplification process.

[86] As part of the Award Simplification process, the UFUA made an application to vary the VFIE 1993 Award pursuant to Item 49 of the WROLA Act.⁵⁸ The issues in contention

were unable to be resolved as at 30 June 1998 (the end of the 'interim period') and consequently became the subject of Commission review pursuant to Item 51 of the WROLA Act.⁵⁹

[87] The CFA initially filed submissions proposing to vary the 10/14 roster provisions to allow for the introduction of part-time work,⁶⁰ but following a consultative process the parties filed a joint submission in relation to, among other things, the inclusion of part-time provisions, which said:

'The parties consider that it is not appropriate to employ part-time firefighters or officers in the CFA.'⁶¹

[88] A further joint submission was subsequently filed which expanded on this position:

'B. PART-TIME EMPLOYMENT

8. The parties submit that, having regard to the nature of the industry and of the firefighting occupation, it is not appropriate to employ part-time firefighters and officers in the CFA. Accordingly, the Commission need make no variation to the Award in this regard.'⁶²

[89] The oral submissions advanced in respect of this issue were confined to the following statement by counsel for the UFUA:

'So far as regular part-time employment is concerned, the Commission can see at the bottom of page 2, it is succinctly stated, that the parties have the view that it is not appropriate to employ part-time firefighters and officers in the CFA.'⁶³

[90] The decision⁶⁴ handed down by Commissioner Hingley dealt primarily with matters which remained in contention and did not address the inclusion of part-time employment.

[91] The award was varied and titled the *Victorian Firefighting Industry Employees Interim Award 2000* (the VFIE 2000 Award). The VFIE 2000 Award provided that the ordinary working hours for employees to be 38 hours per week, over a cycle of eight weeks, with two 10 hours days shifts followed by two 14 hour night shifts.⁶⁵

[92] On 28 March 2008 the Minister for Employment and Workplace Relations signed an award modernisation request pursuant to s.576C(1) of the *Workplace Relations Act 1996* (the WR Act). The WR Act required the Commission (then known as the Australian Industrial Relations Commission (AIRC)) to complete an award modernisation process in accordance with the award modernisation request.

[93] As part of this process, the AIRC established a list of priority industries and occupations and laid down a timetable for the making of modern awards in relation to those industries and occupations. Firefighting services were dealt with in Stage 4 of the modernisation process.

[94] During the award modernisation process, the AIRC considered both the hours of work provisions for public sector employment and the inclusion of part-time provisions in the *Fire Fighting Award*.

[95] The hours of work provisions in the VFIE Award were ultimately included in the *Fire Fighting Award*. However, the Full Bench of the AIRC noted the flexibility afforded to the private sector and the restrictions placed on the public sector with regard to hours of work and rostering, and stated that these matters 'should be revisited at a time when it is practicable to canvass more extensive argument on these issues'.⁶⁶

[96] In making the *Fire Fighting Award*, the AIRC considered the hours of work provisions for public sector employment as well as the inclusion of part-time provisions. The Award Modernisation Full Bench ultimately included the existing hours of work provisions contained in the VFIE Award, including the application of the 10/14 roster, but noted the discrepancy in the flexibility afforded to the private sector:

'We acknowledge that the 10/14 roster is the standard method for arranging the work of most firefighters in the various public sector fire services in Australia. It is workable in a large fire service which operates fire stations on a 24 hours a day, seven days a week basis. However, we are not persuaded that a public sector employer covered by a modern award for the fire fighting industry should be prevented from employing firefighters except on a 10/14 roster. So far as the private sector is concerned, we note the submissions of Transfield which raise the realistic possibility that its key client may require day shift only fire and rescue services. The modern award makes provision for that possibility in the private sector and allows a greater degree of flexibility in hours of work and rostering in that sector. In the public sector it permits employment on bases other than the 10/14 roster provided that the employee receives no less than they would have received on the 10/14 roster. We have also included "special roster" provisions adapted from the part of the Victorian Firefighting Award that applies to the Country Fire Authority (CFA) on the basis that this was one way in which this can be achieved. It may be that the hours of work and rostering provisions in the modern award should be revisited at a time when it is practicable to canvass more extensive argument on these issues.'⁶⁷

[97] The AIRC's initial exposure draft of the *Fire Fighting Award* provided for part-time work in both the public and private sectors. Submissions were made on behalf of a number of major fire fighting services throughout Australia (including the MFB and CFA) in support of the inclusion of such provisions. The CFA ultimately elected not to pursue its application for the inclusion of part-time work in the Award. In its decision regarding the making of the *Fire Fighting Award*, the AIRC stated:

'The exposure draft [of the Fire Fighting Industry Award] made provision for part-time employment. The UFUA made strong submissions against that position and contended that the Commission has already made a "determination" that part-time employment is not appropriate in this industry. That contention appears to be based on the award simplification decision by Commissioner Hingley in relation to the Victorian Firefighting Award. As appears from the UFUA's own submissions, part-time employment had not been part of that award and the CFA made application for the inclusion of part-time employment as part of the award simplification proceedings for that award. The UFUA filed evidence arguing against the CFA's application. However, ultimately, the CFA abandoned its claim so that there was a consent submission

*against the inclusion of part-time employment. Commissioner Hingley's decision makes no mention of part-time employment. In those circumstances, we do not see that decision as constraining us from considering for ourselves whether part-time employment is appropriate in this industry and we are far from persuaded that part-time employment should not be available. We note that while it is not provided for in Victoria it is provided for in several other States. Nevertheless, in the award we have made we have limited the availability of part-time employment to the private sector reserving for further consideration the issue of whether part time employment should also be available in the public sector.'*⁶⁸ (emphasis added)

[98] The Victorian Fire Services contend that the Commission, including in any of its predecessor forms, has not considered the merits of including part-time employment in the *Fire Fighting Award*, or its predecessors. The UFUA disputes this proposition and submits that the appropriateness of part-time employment was considered by Hingley C in the award simplification process.

[99] We accept that in conducting a review of the *Victorian Firefighting Industry Employees Interim Award 1993* Hingley C was required to consider the inclusion of provisions enabling the employment of regular part-time employees. Further, it may be inferred from the Commissioner's decision, and the terms of the VFIE 2000 Award, that the Commissioner decided not to extend part-time employment to the public sector.

[100] As we have mentioned, in conducting the Review the Commission will have regard to the historical context applicable to each modern award, including any previous decisions dealing with a contested issue. The relevance of previous Commission decisions was considered in the *Preliminary Jurisdictional Issues Decision*:

'In conducting the Review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so.'

⁶⁹

[101] The particular context in which a previous decision is made is plainly relevant to the weight to be attached to that decision. In our view very little weight should be attached to the decision of Hingley C.

[102] It is apparent from a review of the award simplification proceedings before Hingley C that the issue of part-time employment in the public sector was not ultimately in issue in those proceedings and that two of the major parties (the CFA and UFUA) had agreed that no variation to the award was needed in this regard. The consent position adopted by the CFA and UFUA is particularly significant given the nature of the award which was the subject of the award simplification proceedings.

[103] In times past, awards – such as the *Victorian Fire Fighting Industry Employees Interim Award 1993* – were made in settlement of industrial disputes and the respondent parties to such awards were the parties to the relevant industrial dispute. The nature of modern awards under the Act is quite different from awards under previous legislative regimes⁷⁰ and they perform a very different function to that performed by awards of the past.

[104] Modern awards are not made to prevent or settle industrial disputes between particular parties. Rather, the purpose of modern awards, together with the National Employment Standards and national minimum wage orders, is to provide a safety net of fair, relevant and enforceable minimum terms and conditions of employment for national system employees (see ss 3(b) and 43(1)). Further, there are no named respondents to modern awards. Modern awards apply to, or cover, certain persons, organisations and entities (see ss.47 and 48), but these persons, organisations and entities are not ‘respondents’ to the modern award in the sense that there were named respondents to awards in the past. The nature of this shift is made clear by s.158 which sets out who may apply for the making of a determination making, varying or revoking a modern award. Under previous legislative regimes the named respondents to a particular award would automatically have the requisite standing to make such applications; that is no longer the case.⁷¹

[105] The shift in the nature and purpose of awards means that the weight to be given to the views of interested parties is, generally speaking, now less than it was previously. This is relevant because it is apparent from the award ultimately made by Hingley C that he must have attached substantial weight to the consent position put by the CFA and UFUA, given that he adopted the consent position put and that the Commissioner’s decision and the transcript of the proceedings do not reveal any other basis for the retention of the prohibition on part-time employment in the public sector fire services. The significance accorded to the views of major parties is a relevant contextual consideration when determining the weight to be attached to the Commissioner’s decision.

[106] The subsequent observations of the Award Modernisation Full Bench are also relevant. The relevant passages from the Full Bench’s decision are set out (at [96]–[97]) and the short points to be drawn from these passages are:

- (i) the Full Bench did not regard Hingley C’s decision as constraining it from considering for itself whether part-time employment was appropriate in the fire fighting industry;
- (ii) the Full Bench was ‘far from persuaded that part-time employment should not be available’; and
- (iii) while the award made limited the availability of part-time employment to the private sector, the Full Bench clearly reserved the issue of whether part-time employment should also be available in the public sector ‘for further consideration’.

[107] The UFUA contends that the observations of the Award Modernisation Full Bench ‘do nothing to undermine the *prima facie* position that the Modern Award being reviewed achieved the Modern Award’s objectives at the time it was made’.⁷² The UFUA submits that:

‘... in the 2009 Modern Award review proceedings, the Full Bench ... considered that part time employment was not then appropriate for the public sector – yet took a different approach to the private sector ... the Commission could only have arrived at such a bifurcated outcome following detailed considerations, including consideration of the industrial histories.’⁷³

[108] We do not find this submission persuasive – it ignores the clear statement by the Full Bench that it was ‘far from persuaded’ that part-time work should not be available and the fact that it expressly reserved this issue ‘for further consideration’.

[109] There is one further aspect of the historical context that is said to be relevant to our consideration of this issue.

[110] As noted in paragraph [75], part-time work for operational firefighters is not permitted by the CFA and MFB Agreements. In particular, in 2010, the MFB and CFA each agreed that ‘for reasons including the welfare and safety of employees covered by this agreement’ the Victorian Fire Services would not employ part-time or casual firefighters.⁷⁴

[111] The UFUA contends that the CFA and MFB Agreements cannot be excluded from the relevant historical context as the position adopted by the parties evidences the historical practice:

‘In the present case, it is manifest that the industrial parties have, on a number of occasions, turned their minds to the matter and actively determined against such proscription in the public sector ... by entering into the current Enterprise Agreements governing the industry. In these instances, the language chosen (e.g. in clause 29 of the CFA Agreement and clause 37 of the MFB Agreement) was that of prohibition of part-time employment (something that the Applicants acknowledge is unique to this industry).’⁷⁵

[112] In support of its contention that the terms of the CFA and MFB Agreements cannot be ignored the UFUA relies on *Equuscorp Pty Ltd and Anor v Glengallan Investments Pty Ltd*,⁷⁶ *NT Power Generation Pty Ltd v Power & Water Authority*⁷⁷ and *Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd*.⁷⁸

[113] For our part we acknowledge that the CFA and MFB Agreements form part of the historical context, but we attach little weight to the position taken by the Victorian Fire Services in the context of enterprise bargaining. We agree with the following observation by the Full Bench in the *June 2015 4 yearly review of modern awards – Annual leave decision*:⁷⁹

‘... we are conscious of the need to exercise care when assessing the provisions in enterprise agreements in the context of a review of modern awards. Enterprise agreements are negotiated by the parties and approved by the Commission against various statutory criteria. The legislative context relevant to the review of modern awards is quite different.’

[114] Nor do the authorities relied on by the UFUA advance their position. It may be readily accepted that parties are bound by their agreements (*Equuscorp*) and that the law attaches significance to the execution of contractual documents (*Toll*). But what is important here is the fact that the CFA and MFB Agreements are the product of enterprise bargaining – they do not have the same status as previous Commission decisions dealing with the relevant subject matter.

[115] To the extent that the UFUA contends that the CFA and MFB Agreements constitute admissions (relying on *NT Power Generation*) and that ‘it was critical for the Fire Services to

explain why they have resiled from their positions, because the Commission's jurisdiction under s.156 is necessarily focussed on changed circumstances',⁸⁰ we reject that submission. We have already dealt with (and rejected) the suggestion that 'changed circumstances' must be shown before the *Fire Fighting Award* may be varied, further, these are not *inter parties* proceedings and hence any previous 'admissions' or statements by a party are of little moment. The issue for us is whether it is necessary to vary the *Fire Fighting Award* to permit part-time employment in public sector fire services. The determination of that issue turns, ultimately, on the evidence and material before us and the position taken by the CFA and MFB in the context of enterprise bargaining is of little relevance.

[116] To summarise, in our view, and contrary to the UFUA's submission, the Commission has not previously given detailed consideration to the issue of part-time employment in public sector fire services and, further, the Award Modernisation Full Bench specifically reserved this issue 'for further consideration'. We attach little weight to the position taken by the Victorian Fire Services in the context of enterprise bargaining.

[117] The historical context and the level of consideration given by the Commission to the issue under consideration is a matter that can be taken into account in the present proceeding for the purpose of considering the *prima facie* position that the *Fire Fighting Award* meets the modern awards objective. The UFUA did not contend to the contrary.⁸¹ In our view the historical context operates to weaken the *prima facie* position and invites consideration of whether it is necessary to vary the *Fire Fighting Award* to permit part-time employment in the public sector. We reject the UFUA's contention⁸² that our consideration of this issue should commence from the position that part-time employment in the public sector is not appropriate.

[118] It is clear that in the Award Modernisation decision the Full Bench was 'far from persuaded' that part-time employment should not be available to public sector fire services and it reserved that issue for future consideration. The time for such consideration is now.

5. Consideration

[119] As mentioned earlier, the Victorian Fire Services are seeking to vary the *Fire Fighting Award* to remove the existing prohibition against part-time employment in the public sector and to make some consequential changes to rostering arrangements.

[120] The variations sought are plainly terms which *may* be included in a modern award. Section 139(1) provides, relevantly:

'A modern award may include terms about any of the following matters:...

(b) types of employments, such as...regular part-time employment...

(c) arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variations to working hours;...'

[121] Section 138 provides that a modern award may include terms that it is permitted to include 'only to the extent necessary to achieve the modern awards objective'.

[122] The Victorian Fire Services contend that the capacity to offer part-time employment (with consequential changes to rostering arrangements) is essential to ensure that the *Fire Fighting Award* provides a 'fair and relevant minimum safety net of terms and conditions'.

[123] The Victorian Fire Services called 12 witnesses in support of their proposed variation to the *Fire Fighting Award*:

- Lucinda Nolan, Chief Executive Officer, CFA.⁸³
- Joseph Buffone, Chief Officer, CFA.⁸⁴
- Peter Rau, Chief Officer, MFB.⁸⁵
- Michael Werle, Director, Human Resources, MFB.⁸⁶
- Kirstie Schroder, Director, Operational Learning and Development, MFB.⁸⁷
- Kate Harrap, Acting Executive Director Learning and Volunteerism, CFA.⁸⁸
- Alex Tasominos, Acting Director, Workplace Relations, Victoria Police.⁸⁹
- Gregory Leach, Deputy Chief Officer, MFB.⁹⁰
- Steve Warrington, Deputy Chief Officer, CFA.⁹¹
- Bruce Byatt, Deputy Chief Officer – Readiness and Response, CFA.⁹²
- David Youssef, Deputy Chief Officer and Regional Director, North West Metro Region, MFB.⁹³
- Malcolm Connellan, Chief Superintendent of Fire & Rescue NSW, Chief of Staff for the Commissioner of Fire & Rescue NSW. Since April 2015 has acted as the Director Human Resources for FRNSW.⁹⁴

[124] It is contended that the above evidence demonstrates the following propositions.

- (i) Clause 10 of the Award does not promote flexible modern work practices or the efficient and productive performance of work, contrary to s.134(1)(d).
- (ii) The proposed variation is likely to promote social inclusion through increased workforce participation, particularly of women.
- (iii) There is support at very high levels of the emergency services sector for the introduction of part-time work to the Award safety net.

- (iv) The capacity to offer part-time work is an essential element of contemporary (i.e. relevant) minimum employment standards in the community at large, and in the emergency services sector.

[125] As we have mentioned, the Commission's primary task in the Review is to determine whether the modern award in question achieves the modern awards objective. The modern awards objective is to 'ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions', taking into account the s.134(1)(a) to (h) considerations.

[126] Given the way in which the case was put by the Victorian Fire Services it is convenient to begin with a consideration of the potential impact of the proposed variations on employment diversity within the Victorian Fire Services and workforce performance generally.

[127] There is an evident lack of gender and age diversity within the Victorian Fire Services. As observed in the October 2015 *Report of the Victorian Fire Services Review (the Fire Services Review Report)*:

'Both CFA and MFB remain dominated by Anglo-Saxon men of a certain age...the numbers of operational women in Victoria's fire services are particularly low and both organisations lag behind the State's other emergency services in terms of women's participation...There are no women in uniformed command roles and only a handful in executive leadership positions.'⁹⁵

[128] The profile of the MFB's workforce is set out in Mr Werle's evidence.⁹⁶ The MFB's workforce is overwhelmingly male and over 45 years of age. Only 70 (or 3.46 per cent) of the MFB's 1944 operational employees are women. Almost 58 per cent of operational employees are over 45.

[129] The profile of the CFA's workforce is similar. It employs 879 career firefighters of whom 29 (or 3.3 per cent) are women and about two thirds are over 35 years of age.⁹⁷ The lack of flexible work options has been identified as a barrier to diversity across the CFA.⁹⁸

[130] Flexible employment arrangements – including the availability of part-time work – are an important element in creating a diverse workplace. As Ms Thomas – Acting Executive Direction People Culture, CFA, put it:

'Based on my experience working in human resources for over 20 years, my assessment is that the ability to work part-time is important in a modern workplace because it promotes diversity in the workforce by allowing persons with particular needs (for example, those with parent/caring responsibilities, nearing retirement age or who are returning to work after injury) the ability to access more flexible working arrangements. These reasons supporting the availability of part time work apply as much to the CFA as any other modern-day employer.'⁹⁹

[131] The growing availability of part-time and flexible employment in Australia is associated with an increase in female labour force participation over the 2000s.¹⁰⁰ Similar associations emerge in the international literature.¹⁰¹

[132] The introduction of part-time employment in Victoria Police has also been associated with an increase in female operational employees. In 2000, Victoria Police employed 9,594 operational employees of whom 1,409 (or 14.69 per cent) were women. At that time there were 243 part-time employees. The incidence of part-time employment has grown steadily since, as has the number and proportion of female operational employees. As at 1 January 2016, Victoria Police employed 14,824 operational employees of whom 3,754 (33.91 per cent) were women, and 910 worked part-time.¹⁰²

[133] A number of the witnesses called by the Victorian Fire Services highlighted the benefits of providing access to more flexible working arrangements. Such arrangements could provide a more flexible transition to retirement; assist in caring responsibilities and facilitate a better 'work/life balance'. As Ms Schroder put it:

'As things currently stand in the MFB, there are a large number of firefighters who are close to retirement age due to major recruitment activity in the 1980s.

The ability to offer a more flexible transition to leaving the service might be very attractive to employees reaching retirement. It could also be beneficial to the organisation because the MFB would be better able to manage workforce planning and the loss of such extensive knowledge and skills would be more gradual, therefore lessening the potential impact on the organisation and our service to the community.

Other employees who may benefit from more flexible work options would be employees with small children, parents wishing to return from a period of parental leave, single parents and employees with responsibilities for the care of elderly parents.

Additionally of course it could also be attractive to firefighters who just wanted to achieve a better work/life balance.'¹⁰³

[134] Similar observations were made by Mr Werle.¹⁰⁴

[135] Ms Schroder's observations as to the *potential* benefits of providing more flexible working arrangements are consistent with the *actual* experience of organisations which have introduced such arrangements. In the course of his evidence Mr Leach dealt with the introduction of part-time work within Ambulance Victoria, noting that:

'While the majority of employees engaged on a part-time basis were women returning to work after a period of parental leave, part time arrangements were also utilised by employees who had ill family members or other personal circumstances and employees transitioning into retirement.'¹⁰⁵

[136] We accept that the variation of the *Fire Fighting Award* to permit part-time employment and more flexible rostering arrangements is likely to facilitate increased female workforce participation and hence promote gender diversity.

[137] Further, we accept the general proposition that workforce diversity has a positive impact on performance. As observed in the *Fire Services Review Report*:

‘There is overwhelming evidence of the significant and positive contributions brought to an organisation by a diverse workforce’¹⁰⁶

[138] Similarly, as Mr Lapsley put it, on the basis of his experience in emergency management:

‘Flexibility, whether it is reflected in work hours, location or other arrangements, makes organisations more sustainable and able to adapt to change. Importantly, it also enables organisations to attract and retain talent and build capability and a workforce that is able to work smarter and be more effective. It is critical to maximising productivity and building a high performance work culture.’¹⁰⁷

[139] We also accept that the introduction of flexible working arrangements – including the availability of part-time work and more flexible rostering arrangements – is likely to assist in the retention of trained operational firefighters, with a consequent saving in employment costs. As Mr Buffone – Chief Office of the CFA – put it:

‘It costs the CFA about \$120,000 to train a recruit firefighter. Recruits attend a 19 week course, and are then allocated to a platoon and a station. With each year of service, the value of that employee to the CFA increases. It is in the CFA’s interest to retain as many employees as possible and the availability of part-time work would further that objective by providing a means for those who might otherwise cease employment with the CFA to continue in employment. For example, part-time work could be a valuable option for employees returning to work from injury, those struggling with mental health issues and those with family/carer responsibilities, all of whom may wish to continue working in an operational capacity but are unable to work full-time. Part-time arrangements may also benefit employees transitioning to retirement who may want to gradually reduce their hours of work over a period of time.’¹⁰⁸

[140] Returning to the s.134 considerations, we are satisfied that varying the *Fire Fighting Award* to permit part-time employment in the public sector (with other consequential changes) will:

- promote social inclusion through increased workforce participation, (particularly by women) (s.134(1)(b));
- promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)); and
- reduce employment costs (s.134(1)(f))

[141] Other than s.134(1)(b) – ‘the need to encourage collective bargaining’ – the remaining s.134 considerations are not relevant to the determination of the matter before us. We now turn to s.134(1)(b).

[142] At present, the *Fire Fighting Award* does not permit part-time employment in the public sector. The relevant enterprise agreements permit part-time work, with the agreement of the UFUA. It seems to us that varying the *Fire Fighting Award* to permit part-time employment (with some consequential changes to rostering provisions to facilitate such employment) will encourage collective bargaining in respect of this issue. The current award

terms provide little incentive for the UFUA to bargain in respect of this issue – it can simply rely on what is effectively an award prohibition on part-time employment in the public sector. Accordingly, we are satisfied that varying the *Fire Fighting Award* in the manner described will ‘encourage collective bargaining’, within the meaning of s.134(1)(b).

[143] It is also convenient to note here that, as mentioned previously, s.578(a) requires that we take into account the objects of the Act. Section 3(d) is particularly relevant in this context:

‘3. Object of this Act

The object of this Act is to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by:...

(d) assisting employees to balance their work and family responsibilities by providing for flexible working arrangements’

[144] The variation of the *Fire Fighting Award* to permit part-time employment in the public sector fire services (with some consequential changes to rostering provisions to facilitate such employment) would assist employees to balance their work and family responsibilities. Such a variation would be consistent with the objects of the Act.

[145] While the Commission must take into account the s.134 considerations, the relevant question is whether the modern award, together with the NES, provides ‘a fair and relevant minimum safety net of terms and conditions’. Fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question and the descriptor ‘relevant’ is intended to convey that a modern award should be suited to contemporary circumstances.

[146] The UFUA submits that the variations sought are not necessary to achieve the modern awards objective. In the alternative, the UFUA submits that a more limited variation should be made, consistent with the draft determination set out at Attachment 1. The UFUA called 13 witnesses in support of its position:

- Malcolm Robert Hayes, Operational Firefighter, CFA, Senior Station Officer, Mildura Fire Station.¹⁰⁹
- Alan Maurice Quinton, Operational Firefighter, MFB, Assistant Chief Fire Officer Fire Safety.¹¹⁰
- Michael Lia, Operational Firefighter, CFA, Senior Station Officer at Hallam.¹¹¹
- Daniel Brett Gatt, Operational Firefighter, MFB. Commander, Operations Southern District B Platoon.¹¹²
- Kenneth Leslie Brown, Assistant Chief Fire Officer, MFB.¹¹³

- Bradley Ivan Quinn, Commander and Commander Operational Communications.¹¹⁴
- Cory Woodyatt, Senior Station Officer at Melton Fire Station, CFA.¹¹⁵
- Patrick Geary, Firefighter, CFA, Operations Officer and acting officer in charge of the Corio Station.¹¹⁶
- Gerald (Archie) Conroy, Operational Firefighter, CFA.¹¹⁷
- Glenn Raymond Veal, Senior Station Officer, MFB, Sunshine Fire Station.¹¹⁸
- John Kennett Radford, Operational Firefighter, CFA, Senior Station Officer and Traralgon Fire Station.¹¹⁹
- Michael Anthony Martin, Structural Firefighting Instructor at the rank of station officer, MFB.¹²⁰
- Barry Thomas, Firefighter (Corio Fire Station), Operations Officer, CFA.¹²¹

[147] The findings of fact sought by the UFUA are set out at Annexure A to the UFUA's Final Outline of Submissions dated 7 June 2016. We do not propose to canvass each of the issues identified by the UFUA witnesses but rather adopt the UFUA's summary of that evidence, as follows:

(i) [The UFUA's witnesses] oppose the introduction of part-time employment on the basis that the manner in which firefighting has been performed in Victoria involves working in close knit teams and undertaking the vast majority of training on station and on shift in those teams. Because of the inherent danger in the job, team members depend upon one another in a manner which is distinguishable from almost every other industry (including other emergency services). In circumstances where the employers are unable to articulate how part-time employment will operate, there is a blanket opposition to inroads being made into the *status quo* by introducing *carte blanche* part-time employment.

(ii) If, despite the UFUA's opposition to the Application, the Commission were to introduce some qualification to clause 10 of the Modern Award, then it is the view of the vast majority of UFUA witnesses that part-time employment should only be introduced:

- (a) above minimum crewing requirements (to guarantee safety and welfare);
- (b) as part of the 10/14 rostering arrangements (for example, by way of a job sharing scheme); and
- (c) for specific purposes (such as return to work, and maternity leave).¹²² (footnotes omitted)

[148] The essence of the UFUA's evidentiary case is that the introduction of part-time work and rostering flexibility would compromise firefighter proficiency and skills acquisition and maintenance, with consequent adverse effects upon the welfare and safety of employees and operational effectiveness.

[149] If the UFUA's evidentiary case was accepted then the matters raised would plainly be relevant to our assessment of the proposed variation to the *Fire Fighting Award*. In particular, if it were shown that the proposed variation would have an adverse impact on firefighter safety then that would be a consideration which would tell strongly against making the proposed variation. However, as will become evident shortly, we are not persuaded that the variation of the modern award to permit part-time work in the public sector fire services (and other consequential amendments) will give rise to the adverse consequences asserted by the UFUA.

[150] It is convenient to deal first with the asserted adverse impact on operational effectiveness. It is submitted that in terms of performance and safety the Victorian Fire Services can make a strong claim to being industry leaders in Australia. The UFUA witnesses gave evidence opposing what they consider to be major inroads into a system which has delivered such outstanding results.

[151] Mr Brown referred to the MFB's operational effectiveness in the course of his evidence:

'I take it you're not suggesting that these different arrangements allowing for part-time work and the operation of a 24-hour roster mean that in New South Wales, for example, they're operating an unsafe system of firefighting?---All I can say to that, I know the Metropolitan Fire Brigade has got the highest performing service in the country. We contain fires to room of the origin in 90 per cent of the times, so what we're doing must be right, and we do it safely. We limit the number of fire fatalities to, I think it's three or four it's been this year, whereas other countries around the world have, you know, like Canada - Ontario lose between 100 and 130 people a year in fire-related fatalities, so we're doing something right here. We're the best performing.

So your claim that the MFB is the best performing - - ----That's the Productivity Commission's report.

It's the Productivity Commission's report?---Yes. It's not my - - -

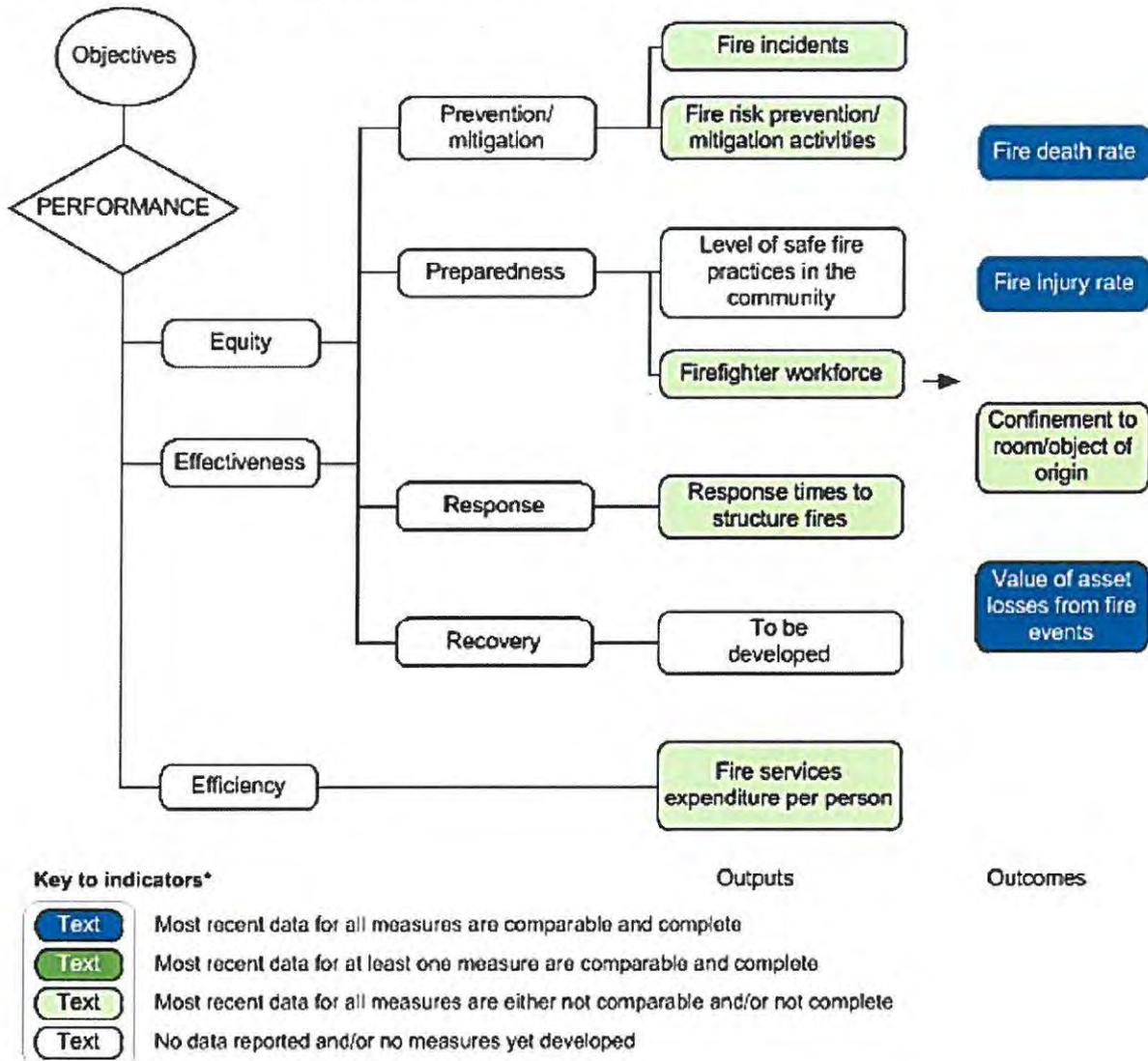
No, just let me ask you a question. So your evidence that MFB is the best performing, as you've just outlined, you base that claim on what basis?---On what we do, the 10/14 system, the team work that we do, our response times, and how we aggressively attack fires to confine to room of origin.

Is your claim that MFB's the best performing based upon any data or analysis?---Yes, it's based on the Productivity Commission report.¹²³

[152] The Productivity Commission Report to which Mr Brown refers is the Report on Government Services 2016 (ROGS 2016).¹²⁴ This report is said to be the basis for Mr Brown's evidence that the MFB is 'the highest performing service in the country'.

[153] ROGS 2016 sets out a performance indicator framework for Australia fire services,¹²⁵ though there is no single universally accepted indicia for fire services' performance.

Figure D.9 Fire events performance indicator framework



[154] The performance indicator results for fire events are summarised in Table D.3 from ROGS 2016.¹²⁶

Table D.3 Performance indicator results for fire events^{a, b}

	NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
<u>Equity and effectiveness — prevention/mitigation indicators</u>									
Fire incidents									
Fire incidents attended by fire service organisations per 100 000 people, 2014-15									
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)									
no.	408	373	400	443	422	669	220	1 154	413
<i>Source:</i> Attachment table 9A.14									
Accidental residential structure fires per 100 000 households, 2014-15									
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)									
no.	95.2	113.4	46.9	60.2	73.6	112.9	89.1	51.4	84.5
<i>Source:</i> Attachment table 9A.15									
Level of safe fire practices in the community									
Estimated percentage of households with a smoke alarm/detector, 2014-15									
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)									
%	94.4	97.2	94.9	na	na	na	na	80.0	na
<i>Source:</i> Attachment table 9A.23									
<u>Equity and effectiveness — preparedness indicators</u>									
Firefighter workforce									
Number of firefighting personnel (FTE) per 100 000 people, 2014-15									
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)									
no.	54.4	80.4	52.9	42.7	52.3	59.4	90.5	115.9	60.5
<i>Source:</i> Attachment table 9A.24									
<u>Equity and effectiveness — response indicators</u>									
Response times to structure fires									
State-wide response times to structure fires, 2014-15									
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)									
Including call taking time, 90th percentile									
min.	14.1	10.9	12.3	15.2	11.7	17.7	11.0	23.2	na
Excluding call taking time, 90th percentile									
min.	13.2	9.5	11.6	13.6	14.0	16.3	9.0	15.1	na
<i>Source:</i> Attachment tables 9A.27									
<u>Efficiency indicators</u>									
Fire services expenditure per person									
Fire service organisations' expenditure per person, 2014-15									
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)									
\$	131.63	214.31	129.96	145.61	134.85	157.24	211.64	220.13	156.42

Table D.3 (continued)		NSW	Vic	Qld	WA	SA	Tas	ACT	NT	Aust
Outcome indicators										
Fire death rate										
Fire death rate, per million people, 2013										
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)										
no.	4.5	4.0	4.9	2.8	4.8	–	2.6	4.2	4.3	
Source: Attachment table 9A.6										
Fire injury rate										
Rate of hospital admissions due to fire injury, per 100 000 people, 2013-14										
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)										
no.	15.1	12.0	19.2	19.3	28.6	15.4	9.6	78.3	17.2	
Source: Attachment table 9A.9										
Confinement to room/object of origin										
Proportion of building fires confined to room of origin, all ignition types, 2014-15										
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)										
%	68.3	71.8	69.5	65.9	66.2	60.4	73.4	94.0	na	
Source: Attachment table 9A.10										
Proportion of building and other structure fires confined to room of origin, all ignition types, 2014-15										
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)										
%	80.4	78.8	83.9	73.6	72.7	72.2	85.7	94.0	na	
Source: Attachment table 9A.11										
Value of property losses from fire events										
Value of fire event household insurance claims per person, 2014-15										
Most recent data for this measure are comparable and complete, subject to caveats (chapter 9)										
\$	17.44	20.21	21.52	13.27	31.41	63.11	12.21	15.73	20.38	
Source: Attachment table 9A.12										

[155] In terms of the data cited by Mr Brown, in 2013 Victoria had a fire death rate of 4.0, compared to the national average of 4.3. But these figures are subject to annual fluctuations. In the decade between 2003–2013 (leaving aside the Black Saturday fires in 2009), Victoria's fire death rate ranged from 3.7 to 6.7 and in 2006 to 2008 Victoria's fire death rate was higher than NSW.

[156] While Victoria has very good rates of confining fires to the room of origin, the rate in 2014–15 was 71.8 per cent (not 90 per cent as asserted by Mr Brown). Further, ROGS 2016 notes that a high or increasing proportion of structure fires confined to the room of origin is desirable and Victoria's performance, as measured by this indicator, has been *declining* in recent years. In 2012–13 some 75.3 per cent of fires were confined to their room of origin – falling to 73.5 per cent in 2013–14 and falling further to 71.8 per cent in 2014–15.¹²⁷ Indeed

on this measure Victoria's fire services were out-performed by the ACT and NT fire services (with rates of 73.4 and 94.0 per cent respectively).

[157] It is also apparent from Mr Brown's evidence that he is seeking to draw a causal connection between the MFB's performance and the existing system of work – full-time employment on the 10/14 roster. The empirical basis for the asserted causal connect is undisclosed and we reject the proposition advanced. There is no basis for the asserted correlation between the ROGS 2016 performance data and the employment and rostering arrangements in the various fire services.

[158] It is also relevant to observe that Victoria consistently has the highest, or among the highest, 'fire services organisations expenditure per person' of any fire service.¹²⁸ It is not unreasonable to assume that a high level of performance may be causally connected to the expenditure of resources, a point acknowledged in the ROGS 2016 report:

'Expenditure per person is employed as a proxy for efficiency. All else being equal, lower expenditure per person represents greater efficiency. However, efficiency data should be interpreted with caution. For example:

- high or increasing expenditure per person may reflect deteriorating efficiency. Alternatively, it may reflect changes in aspects of the service (such as improved response), increased resourcing for fire prevention or community preparedness, or the characteristics of fire events (such as more challenging fires)
- low or declining expenditure per person may reflect improving efficiency. Alternatively, it may reflect lower quality responses or less challenging fires.'¹²⁹

[159] We now turn to the other evidentiary propositions advanced by the UFUA. There are three particular aspects of the UFUA's evidentiary case that warrant specific comment.

(i) Teamwork and the 10/14 roster

[160] A number of the UFUA witnesses,¹³⁰ in one way or another, suggest that under the existing 10/14 roster employees are familiar with and trust in their fellow firefighters, that this would not be achieved if they were to work on-shift with part-time employees and that this in turn is linked to health and safety issues on the fireground.

[161] The UFUA witnesses gave evidence that teamwork was essential to firefighting, and that working in teams on the 10/14 roster was necessary to build trust and confidence among members of the team. The introduction of a new rostering system has the potential to impact on skills acquisition and maintenance, and therefore the 'welfare and safety of employees'.¹³¹ Part-time work and work on the day roster was opposed on this basis. For example, Mr Brown's evidence was that:

'It's because on the 10/14 roster they actually live together, they drill together, the train together, they exercise together, they do everything together. They eat together, they build a very strong team. When they go out on the frontline they're the first attack principal people, so they're the people that are on the end of the hose that go into the burning building and that.'¹³²

[162] A number of the witnesses called by the Victorian Fire Services disputed the UFUA's evidence. Mr Buffone, Chief Officer of the CFA, said:

'In my own experience in the CFA, the Victorian State Emergency Service (SES) and at Emergency Management Victoria (EMV), working with other emergency services personnel, including those I did not know, has never been an issue.

It is common for firefighters to have to work alongside people they do not know. This happens on a daily basis. There are numerous examples of where this occurs including:

- (a) within the CFA, career firefighters and volunteers will work alongside each other on a daily basis either as part of an integrated station or when attending an incident;
- (b) in strike teams, a number of CFA crews from different stations will attend an incident and work together; and
- (c) with the introduction of EMV and the heightened focus on working with other emergency services agencies, operational employees will attend major incidents where they are required to work with employees from the MFB and other emergency services such as the SES.

Based on my experience, when I and others have been required to work with people with whom we were not familiar, there has been no difference in the performance and outcomes of the team, nor any greater incidence of safety issues arising out of these types of scenarios. It ultimately comes down to the right systems being in place with clear objectives and good leadership.¹³³

[163] Similar views were expressed by Warrington;¹³⁴ Byatt;¹³⁵ and Youssef.¹³⁶

[164] The short point put by the Victorian Fire Services witnesses is that firefighters frequently work with firefighters they do not know and that this practice does not compromise health and safety.

[165] Three further matters are relevant to the assessment of the concerns raised by the UFUA's witnesses.

[166] First, there is no suggestion that part-time employees would not work in teams, or would not be members of existing teams. We are not persuaded that there is anything inherent to part-time work arrangements which would preclude part-time workers working as a member of a team.

[167] Second, the proposition that the 10/14 roster was the best method of ensuring trust and confidence among firefighters is undermined by the evidence of the UFUA witnesses themselves, many of whom do not work on the 10/14 roster but who undertake operational firefighting roles when required. Of the six UFUA witnesses employed by the MFB, four do not work on the 10/14 roster,¹³⁷ and Mr Gatt, who currently works on the 10/14 roster, has spent considerable time working on the special administrative duties roster, otherwise referred

to as ‘day shift’. Of the seven UFUA witnesses employed by the CFA, four do not work on the 10/14 roster.¹³⁸

[168] Despite their ‘day worker’ status, these witnesses agreed that when turning out as required, including in strike teams and in large-scale emergencies such as the Hazelwood mine fire, they were able to perform their role safely and effectively. None felt that their skills and abilities were compromised by working on the day shift, and none had ever received or heard of any complaints from their colleagues that working alongside non-10/14 firefighters was endangering the trust and confidence necessary to safely and effectively do their job.¹³⁹

[169] In light of the evidence of these witnesses, the proposition that the full-time work on the 10/14 roster is *necessary* to ensure trust and confidence is unsustainable.

[170] Finally, as to the proposition that ‘trust and confidence’ is generated by familiarity with colleagues, it has always been the case that firefighters work – successfully and safely – alongside other firefighters, and other emergency services personnel, that they do not know. Each of the UFUA witnesses accepted that this was a common occurrence.¹⁴⁰ The examples are:

- (a) Working with new recruits.¹⁴¹
- (b) Officers recalled to stations that are not their own,¹⁴² which occurs on a regular basis (see further paragraph [181] below).
- (c) Officers transferring between stations.¹⁴³
- (d) Officers on secondment.¹⁴⁴
- (e) Officers who have been promoted and moved away from their ‘home’ station.¹⁴⁵
- (f) Working with CFA volunteers.¹⁴⁶
- (g) When acting as an incident controller, by necessity making judgments and decisions and controlling the response to an incident with people he or she may not necessarily know.¹⁴⁷
- (h) Working with strike teams.¹⁴⁸
- (i) Working on large-scale emergencies that require interoperability between emergency services agencies in accordance with the *Emergency Management Act 2013* (Vic),¹⁴⁹ most recently the Hazelwood mine fire, which Mr Brown described as ‘a great example of how different cultures came together and worked cooperatively and the trust that has been built over that incident amongst the agencies’.¹⁵⁰
- (j) Working with interstate fire agencies.¹⁵¹
- (k) Working with officers from Victoria Police and Ambulance Victoria, some of whom may be part-time.¹⁵²

[171] A number of the UFUA witnesses confirmed that they place trust and confidence in the abilities of their emergency services colleagues. None have ever enquired as to the terms of employment of a member of Victoria Police or Ambulance Victoria while attending an emergency or otherwise.¹⁵³

(ii) Skills acquisition and maintenance

[172] Recruit firefighters to both the MFB and the CFA undertake a training course of 18.8 weeks. After successful completion of the recruit course, the firefighter is ranked as a Level 1 Firefighter. Over the next three years, all things being equal, they progress through the ranks to Levels 2 and 3, ultimately becoming a Qualified Firefighter after three years of training. Once qualified, firefighters can obtain specialist skills qualifications which are obtained by attending a specialist course.¹⁵⁴

[173] Formal skills maintenance at the fire services are delivered through the conduct of drills by operational firefighters at a station level. These drills are administered and managed by the on-shift officers for each shift. At the MFB there is a requirement for four drills to be conducted for crews at each station in a 28 day period. It is up to individual officers to determine how and when skills maintenance is delivered.¹⁵⁵ The terms of the *Fire Fighting Award* and the operational agreements effectively prevent running drills at night between 11.00 pm and 7.00 am, although skills maintenance drills can be run for the first five hours of the night shift, between 6.00 pm and 11.00 pm.¹⁵⁶

[174] In addition to on-going skills maintenance drills, once accredited, all MFB officers must complete a minimum of four Emergency Medical Response (EMR) continuing education sessions per year. Up to ten sessions are available each year and participation rates are high. The EMR training is necessary to retain certification to attend EMR incidents with Ambulance Victoria. This is a core function of the MFB.¹⁵⁷ The EMR program is being rolled out across the CFA but is not yet complete.

[175] One of the UFUA's objections to the introduction of part-time work in the *Fire Fighting Award* is that part-time work would undermine the acquisition and maintenance of skills by operational firefighters.

[176] A number of the UFUA witnesses¹⁵⁸ expressed concern that employees engaged on a part-time basis would not have sufficient access to ongoing skills maintenance and training. The basis for the proposition advanced by the UFUA appears to be that part-time employees would not be at work for 42 hours per week and hence would be unable to participate in the requisite training.

[177] These views were disputed by the witnesses called by the Victorian Fire Services. The Victorian Fire Services' witnesses consistently expressed the view that there was no impediment to delivering skills maintenance and training to part-time employees. As Mr Leach put it:

‘...skills maintenance drills are scheduled at times convenient to each station, recognising that shifts can be unpredictable and having regard to the various operational demands placed on each shift throughout the 28 day period.

This flexibility in scheduling skills maintenance drills means that the current delivery of skills maintenance could accommodate part time employees without issue. For example, skills maintenance drills could be run on days when part time employees are on shift. Alternatively, additional skills maintenance sessions could be run during the month.¹⁵⁹

[178] Similar views were expressed by Byatt¹⁶⁰ and Warrington.¹⁶¹

[179] Further, it is a feature of all workplaces, including the Victorian Fire Services, that employees are sometimes absent from work, for a variety of reasons. The feature is compounded in the MFB and the CFA by the extensive leave provisions in the operational agreements, including:

- (a) Recreation leave of 65.06 days per year.¹⁶² The scheduling of recreation leave is arranged in advance, and the net effect is that 20 per cent of the workforce is absent on any given day of the year.¹⁶³
- (b) Parental leave of 52 weeks.¹⁶⁴
- (c) Industrial training leave of up to five days per year.¹⁶⁵
- (d) Defence force leave of 14 days per year.¹⁶⁶
- (e) Sick and carer’s leave of between 10 and 19 days per year.¹⁶⁷
- (f) Accrued and long service leave. The MFB encourages firefighters to take accrued leave or ‘single day long service leave’ and allocate time so that 22 people in each 24 hour period will be absent.¹⁶⁸

[180] The absence of firefighters from the workplace is compounded by high rates of unplanned absenteeism. According to the Victorian Auditor-General’s Report into unplanned leave in the emergency services, the MFB lost 139.5 hours per person per year in unplanned leave in 2011–2012, with significantly higher levels of unplanned leave on weekends,¹⁶⁹ and overall the highest level of unplanned leave among emergency services in Victoria.¹⁷⁰

[181] Officers are recalled when another officer is unable to attend their rostered shift and numbers fall below the minimum crewing levels mandated in the agreements. The unchallenged evidence of Greg Leach and Bruce Byatt was that in the month between 20 March 2016 and 20 April 2016, it was necessary to recall 746 MFB officers and 921 CFA officers.¹⁷¹

[182] During cross-examination, the UFUA witnesses were asked if their concerns about part-time firefighters could be assuaged if they could assume that the part-time employee had been appropriately trained and could maintain their skill set in line with full-time firefighters. Four witnesses either refused to accept the proposition, or were unable to accept the premise of the question.¹⁷² However, seven UFUA witnesses accepted that their concerns about part-

time firefighters and skills maintenance would be reduced or removed if they could be assured that skills would be maintained at the appropriate level.¹⁷³

[183] We also note that other emergency services providers are able to manage skills maintenance training with a part-time workforce. Drawing on his experience at Ambulance Victoria, where part-time work was available in a suite of working arrangements outside the full-time 10/14 roster, as well his role as Executive Director of Organisational Learning and Development of the MFB, Mr Leach gave evidence of his view that ‘there is no impediment to delivering skills maintenance and training to employees engaged on a part time basis’.¹⁷⁴ Mr Leach gave some practical examples of how this could work that were entirely consistent with what some of the union witnesses acknowledged was the existing practice to meet the skills maintenance needs of employees who have been absent:

‘This flexibility in scheduling skills maintenance drills means that the current delivery of skills maintenance could accommodate part time employees without issue. For example, skills maintenance drills could be run on days when part time employees are on shift. Alternatively, additional skills maintenance sessions could be run during the month.’¹⁷⁵

[184] We accept that the Victorian Fire Services already have particular expertise at managing a large population of employees whose attendance at work is constantly fluctuating. The nature of the work in the Victorian Fire Services also means that predictable attendance at the station is impossible – emergencies by their definition arise without notice and regularly disrupt scheduled skills training. The UFUA witnesses agreed that skills maintenance training was necessarily flexible, and had to be adjusted to take into account the events at the station on any given day.¹⁷⁶ Equally, it was accepted that it is necessary to structure skills maintenance training to accommodate absent employees.¹⁷⁷ Messrs Veal and Martin gave evidence that where possible, drills are repeated for the benefit of firefighters who were absent when the drill initially took place.¹⁷⁸ Mr Brown gave evidence that station officers plan to accommodate absences when arranging skills maintenance training, stating by way of example:

‘...for undetermined leave like the unplanned leave as you say, but what will happen is that the officer will plan that. So there might be an exercise or a drill that's planned for that week, so the officer might turn round and say well firefighter X is off for these four days because of this, so we'll delay that drill to next week so we can do it all together. That's the important thing about doing it all together, it's that teamwork in there and have an understanding. So that's why the flexibility is put into the skills maintenance database so you can capture those drills in that process.’¹⁷⁹

[185] Consequently, skills acquisition and maintenance in the fire services is already inherently flexible, and necessarily accommodates employees who may be absent from work on a given day.

(iii) Firefighter welfare

[186] A number of the UFUA witnesses express the view that the Victorian Fire Services would be less able to provide support to firefighters engaged on a part-time basis and that this

would adversely impact on employee welfare. For example, Mr Geary gave the following evidence:

‘And as you have probably had explained to you, the crew is a very tight-knit group. They work together on the 10/14 system. They spend more time some of them with the guys that they work with, rather than their own families. So they get to know each other very well. If I have only got someone that is popping in every second or third day, we don't get to know that person, we don't know how they're reacting to some of the scenes that they see.’¹⁸⁰

[187] This evidence was disputed by the witnesses called by the Victorian Fire Services. For example, Mr Leach gave the following evidence:

‘I refer to the witness statements of:

- (a) Daniel Gatt (paragraphs 25 – 31);
- (b) Bradley Quinn (paragraph 25); and
- (c) Glenn Veal (paragraphs 21 – 25).

These witnesses express the view that the MFB would be less able to provide support to firefighters engaged on a part time basis.

I do not agree with this view.

AV employees regularly attend distressing incidents. In my experience at AV, if a part time employee attended a difficult call and was rostered to go off-shift following the incident, AV would ensure contact with that person via a Manager or Supervisor, or a Peer or Employee Assistance Program person to ensure their welfare, regardless of whether that person was rostered to work the next day.

The MFB currently manages employee welfare successfully within the 10/14 roster. If, for example, a firefighter attended a distressing call out at the end of the 10/14 roster, he or she may then be off-shift for 4 days. I have the utmost confidence that the MFB Peer Support staff could and would appropriately manage the welfare of and provide the necessary support to an employee in this situation.’¹⁸¹

[188] Similar views were expressed by Warrington,¹⁸² Byatt¹⁸³ and Youssef.¹⁸⁴

[189] In respect of each of the three aspects of the UFUA’s evidentiary case we have mentioned (Teamwork and the 10/14 roster; Skills acquisition and maintenance; and Firefighter welfare) the views expressed by the UFUA witnesses are disputed by the witnesses called by the Victorian Fire Services. We prefer the evidence of the Victorian Fire Services witnesses in respect of these issues, for two main reasons.

[190] First, the objections of six of the UFUA’s witnesses were pressed on the false assumption that part-time work was ‘casual, irregular work’.¹⁸⁵ One witness, Patrick Geary, expressed his ‘greatest concern’ as ‘people just popping in every now and again to work a shift’.¹⁸⁶ The definition of a part-time employee in the proposed variation is an employee who

has ‘reasonably predictable hours of work’,¹⁸⁷ and who has agreed in advance with their employer on a regular pattern of work.¹⁸⁸ This is the antithesis of casual and irregular work. As the objections to part-time work expressed by Mr Hayes, Mr Quinton, Mr Lia, Mr Woodyatt, Mr Geary, and Mr Radford, proceeded from an incorrect assumption, we attribute no weight to the views expressed by these witnesses about the likely impact of part-time work in the Victorian Fire Services.

[191] Second, none of the witnesses called by the UFUA have ever worked part-time, or worked alongside a part-time employee.¹⁸⁹ The UFUA witnesses had worked for the MFB or the CFA for an average of nearly 28 years. Of the 13 witnesses, only three – Malcolm Hayes (12 years), Cory Woodyatt (16 years), and John Radford (20 years) – had worked for the Fire Services for under 26 years. None have worked on secondment within the MFB or the CFA, or outside the MFB or CFA, such as on exchange to an interstate or international fire fighting service.

[192] We agree with the Victorian Fire Services submission that the professional experience of the UFUA witnesses may be characterised as extensive and comprehensive, but also narrow. Further, that narrow professional experience may be contrasted with the breadth of experience evidence in the operational witnesses called by the Victorian Fire Services.

[193] In addition to extensive experience working on the 10/14 roster within Victoria, the Victorian Fire Services’ witnesses had a broad range of employment experiences outside the MFB and the CFA. This included working with fire services in Canada (Youssef), the Northern Territory (Byatt), Queensland (Byatt), New South Wales (Lapsley), and with other emergency services including the SES (Buffone and Lapsley) and Melbourne Airport fire services (Youssef).

[194] The witnesses called by the Victorian Fire Services had experienced working in firefighting and emergency services environments outside the full-time 10/14 or special administrative duties 42 hour rosters available to operational firefighters in Victoria. Several of those witnesses identified that they had worked the 10/14 roster for a number of years – Mr Connellan said he ‘thought it was great’¹⁹⁰ – but through experience and exposure to alternative models of work, had formed the view that the 10/14 roster was only one of several functional, safe, effective, and employee-friendly methods of arranging work for firefighters.

[195] By contrast, the witnesses called by the UFUA had no such experience to draw on in forming their opinions about the viability of part-time work. Several of the witnesses, such as Messrs Brown,¹⁹¹ Veal,¹⁹² and Martin,¹⁹³ acknowledged the existence of part-time work in other fire services in Australia, but did not feel it necessary to inform themselves of these matters before giving evidence to the Commission, or to alter their views about the viability of part-time work in light of this information. Other witnesses, such as Quinton¹⁹⁴ and Thomas¹⁹⁵ were unaware of the existence of flexible work arrangements outside of Victoria. One of the witnesses called by the UFUA made it clear that the basis for his opinions about part-time work was anecdotal, and in our view, of no probative value. Mr Lia gave evidence that he ‘would have doubts about the lack of commitment of part time employees’.¹⁹⁶ In response to a question from the Commission, Mr Lia explained the basis for his opinion as:

'I have three daughters which, they've worked in another industry, they've worked in retail and they deal with, and have done over periods of their life, dealt with part-time employees in that environment and their main complaint was that they – the part-time did their minimal amount and left items that they had to fix or replace or look after when they come back to work. I'm just concerned that with part-time personnel, have they got the same commitment to the service as what the full-time employee does.'¹⁹⁷

[196] We accept that the views expressed by the UFUA's witnesses are genuinely held and that they reflect the common experience of these witnesses. But, as we have mentioned, that experience is overwhelmingly with the status quo – that is, full-time employment on the 10/14 roster.

[197] The UFUA submits that it is 'completely artificial' to assess the draft determination against the modern awards objective, because it is 'undisputed' that there is no intention to make the variations operational.¹⁹⁸ The Victorian Fire Services contend that this is a mischaracterisation of their evidence. We agree.

[198] It was generally acknowledged by the Victorian Fire Services' witnesses that there are likely to be differing opinions about how part-time work might be implemented, but that any operational challenges could be addressed during a consultation process with the relevant employees and the UFUA. (See: Nolan;¹⁹⁹ Buffone;²⁰⁰ Rau;²⁰¹ Warrington;²⁰² Byatt;²⁰³ and Youssef²⁰⁴).

[199] The evidence of the fire services was *not* that there was no intention to ever introduce part-time work to the fire services, but that there is no intention to implement part-time work in the fire services *immediately* and without consultation with employees and the UFUA. The fire services clearly intend and wish to offer part-time work to its employees. The precise form of that work will be the subject of consultation in accordance with the terms of the *Fire Fighting Award* and the relevant agreements.

[200] There are legitimate differences of opinion about where part-time work arrangements might be best utilised to ensure the highest quality of service delivery to the community; safety to employees; and fairness to employees that are unable to work 42 hours a week on the rotating 10/14 roster but wish to remain operational firefighters. These differences of opinion are properly matters for consultation. This issue raises an important contextual consideration.

[201] The variation of the *Fire Fighting Award* in the manner proposed by the Victorian Fire Services will not give rise to an unfettered right to introduce part-time work in the public sector fire services. Clause 8.2(a) of the *Fire Fighting Award* provides:

'Where an employer proposes to change an employee's regular roster or ordinary hours of work, the employer must consult with the employee or employees affected and their representatives, if any, about the proposed change.'

[202] Clause 8.1(b) also provides that 'major changes ... in organisation' are to be discussed with the employees affected and their representatives. Such discussions are to include 'the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees'. In the context of such discussions the

employer ‘must give prompt considerations to matters raised by the employees and/or their representatives in relation to the changes’. On any view of it the introduction of part-time work in the Victorian Fire Services would constitute a ‘major change’, triggering the obligations in clause 8.1(b).

[203] The right to be consulted is a substantive right, it is not to be treated perfunctorily or as a mere formality.²⁰⁵ Inherent in the obligation to consult is the requirement to provide a genuine opportunity for the affected party to express a view about a proposed change in order to seek to persuade the decision maker to adopt a different course of action. As Logan J observed in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited (QR)*:²⁰⁶

‘...A key element of that content [of an obligation to consult] is that the party to be consulted be given notice of the subject upon which that party’s views are being sought before any final decision is made or course of action embarked upon. Another is that while the word always carries with it a consequential requirement for the affording of a meaningful opportunity to that party to present those views. What will constitute such an opportunity will vary according to the nature and circumstances of the case. In other words, what will amount to “consultation” has about it an inherent flexibility. Finally, a right to be consulted, though a valuable right, is not a right of veto.

To elaborate further on the ordinary meaning and import of a requirement to “consult” may be to create an impression that it admits of difficulties of interpretation and understanding. It does not. Everything that it carries with it might be summed up in this way. There is a difference between saying to someone who may be affected by a proposed decision or course of action, even, perhaps, with detailed elaboration, “this is what is going to be done” and saying to that person “I’m thinking of doing this; what have you got to say about that?”. Only in the latter case is there “consultation. ...”

[204] We respectfully adopt his Honour’s observations. The precise content of an obligation to consult will depend on the context. The extent and significance of a proposed change, in terms of its impact on the affected employees, will have a bearing on the extent of the opportunity to be provided. In the context of the Victorian Fire Services the introduction of part-time work would be a significant change, requiring extensive consultation. However, it is also relevant to note that while the right to be consulted is a substantive right, it does not confer a power of veto. Consultation does not amount to joint decision making.²⁰⁷

[205] The anxiety expressed by several of the UFUA witnesses about the impact of part-time work is acknowledged. However, matters such as the management of skills maintenance requirements, the availability of part-time work to recruit firefighters, the participation of part-time firefighters in minimum crewing numbers, whether part-time work should only be available on particular rosters or under particular arrangements such as job-sharing, whether part-time work should only be available to certain employees such as parents returning from parental leave, and whether the fire services should conduct a trial of part-time work before considering full implementation, are all important issues which could be the subject of consultation.

[206] As mentioned previously, the incidence of part-time employment has increased over time and currently about one third of all employees are engaged on a part-time basis. Female workers account for 68.5 per cent of all part-time employees. The vast majority of modern awards make provision for part-time employment.

[207] Victoria stands alone in prohibiting part-time work among public sector firefighters in Australia. Each other state and territory in Australia permits the engagement of firefighters on a part-time basis. The relevant industrial instruments, and their part-time work (and associated) provisions, are set out in Attachment 3, in summary:

- (i) Part-time work within the 10/14 roster is permitted in the Australian Capital Territory pursuant to the provisions of Section J of the *ACT Public Service Act Fire and Rescue Enterprise Agreement 2011–2013* (the ACT Agreement); in Queensland per clause 24 of the *Queensland Fire and Emergency Services Determination 2013* (the Qld Determination) and clause 4.2 of the *Queensland Fire and Rescue Service Award – State 2012* (the Qld Award); and in Tasmania by clause 34 of the *Tasmanian Fire Fighting Industry Employees’ Industrial Agreement 2014* (the Tasmanian Agreement).
- (ii) Part-time work is available in the New South Wales Fire & Rescue Service pursuant to clause 8.2.3 in conjunction with clause 8.2.2 of the *Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016* (the NSW Award), and is acknowledged by clauses 21.3.3.2 and 21.9.1.2 (with reference to Parental leave).
- (iii) Part-time work is available on request by all firefighters in the Northern Territory, subject to operational requirements and other criteria, and to women firefighters returning to work after the birth of a child until the child reaches school age, per clauses 42.15(a) and 57.1(d) of the *Northern Territory Public Sector Fire and Rescue Service 2011–2013 Enterprise Agreement* (the NT Agreement).
- (iv) In South Australia, firefighters are entitled to return to work after maternity or adoption leave on a part-time basis until their child’s second birthday, and such return to work must be on a non-discriminatory basis, per clause 24.3 of the *South Australian Metropolitan Fire Service Enterprise Agreement 2014* the SA Agreement). The UFUA is a party to the SA Agreement. The entitlement to part-time work is included in clause 11 of the *Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007* (the SA Award), with express provision made, by clause 22.12, for part-time work for pregnant women, or employees on parental leave.
- (v) Western Australian firefighters are entitled to work part-time if they are non-rostered shift workers, or are Communications Systems Officers, per clause 19 of the *Western Australian Fire Service Enterprise Bargaining Agreement 2014* (the WA Agreement). There is no provision for part-time work in the *Fire Brigade Employees’ Award 1990*. However, there is provision at clause 19(6)(b) of the WA Agreement for the parties to “agree to develop a part-time/job share arrangement for all employees covered by this Agreement over the life of this Agreement”.

- (vi) Within Victoria, the industrial instruments governing Victoria Police and Ambulance Victoria permit part-time work for operational employees, and have done so for many years. Ambulance Victoria organises its shiftwork on a 10/14 roster. Clause 14 of the *Ambulance Victoria Enterprise Agreement 2015* provides that employees may be engaged as full-time, part-time, casual, fixed term, or job share employees. Ambulance Victoria cannot unreasonably refuse a request for part-time employment (per clause 16.1). The right to work part-time is part of the award safety net, contained in clause 10.1 of the *Ambulance and Patient Transport Industry Award 2010*. Part-time work and the 10/14 roster have been features of the applicable Award since at least 2002, and part-time work, as well as some use of the 10/14 roster, have been contained in the applicable enterprise agreements since at least 1997. Victoria Police employees may work part-time on the application of an employee, or where they have been selected for an advertised part-time position. The part-time work provisions are contained in clause 31 of the *Victoria Police Force Enterprise Agreement 2011*. Part-time work has been a feature of Victoria Police industrial instruments since at least 1992.

[208] While there are differences between the various fire services across Australia, the existence of part-time work provisions in industrial instruments for other firefighting services suggests both that part-time work is an appropriate employment option in the sector, and that there is no rational operational impediment to including part-time work in the *Fire Fighting Award*.

[209] We now turn to consider the terms of such a variation.

[210] As previously mentioned, the UFUA submits that if the Commission decided that it was necessary to vary the *Fire Fighting Award* to provide for part-time employment in the public sector fire services, then the variation determined should be more limited than that proposed by the Victorian Fire Services in order to accommodate the concerns identified in the evidence. In particular, the UFUA submits that:

‘The views of the UFUA witnesses is that concerns of safety and welfare are, in that case, best accommodated by way of a prohibition on part-time employment forming part of minimum crewing, and the preservation of the current rostering system.’²⁰⁸

[211] We are not satisfied that it is necessary to circumscribe the introduction of part-time work in the manner proposed by the UFUA. The proposed prohibitions are based on the evidence of the UFUA witness regarding the anticipated adverse impact of part-time work on proficiency; skills maintenance and acquisition; firefighter safety and performance; and the benefits of the 10/14 roster. For the reasons given we have not found that evidence persuasive and we prefer the evidence of the Victorian Fire Services witnesses in respect of these issues.

[212] However, the evidence does disclose that there would be practical difficulties in extending part-time to classifications below that of qualified firefighter. Ms Schroder, Director Operational Learning and Development at the MFB, expressed the following reservations in her evidence:

‘I do think there would be other areas that accommodating part-time would be both very costly and difficult to manage. For example, there would be difficulties participating the recruit course on a part time basis. In my view the ability to absorb all the course information in its context would be difficult for a part-time recruit. The recruit course involves significant resources and costs and is structured around group participation.

I also have concerns that similar challenges would arise for level 1, 2 and 3 firefighters in respect to the courses they are required to complete. This is a very important time for any firefighter.’

[213] In the course of her cross examination, Ms Schroder expressed concern about the ‘unbridled application of a part-time prescription’ having regard to the part of her evidence set out above. Ms Schroder’s concerns are associated with the intense level of skill acquisition undertaken by firefighters.²⁰⁹ Ms Schroder’s key duties include the delivery of all operational training programs including programs run with the CFA.

[214] We note that similar reservations about the extension of part-time employment to recruits were also expressed by Byatt,²¹⁰ Youssef²¹¹ and Connellan.²¹² We also note that Fire and Rescue NSW does not accept recruit employees on a part-time basis.²¹³

[215] In view of the evidence the terms of the variation to the *Fire Fighting Award* will be such that in the public sector fire services part-time employment will only be available to employees employed at or above the qualified firefighter classification.

6. Conclusion

[216] We are satisfied that the variation of the *Fire Fighting Award* to permit part-time employment in the public sector for employees at or above the qualified firefighter classification (with some consequential changes to rostering provisions to facilitate such employment) will ensure that the award, together with the NES, provides a fair and relevant minimum safety net of terms and conditions, taking into account the s.134 considerations (insofar as they are relevant). The variations proposed are also consistent with the objects of the Act. Further, we are also satisfied that after the variation of the *Fire Fighting Award* in the manner described the modern award will only include terms to the extent necessary to achieve the modern awards objective.

[217] The variation determination giving effect to our decision will come into effect on 15 November 2016.



Appearances:

Mr S Moore QC with *Ms K Burke* for the Metropolitan Fire Brigade and the Country Fire Authority

Mr R. C. Kenzie QC with *Mr T. J. Dixon* for the United Firefighters' Union of Australia

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¹ Currently clause 22.4(b) in the modern award. The adjustment to the clause numbers arises because of the proposed insertion of the new clause 22.4 in the modern award, eg, the current clause 22.4 (10/14 roster system) would become clause 22.5, and the sub-clauses 22.5 to 22.8 would each advance by one (eg, 22.5 becomes 22.6 et seq).

² Currently clause 22.7(b) and (e).

³ MFB/CFA submissions 26 February 2016 at paragraph 37.

⁴ [2014] FWCFB 1788.

⁵ *National Retail Association v Fair Work Commission* (2014) 225 FCR 154 at [85]. Although the Court's observations were directed at the expression 'in its own right' in Item 6(2A) of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) they are apposite to s.156(5).

⁶ *National Retail Association v Fair Work Commission* (2014) 225 FCR 154 at [118]. While the Full Federal Court was considering the meaning of the Item 6(2A) of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth) the observations are also apposite to s.156(5) of the *Fair Work Act*, which is in substantially the same terms. (2014) 225 FCR 154 at [86].

⁷ *4 Yearly Review of Modern Awards – Annual Leave* [2016] FWCFB 3177 at [135]-[140].

⁸ See *Shop, Distributive and Allied Employees Association v National Retail Association (No 2)* (2012) 205 FCR 227 at [35] per Tracey J.

⁹ *Friends of Hinchinbrook Society Inc v Minister for Environment and Others*(No 3) (1997) 77 FCR 153; *Australian Competition and Consumer Commission v Leelee Pty Ltd* [1999] FCA 1121; *Edwards v Giudice and Others* (1999) FCR 561; *National Retail Association v Fair Work Commission* (2014) 225 FCR 154.

- ¹⁰ *National Retail Association v Fair Work Commission* [2014] FCAFC 118 at [110].
- ¹¹ *Ibid* at [110] albeit the Court was considering a different statutory context, the observation at [110] is applicable to the Commission's task in the Review.
- ¹² Also see *Shop Distributive and Allied Employees Association v \$2 and Under* (2003) 135 IR 1 at [11] and [124].
- ¹³ Fair Work Bill 2008, Explanatory Memorandum at paragraph 527.
- ¹⁴ See generally, : *Shop, Distributive and Allied Employees Association v National Retail Association (No.2)* (2012) 205 FCR 227.
- ¹⁵ UFUA Final Outline of Submissions 7 June 2016 at paragraph 14.
- ¹⁶ See Transcript 17 June 2016, PN4977 and following.
- ¹⁷ See *Modern Awards Review 2012* [2012] FWAFB 5600 at [82]–[85].
- ¹⁸ *Nguyen v Nguyen* (1990) 169 CLR 245 at 269. Also see *The Queen v Moore; ex parte Australian Telephone and Phonogram Officers' Association* (1982) 148 CLR 600.
- ¹⁹ *Re Furnishing Industry Association of Australia (Queensland) Limited Union of Employers*, Print Q9115, 27 November 1998 per Giudice J, Watson SDP, Hall DP, Bacon C and Edwards C.
- ²⁰ (2003) 127 IR 205 at [48].
- ²¹ Also see *Re Furnishing Industry Association of Australia (Queensland) Ltd Union of Employers*, Print Q9115, 27 November 1998 per Giudice J, Watson SDP, Hall DP, Bacon C and Edwards C.
- ²² *4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [23]–[27].
- ²³ ABS, *Labour Force, Australia, Mar 2016*, Catalogue No. 6202.0.
- ²⁴ OECD, *Labour Market Statistics: Full-time part-time employment*, OECD Employment and Labour Market Statistics (database), 2014.
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- ³² Kajitani, S, McKenzie, C and Sakata, K. 'Use It Too Much and Lose It? The Effect of Working Hours on Cognitive Ability', Melbourne Institute Working Paper No. 7/16, Melbourne Institute of Applied Economic & Social Research, February 2016.
- ³³ MacDonald, D, Orr, R and Pope, R (2016), 'Differences in physical characteristics and performance measures of part-time and full-time tactical personnel: A critical narrative review', *Journal of Military and Veterans' Health*.
- ³⁴ *Ibid*, Table 2, 49.
- ³⁵ *Ibid*, Table 2, summary of findings from Lindberg, Oksa and Malm (2014).
- ³⁶ *Ibid*, Table 2, summary of findings from Wynn and Hawdon (2011).
- ³⁷ *Ibid*, page 53.
- ³⁸ UFUA Submissions in reply, 7 June 2016 at paragraph 70.
- ³⁹ O'Connor, P, Ross, VP, Marsh, SDP, McDonald, C and Holmes, C, *Family Leave Test Case*, (29 November 1994) 57 IR 121, Print L6900.

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- ⁴⁰ AIRC (1995), *Australian Liquor, Hospitality and Miscellaneous Workers Union & Others Personal/Carer's Leave Test Case – Stage 2* (28 November 1995) 62 IR 48, Print M6700.
- ⁴¹ *Ibid* at p. 40.
- ⁴² *Ibid* at p. 42.
- ⁴³ *Ibid* at p. 41.
- ⁴⁴ See Annexure A.
- ⁴⁵ *Fair Work Act 2009* (Cth) s.133; *Fire Fighting Industry Award 2010* clauses 4.1 and 4.2.
- ⁴⁶ These categories of 'national system employers' reflect the legislative powers of the Commonwealth – *Commonwealth of Australia Constitution Act*, sections 51(xx), 51(i), 122.
- ⁴⁷ *Fair Work Act 2009* (Cth) sections 30H and 30S.
- ⁴⁸ *Fair Work Act 2009* (Cth) sections 13, 30C and 30M.
- ⁴⁹ *Fair Work (Commonwealth Powers) Act 2009* (Vic), sections 4 and 5.
- ⁵⁰ See *United Firefighters' Union of Australia and Others v Metropolitan Fire and Emergency Services Board* [1998] FCA 551; *United Firefighters' Union of Australia v Country Fire Authority* [2015] FCAFC 1.
- ⁵¹ *Fire Fighting Industry Award 2010*, clauses 4.3 – 4.5.
- ⁵² In respect of the ACTFR and the NTFRS the *Fire Fighting Industry Award 2010* covers these entities by virtue of section 122 of the Constitution.
- ⁵³ See section 7 MFB Act.
- ⁵⁴ Section 20 CFA Act.
- ⁵⁵ MFB Agreement, cl 37.2; CFA Agreement, cl 29.2, 30.1.
- ⁵⁶ MFB Agreement, cl 13; CFA Agreement, cl 13.
- ⁵⁷ AIRC, *Award Simplification Decision* (1997) 75 IR 272 page 298.
- ⁵⁸ *Re Victorian Firefighting Industry Employees Interim Award 1993* [1998] AIRC 843 (22 June 1998) Print Q2214.
- ⁵⁹ *Re Victorian Firefighting Industry Employees Interim Award 1993* [2000] AIRC 957 (1 March 2000) Print S3127.
- ⁶⁰ Country Fire Authority, Submission, 25 March 1999, at paragraph 31.
- ⁶¹ Country Fire Authority and United Firefighters' Union of Australia, Joint submission, 24 November 1999 at p. 2 (unsigned). See Transcript CN37547 of 1997; CN00164 of 1998 and CN00819 of 1998, 1 December 1999 p. 1011 at [20].
- ⁶² Country Fire Authority and United Firefighters' Union of Australia, Further joint submission, 1 December 1999, at paragraph 8. See Transcript, *ibid*, p. 1019 at [5].
- ⁶³ Transcript 1 December 1999, *ibid*, p. 1013 at [5].
- ⁶⁴ *Re Victorian Firefighting Industry Employees Interim Award 1993* [2000] AIRC 957 (1 March 2000) Print S3127.
- ⁶⁵ AP801881CRV – *Victorian Firefighting Industry Employees Interim Award 2000*, cl. 13, cl. 14.
- ⁶⁶ [2009] AIRCFB 945 at paragraph [49].
- ⁶⁷ AIRC, *Award modernisation – Stage 4 Awards* [2009] AIRCFB 945, at paragraph 49.
- ⁶⁸ [2009] AIRCFB 945 at paragraph [51].
- ⁶⁹ [2014] FWCFB 1788 at paragraph [27].
- ⁷⁰ *National Retail Association v Fair Work Commission* [2014] FCAFC 118 at [18].
- ⁷¹ *The Australian Industry Group re Manufacturing and Associated Industries and Occupations Award 2012* [2012] FWA 2556.
- ⁷² UFUA's Final Outline of Submissions dated 7 June 2016 at paragraph [29].
- ⁷³ UFUA's answers to questions on notice of 16 June 2016, dated 24 June 2016 at paragraph [41].
- ⁷⁴ The parties also agreed to utilise the rostering systems under the agreement for the same reasons: clause 37 of the MFB Agreement [2010] FWAA 7414, clause 29 of the CFA Agreement [2010] FWAA 8164.
- ⁷⁵ UFUA's Final Outline of Submissions 7 June 2016, paragraph 27(a) and (d).

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- ⁷⁶ (2004) 218 CLR 471 at [33].
- ⁷⁷ (2004) 219 CLR 90 at [52]-[55].
- ⁷⁸ (2004) 219 CLR 165 at [42]-[48].
- ⁷⁹ [2015] FWCFB 3406 at [252].
- ⁸⁰ UFUA's Final Outline of Submission, 7 June 2016 at paragraph 14.
- ⁸¹ See UFUA's answers to the questions on notice of 16 June 2016, dated 24 June 2016 at paragraph 42.
- ⁸² UFUA's answers to questions on notice of 16 June 2016, dated 24 June 2016 at paragraph [43].
- ⁸³ Exhibit MFB/CFA 3, Transcript 19 April 2016, PN 252.
- ⁸⁴ Exhibit MFB/CFA 5, Transcript 19 April 2016, PN437
- ⁸⁵ Exhibit MFB/CFA 7, Transcript 19 April 2016, PN592
- ⁸⁶ Exhibit MFB/CFA 9, Transcript 19 April 2016, PN684
- ⁸⁷ Exhibit MFB/CFA 10, transcript 19 April 2016, PN745
- ⁸⁸ Exhibit MFB/CFA 11, transcript 19 April 2016, PN881.
- ⁸⁹ Exhibit MFB/CFA 12, transcript 19 April 2016, PN952.
- ⁹⁰ Exhibit MFB/CFA 14, transcript 20 April 2016, PN1084.
- ⁹¹ Exhibit MFB/CFA 16, transcript 20 April 2016, PN1278.
- ⁹² Exhibit MFB/CFA 17, transcript 20 April 2016, PN1357.
- ⁹³ Exhibit MFB/CFA 19, transcript 20 April 2016, PN1440.
- ⁹⁴ Exhibit MFB/CFA 25, transcript 28 April 2016, PN3940.
- ⁹⁵ Exhibit MFB/CFA 13 at p. 31.
- ⁹⁶ Exhibit MFB/CFA 9 at paragraph 15.
- ⁹⁷ Exhibit MFB/CFA 2 at paragraph 17.
- ⁹⁸ Exhibit MFB/CFA 3 at paragraph 30.
- ⁹⁹ Exhibit MFB/CFA 2 at paragraph 10.
- ¹⁰⁰ Breunig R, A Weiss, C Yamauchi, X Gong and J Mercante (2011) 'Child Care Availability, Quality and Affordability: Are Local Problems Related to Labour Supply?', *Economic Record* 87 (276) pp. 109–124 cited in Borland (2011) op cit at p. 178.
- ¹⁰¹ For example see Euwals, R. and Hogerbrugge, M. (2006), 'Explaining the Growth of Part-time Employment: Factors of Supply and Demand', *Labour*, 20: 533–557.
- ¹⁰² Exhibit MFB/CFA 12 at paragraphs 27, 30.
- ¹⁰³ Exhibit MFB/CFA 10 at paragraphs 21–24.
- ¹⁰⁴ Exhibit MFB/CFA 9 at paragraphs 11–12.
- ¹⁰⁵ Exhibit MFB/CFA 14 at paragraph 28.
- ¹⁰⁶ Exhibit MFB/CFA 13 at p. 31 citing McKinsey "Company Inc (2007), *Women Matter: Gender Diversity, a corporate performance driver*".
- ¹⁰⁷ Exhibit MFB/CFA 1 at paragraph 20.
- ¹⁰⁸ Exhibit MFB/CFA 5 at paragraph 17.
- ¹⁰⁹ Exhibit UFU 2, transcript 20 April 2016, PN1532.
- ¹¹⁰ Exhibit UFU 3, transcript 20 April 2016, PN1724.
- ¹¹¹ Exhibit UFU 4, transcript 20 April 2016, PN1967.
- ¹¹² Exhibit UFU 5, transcript 20 April 2016, PN2177.
- ¹¹³ Exhibit UFU 6, transcript 21 April 2016, PN2449.
- ¹¹⁴ Exhibit UFU 7, transcript 21 April 2016, PN3010.
- ¹¹⁵ Exhibit UFU 8, transcript 21 April 2016, PN3149.

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- ¹¹⁶ Exhibit UFU 9, transcript 21 April 2016, PN3285.
- ¹¹⁷ Exhibit UFU 10, transcript 21 April 2016, PN3446.
- ¹¹⁸ Exhibit UFU 11, transcript 21 April 2016, PN3606.
- ¹¹⁹ Exhibit UFU 12, transcript 21 April 2016, PN3756.
- ¹²⁰ Exhibit UFU 14, transcript 28 April 2016, PN4239.
- ¹²¹ Exhibit UFU 15, transcript 28 April 2016, PN4412.
- ¹²² UFUA Finding of Fact Sought at paragraph 55.
- ¹²³ Transcript, 21 April 2016, PN2738-2742.
- ¹²⁴ Common Exhibit 1.
- ¹²⁵ ROGS 2016, Figure 10.9, p. D.24.
- ¹²⁶ ROGS 2016, Table D.3, p. D.25 – D.26.
- ¹²⁷ See ROGS 2016, Table 9A.10.
- ¹²⁸ ROGS 2016 Table 9A.29 2005-06 to 2014-15. Only the ACT and NT had a higher level of expenditure and only in a limited number of years.
- ¹²⁹ ROGS 2016, Box 9.8, p 9.22.
- ¹³⁰ Cory Woodyatt, Exhibit UFU 8 at paragraph 6; Patrick Geary, Exhibit UFU 9 at paragraphs 9, 11, 12, 14, 18, 21; Malcolm Hayes, Exhibit UFU 2 at paragraphs 11, 14, 17, 24; Gerald Conroy, Exhibit UFU 10 at paragraphs 11–12; John Radford, Exhibit UFU 12 at paragraphs 15–17; Michael Lia, Exhibit UFU 4 at paragraph 18; and Barry Thomas, Exhibit UFU 15 at Attachment DK-1 and paragraphs 16 and 20–23.
- ¹³¹ Kirstie Schroder, Transcript 19 April 2016 at PN795, Exhibit MFB/CFA 10 at paragraph 31; Leach, Transcript 20 April 2016 at PN1209–1211; Each of the UFUA witnesses made this point. See, for example: Ken Brown Exhibit UFU 6 at paragraphs 8–9 and 31; Daniel Gatt Exhibit UFU 5 at paragraphs 11– 19 and 34; Alan Quinton Exhibit UFU 3 at paragraphs 14–21 and 31–33; Bradley Quinn Exhibit UFU 7 at paragraphs 27–30; Cory Woodyatt Exhibit UFU 8 at paragraphs 4, 7 and 30; Malcolm Hayes Exhibit UFU 2 at paragraphs 10–18; Archie Conroy Exhibit UFU 10 at paragraphs 19–20; John Radford Exhibit UFU 12 at paragraphs 15–34; Michael Martin, Exhibit UFU 14 at paragraphs 3, 18; Michael Lia, Exhibit UFU 4 at paragraphs 14– 17 and 21; Barry Thomas Exhibit UFU 15, Exhibit BT-1 at paragraphs 20– 39, 49– 58; Buffone, Transcript 19 April 2016 at PN481–PN482; Leach, Transcript 20 April 2016 at PN1209–PN1211; Youssef, Transcript 20 April 2016 at PN1479; Hayes, Transcript 20 April 2016 at PN1559; Geary, Transcript 21 April 2016 at PN3391–PN3396; Martin, Transcript 28 April 2016 at PN4301–PN4311; Thomas, Transcript 28 April 2016 at PN4505 and PN4523.
- ¹³² Transcript 21 April 2016 at PN2955.
- ¹³³ Exhibit MFB/CFA 6 at paragraphs 7–8, 11.
- ¹³⁴ Exhibit MFB/CFA 16 at paragraphs 10–26.
- ¹³⁵ Exhibit MFB/CFA 18 at paragraphs 7–12.
- ¹³⁶ Exhibit MFB/CFA 20 at paragraphs 6–27.
- ¹³⁷ Ken Brown, Bradley Quinn, Alan Quinton and Tony Martin.
- ¹³⁸ Gerald Conroy, Barry Thomas, Patrick Geary and John Radford.
- ¹³⁹ See for example, evidence under cross-examination of Alan Quinton, Transcript 20 April 2016 at PN1862–66; Daniel Gatt, Transcript 20 April 2016 at PN2212; Bradley Quinn, Transcript 21 April 2016 at PN3111–15; Tony Martin, Transcript 28 April 2016 at PN4292–300; Barry Thomas, Transcript 28 April 2016 at PN4540.
- ¹⁴⁰ Note that while Ken Brown accepted under cross-examination that firefighters can work alongside people from other stations or sectors, he refused to accept that it was a regular occurrence and that they would not know those people: Transcript, 21 April at PN2578–PN2580. However, other witnesses accepted the proposition. See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN1611; Bradley Quinn, Transcript 21 April 2016 at PN3056–58.
- ¹⁴¹ See evidence under cross-examination of Ken Brown, Transcript 21 April 2016 at PN2582; Glenn Veal, Transcript 21 April 2016 at PN3675.

- ¹⁴² See evidence under cross-examination of Malcolm Hayes, Transcript 21 April 2016 at PN1620; Michael Lia, Transcript 20 April 2016 at PN2112–15; Ken Brown, Transcript 21 April 2016 at PN2637–PN2654; Cory Woodyatt, Transcript 21 April 2016 at PN3217–35, PN3241–46; Patrick Geary, Transcript 21 April 2016 at PN3292–98; Glenn Veal, Transcript 21 April 2016 at PN3676–87; John Radford, Transcript 21 April 2016 at PN3817; Barry Thomas, Transcript 28 April 2016 at PN4564.
- ¹⁴³ See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN1625–27; Michael Lia, Transcript 20 April 2016 at PN2116–17; Daniel Gatt, Transcript 20 April 2016 at PN2291–98; Cory Woodyatt, Transcript 21 April 2016 at PN3239–40; Patrick Geary, Transcript 21 April 2016 at PN3378–79; Glenn Veal, Transcript 21 April 2016 at PN3688–91; Barry Thomas, Transcript 28 April 2016 at PN4565.
- ¹⁴⁴ See evidence under cross-examination of Daniel Gatt, Transcript 20 April 2016 at PN2299–2305; Ken Brown, Transcript 21 April 2016 at PN2655–62, PN2663–84; Glenn Veal, Transcript 21 April 2016 at PN3692–94.
- ¹⁴⁵ See evidence under cross-examination of Daniel Gatt, Transcript 20 April 2016 at PN 2328–37; Glenn Veal, Transcript 21 April 2016 at PN 3694–96.
- ¹⁴⁶ See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 PN 1644–52; Cory Woodyatt, Transcript 21 April 2016 at PN 3215–16; Patrick Geary, Transcript 21 April 2016 at PN 3383; John Radford, Transcript 21 April 2016 at PN 3835–52; Barry Thomas, Transcript 28 April 2016 at PN 4569.
- ¹⁴⁷ See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 PN1666.
- ¹⁴⁸ See evidence under cross-examination Patrick Geary, Transcript 21 April 2016 at PN 3373; Glenn Veal, Transcript 21 April 2016 at PN 3703–06; John Radford, Transcript 21 April 2016 at PN 3826–27; Barry Thomas, Transcript 28 April 2016 at PN 4567.
- ¹⁴⁹ See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN 1636–38; Michael Lia, Transcript 20 April 2016 at PN 2118–20; Daniel Gatt, Transcript 20 April 2016 at PN 2311–17; Ken Brown, Transcript 21 April 2016 at PN 2693, 2713, 2911–18; Cory Woodyatt, Transcript 21 April 2016 at PN 3247–49; Patrick Geary, Transcript 21 April 2016 at PN 3371–72; Glenn Veal, Transcript 21 April 2016 at PN 3701–02; Barry Thomas, Transcript 28 April 2016 at PN 4567.
- ¹⁵⁰ Transcript 21 April 2016 at PN 2916–18; and see John Radford, Transcript 21 April 2016 at PN 3823–25.
- ¹⁵¹ See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 PN 1630–31, 1634–35
- ¹⁵² See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN 1640–43; Alan Quinton, Transcript 2 April 2016 at PN 1819–33; Michael Lia, Transcript 20 April 2016 at PN 1982–96; Daniel Gatt, Transcript 20 April 2016 at PN 2320–22; Ken Brown, Transcript 21 April 2016 at PN 2722–2724, 2729; Bradley Quinn, Transcript 21 April 2016 at PN 3074–80; Cory Woodyatt, Transcript 21 April 2016 at PN 3256–63; Patrick Geary, Transcript 21 April 2016 at PN 3383, 3387–90; Glenn Veal, Transcript 21 April 2016 at PN 3709–12; John Radford, Transcript 21 April 2016 at PN 3854–68; Barry Thomas, Transcript 28 April 2016 at PN 4590–98.
- ¹⁵³ See, for example: evidence under cross-examination of John Radford, Transcript 21 April 2016 at PN 3867–68; Barry Thomas, Transcript 28 April 2016 at PN 4597–98.
- ¹⁵⁴ See Statement of Kirstie Schroeder, Exhibit MFB/CFA 10 a paragraphs 1–18; Statement of Kate Harrap, Exhibit MFB/CFA 11 at paragraph 15.
- ¹⁵⁵ See Reply Statement of Gregory Leach, Exhibit MFB/CFA 15 at paragraphs 8–9; Reply Statement of Steve Warrington, Exhibit MFB/CFA 16, 29–32.
- ¹⁵⁶ See *Fire Fighting Industry Award 2010* cl 22.6(a); MFB Operational Agreement cl 83; CFA Operational Agreement cl 84.
- ¹⁵⁷ MFB Agreement, cl 87.1.
- ¹⁵⁸ For example, see: Ken Brown, Exhibit UFU 6 at paragraphs 9, 15–17; Daniel Gatt, Exhibit UFU 5 at paragraphs 11, 15 – 18; Alan Quinton, Exhibit UFU 3 at paragraphs 18, 23–27; Bradley Quinn, Exhibit UFU 7 at paragraph 25; Glenn Veal, Exhibit UFU 11 at paragraphs 14 –17; Cory Woodyatt, Exhibit UFU 8 at paragraphs 3–4, 9–12; Patrick Geary, Exhibit UFU 9 at paragraphs 9, 11, 12, 14, 17, 18 and 21; Malcolm Hayes, Exhibit UFU 2 at paragraphs 9, 15–17, 20–21; Gerald Conroy, Exhibit UFU 10 at paragraphs 7, 9, 11–12; John Radford, Exhibit UFU 12 at paragraphs 25–31, 37–41; Michael Lia, Exhibit UFU 4 at paragraphs 11–14 and 17; and Barry Thomas, Exhibit UFU 15 at paragraphs 24–28, 35–36.
- ¹⁵⁹ Exhibit MFB/CFA 15 at paragraphs 10–11.
- ¹⁶⁰ Exhibit MFB/CFA 18 at paragraphs 16–19.
- ¹⁶¹ Exhibit MFB/CFA 16 at paragraphs 29–34.
- ¹⁶² MFB Agreement cl 58; CFA Agreement cl 54.

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- ¹⁶³ See Gregory Leach, Transcript 20 April 2016 at PN1261.
- ¹⁶⁴ MFB Agreement cl 67; CFA Agreement cl 64.
- ¹⁶⁵ MFB Agreement cl 61; CFA Agreement cl 58.
- ¹⁶⁶ MFB Agreement cl 63; CFA Agreement cl 60.
- ¹⁶⁷ MFB Agreement cll 53, 66; CFA Agreement cll 47.2, 51.1.
- ¹⁶⁸ Ken Brown, Transcript 21 April 2016 at PN2528.
- ¹⁶⁹ Report of the Victorian Auditor-General, *Management of Unplanned Leave in Emergency Services*, March 2013, 21, 24.
- ¹⁷⁰ *Ibid*, 24 (Figure 3C).
- ¹⁷¹ Further Statement of Greg Leach, Exhibit MFB/CFA 23 at paragraph 10; Further Statement of Bruce Byatt, Exhibit MFB/CFA 24 at paragraph 10.
- ¹⁷² See the evidence under cross-examination of Alan Quinton, Transcript 20 April 2016 at PN 1814, 1871–72; Michael Lia, Transcript 20 April 2016 at PN 2003–06; John Radford, Transcript 21 April 2016 at PN 3790–94; and Tony Martin, Transcript 28 April 2016 at PN 4301.
- ¹⁷³ See the evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN 1668–71; Daniel Gatt, Transcript 20 April 2016 at PN 2224–25; Ken Brown, Transcript 21 April 2016 at PN 2943; Bradley Quinn, Transcript 21 April 2016 at PN 3083; Cory Woodyatt, Transcript 21 April 2016 at PN 3238; Patrick Geary, Transcript 21 April 2016 at PN 3395; and Glenn Veal, Transcript 21 April 2016 at PN 3717. In fairness, it must be noted that some of those witnesses offered their conditional acceptance of the proposition, such as Ken Brown, who stated his opinion that part-time work would not be compatible with the recruit course or with the first three years of employment, but ‘it’s not impossible to look at... you’d want to look at the right rank where to go’. Transcript 21 April 2016 at PN2943, See also Patrick Geary, Transcript 21 April 2016 at PN3395.
- ¹⁷⁴ Reply Statement of Greg Leach, Exhibit MFB/CFA 15 at paragraph 7.
- ¹⁷⁵ Reply Statement of Greg Leach, Exhibit MFB/CFA 15 at paragraph 11.
- ¹⁷⁶ See the evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN 1560, 1569, 1570, 1605–1608; Alan Quinton, Transcript 20 April 2016 at PN 1792; Michael Lia, Transcript 20 April 2016 at PN 2032; Daniel Gatt, Transcript 20 April 2016 at PN 2254, 2262; Ken Brown, Transcript 21 April 2016 at PN 2517–18; Bradley Quinn, Transcript 21 April 2016 at PN 3030; Patrick Geary, Transcript 21 April 2016 at PN 3354–56; Cory Woodyatt, Transcript 21 April 2016 at PN 3185; Glenn Veal, Transcript 21 April 2016 at PN 3627–28; John Radford, Transcript 21 April 2016 at PN 3811; Tony Martin, Transcript 28 April 2016 at PN 4364–65; and Barry Thomas, Transcript 28 April 2016 at PN 4614.
- ¹⁷⁷ See the evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN 1603–04; Alan Quinton, Transcript 20 April 2016 at PN 1775; Michael Lia, Transcript 20 April 2016 at PN 2052; Daniel Gatt, Transcript 20 April 2016 at PN 2281; Ken Brown, Transcript 21 April 2016 at PN 2534, 2539, 2558; Bradley Quinn, Transcript 21 April 2016 at PN 3031–33; Glenn Veal, Transcript 21 April 2016 at PN 3633–39; Tony Martin, Transcript 28 April 2016 at PN 4372–75; and Barry Thomas, Transcript 28 April 2016 at PN 4615.
- ¹⁷⁸ Glenn Veal, Transcript 21 April 2016 at PN 3637–39; Tony Martin, Transcript 28 April 2016 at PN 4373–74.
- ¹⁷⁹ Transcript 21 April 2016 at PN 2534; see also PN 2538.
- ¹⁸⁰ Transcript 21 April 2016 at PN3424.
- ¹⁸¹ Exhibit MFB/CFA 15 at paragraphs 22–26.
- ¹⁸² Exhibit MFB/CFA 16 at paragraphs 35–40.
- ¹⁸³ Exhibit MFB/CFA 18 at paragraphs 28–30.
- ¹⁸⁴ Exhibit MFB/CFA 20 at paragraphs 45–48.
- ¹⁸⁵ See evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016, at PN 1547–51; Alan Quinton Transcript 20 April 2016 at PN 1725; Michael Lia, Transcript 20 April 2016 at PN 1968; Corey Woodyatt Transcript 21 April 2016 at PN 3169; Patrick Geary, Transcript 21 April 2016 at PN 3320; and John Radford at PN 3796.
- ¹⁸⁶ Patrick Geary, Transcript 21 April 2016 at PN 3320.
- ¹⁸⁷ Draft Determination, cl 10.3(a)(ii);
- ¹⁸⁸ Draft Determination, cl 10.3(b).
- ¹⁸⁹ See the witness statements of each of the UFU witnesses, and the evidence under cross-examination of Malcolm Hayes, Transcript 20 April 2016 at PN 1540–43; Alan Quinton, Transcript 20 April 2016 at PN 1868; Ken Brown, Transcript 21

April 2016 at PN 2495, PN 2732; Glenn Veal, Transcript 21 April 2016 at PN 3666–71; Tony Martin, Transcript 28 April 2016 at PN 4314–15, 4319; and Barry Thomas, Transcript 28 April 2016 at PN 4519.

- ¹⁹⁰ Eg, Malcolm Connellan, Transcript 28 April 2016 at PN 4208. See also David Youssef, Transcript 20 April 2016 PN 1479.
- ¹⁹¹ Transcript 21 April 2016 at PN 2735–38.
- ¹⁹² Transcript 21 April 2016 at PN 3659–60.
- ¹⁹³ Transcript 28 April 2016 at PN 4334–35.
- ¹⁹⁴ Transcript 20 April 2016 See PN 1881.
- ¹⁹⁵ Transcript 28 April 2016 at PN 4546–47.
- ¹⁹⁶ Statement of Michael Lia, Exhibit UFU 4 at paragraph 11.
- ¹⁹⁷ Transcript 20 April 2016 at PN 2135.
- ¹⁹⁸ UFUA Final Outline of Submissions, 7 June 2016 at paragraphs 30–31, 51.
- ¹⁹⁹ Exhibit MFB/CFA 4 at paragraph 9.
- ²⁰⁰ Exhibit MFB/CFA 6 at paragraphs 18–19.
- ²⁰¹ Exhibit MFB/CFA 7 at paragraphs 12–13 and Exhibit MFB/CFA 8 at paragraphs 5 – 7.
- ²⁰² Exhibit MFB/CFA 16 at paragraphs 52 and 59.
- ²⁰³ Exhibit MFB/CFA 18 at paragraphs 24–25 and 36.
- ²⁰⁴ Exhibit MFB/CFA 20 at paragraphs 30, 40 and 51.
- ²⁰⁵ *Port Louis Corporation v Attorney-General of Mauritius* (1965) AC 1111 at 1124; *TVW Enterprises Ltd v Duffy and Others* (1985) 60 ALR 687 at 694 per Toohey J.
- ²⁰⁶ [2010] FCA 591 at [44] to [45]. A subsequent appeal against his Honour’s decision failed in relation to the decision to convict QR of a breach of the relevant enterprise agreement. The appeals against sentence were upheld, but only to the extent of setting aside the penalties of \$390,000; \$231,000 and \$33,000 in relation to the appellants and inserting the sums of \$192,200; \$112,000 and \$16,000. (2010) 204 IR 142.
- ²⁰⁷ *CPSU v Vodafone Network Pty Ltd* Print PR911257, 14 November 2001 per Smith C (as he then was).
- ²⁰⁸ UFUA Final Outline of Submissions, 7 June 2016 at paragraph 138.
- ²⁰⁹ Transcript 19 April 2016 at PN791–798.
- ²¹⁰ Transcript 20 April 2016 at paragraphs 1386 – 1390.
- ²¹¹ Transcript at paragraphs 1475 – 1477.
- ²¹² Transcript at paragraphs 4042 – 4066.
- ²¹³ Exhibit MFB/CFA 25 at paragraph 30.

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

Fire Fighting Industry Award 2010 – Part-Time Work

Matter No. AM2014/202

Firefighting Industry Award 2010

[MA000111]

Firefighting industry

COMMISSION MEMBER

MELBOURNE, XX YYY 2016

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/202, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Firefighting Industry Award 2010* be varied as follows:

[1] By amending **clause 10** as follows:

10.1 An employer in the public sector may **only** employ a person in a classification in this award on a full-time or part-time basis.

~~A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.~~

10.2 Full-time employment

A full-time employee is an employee who is engaged to work an average of 38 ordinary hours per week.

10.3 Part-time employment

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

(i) works less than the full-time hours of 38 ordinary hours per week;

(ii) has reasonably predictable hours of work; and

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

(b) At the time of engagement as a part-time employee the employer and the part-time employee will agree in writing on a regular pattern of work, specifying at least the hours worked each day, which days of the week the employee will work and the actual starting and finishing times each day.

(c) Any agreed variation to the hours of work will be recorded in writing.

- (d) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.
- (e) All time worked in excess of the hours as agreed under clause 10.3(b) or varied under clause 10.3(c) will be overtime and paid for at the rates prescribed in clause 26.1—Overtime – public sector.
- (f) A part-time employee employed under the provisions of this clause must be paid for ordinary hours worked at the rate of 1/38th of the appropriate weekly rate prescribed in clause 15 – Minimum wages – public sector.

[2] By amending **clause 22.2(a)** as follows:

- (a) ~~Full-time E~~employees working a 10/14 roster will be rostered and work an average of 42 hours per week, two hours of which will be overtime work and paid for as such and the remaining two hours will be taken as annual/accrued leave in accordance with the roster laid down for this purpose. ~~Part-time employees working a 10/14 roster will be rostered and work hours as agreed under clause 10.3.~~

[3] By amending **clause 22.3** as follows:

- (a) ~~Full-time E~~employees (other than recruits) who are not working a 10/14 roster will be required to work an average of 42 hours per week, two hours of which will be overtime work and paid for as such and the remaining two hours will be taken as accrued leave. ~~Part-time employees who are not working a 10/14 roster will be rostered and work hours as agreed under clause 10.3.~~
- (b) Subject to clause 22.3(a), a ~~full-time~~ Fire Service Communications Controller will, subject to the requirements in clauses 22.2(b) and (c) and clause 22.5(b), work a 12 hour continuous roster over a cycle of eight weeks with a day shift of 7.00 am to 7.00 pm and a night shift of 7.00 pm to 7.00 am.
- (c) Where an employee is required to undertake duties that are outside of the standard hours for the work location the following will apply:
 - (i) where such activity involves normal activities a minimum break between periods of duty of 10 hours will apply; and
 - (ii) where such activity involves a major fire or major incident a minimum break between periods of duty of 12 hours will apply.
- (d) ~~Full-time E~~employees (other than recruits) not working a 10/14 roster, will receive the same total weekly wage as employees on a 10/14 roster.

[4] By inserting a new **clause 22.4** as follows:

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 7.00am and 6.00pm, Monday to

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

[5] By amending **clause 22.5(b)** as follows:

The roster may be varied for part-time employees, for employees on special duties and to provide that during the first year of service employees may be rostered for up to five consecutive day duties.

[6] By amending **clause 22.8(b)** and **clause 22.8(e)** as follows:

(b) The hours of duty for full-time employees will be 42 hours per week over a seven day cycle. The hours of duty for part-time employees will be as agreed under clause 10.3.

(e) Full-time employees operating under this roster will receive the same total weekly wage and annual leave provisions as Firefighters on a 10/14 shift roster.

[7] By amending **clause 26.1** as follows:

(a) Shiftworkers

(i) A shiftworker working a 10/14 roster or a Fire Service Communications Controller required to work in excess of a rostered shift or for more than four shifts in any one week will be paid for such additional time as overtime.

(ii) Subject to clause 26.1(a)(i), all time worked in excess of the daily or weekly ordinary hours of work is overtime and will be paid for at the rate of double time.

(iii) The rate used for the purpose of calculating overtime payments is 130% of the minimum weekly wage: 38 hours for employees in clause 26.1-Overtime-public sector.

(iv) Overtime will be calculated to the nearest quarter of an hour.

(v) To remove doubt, no additional payment is made to an employee in respect of the average of two hours a week of overtime incorporated in minimum weekly rate payable to the employee.

(b) Day workers

All time worked in excess of the daily or weekly ordinary hours of work is overtime and will be paid for at the rate of double time save that any overtime worked on a public holiday will be paid at the rate of double time and half.

[8] By amending **clause 27** as follows:

27.1 Employees who are employed as shiftworkers will receive a shift loading of 30% in addition to their classification rate of pay. For **full-time** public sector employees, including those who work a 10/14 roster, this loading is built into their minimum weekly wage specified in clause 15-Minimum wages-public sector.

27.2 Clause 27.2 applies to **private-sector** day workers only.

[9] By amending **clause 28.3(a)** as follows:

Notwithstanding clause 28.2, a **full-time** employee working the 10/14 roster and other **full-time** employees of public sector employers will be entitled to 65.06 days annual leave per annum inclusive of the NES. **Part-time employees working the 10/14 roster will be entitled to annual leave on a pro-rata basis of 65.06 days annual leave per annum inclusive of the NES.** Such leave is to be taken on the following basis:

(i) for **full-time** employees subject to the 10/14 roster, such leave will be taken in periods of 28 calendar days within alternating periods of 20 weeks and 24 weeks; and

(ii) for other employees not subject to the 10/14 roster **and for part-time employees**, such leave will be taken within periods as reasonably prescribed by the employer. These employees will be required to take any public holiday on the date reasonably prescribed.

[3] The determination shall operate on and from XX YYY 2016.

BY THE COMMISSION

Attachment 2—Table of provisions for part-time and/or casual employment in modern awards

Award	Provision for part-time and/or casual employment	Additional comments
Aboriginal Community Controlled Health Services Award 2010 [MA000115]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Aged Care Award 2010 [MA000018]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Air Pilots Award 2010 [MA000046]	Yes. Full-time, part-time & casual basis (11).	No detailed parameters around accessing part-time entitlements.
Aircraft Cabin Crew Award 2010 [MA000047]	Yes. Full-time, part-time & casual basis (11, 13).	No detailed parameters around accessing part-time entitlements.
Airline Operations—Ground Staff Award 2010 [MA000048]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements.
Airport Employees Award 2010 [MA000049]	Yes. Full-time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements.
Alpine Resorts Award 2010 [MA000092]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Aluminium Industry Award 2010 [MA000060]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Ambulance and Patient Transport Industry Award 2010 [MA000098]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.

Award	Provision for part-time and/or casual employment	Additional comments
Amusement, Events and Recreation Award 2010 [MA000080]	Yes. Full-time, part-time & casual (10.1).	No detailed parameters around accessing part-time entitlements.
Animal Care and Veterinary Services Award 2010 [MA000118]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Aquaculture Industry Award 2010 [MA000114]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Architects Award 2010 [MA000079]	Yes. Full-time & part-time (11.1). Casual (11.2).	No detailed parameters around accessing part-time entitlements.
Asphalt Industry Award 2010 [MA000054]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Banking, Finance and Insurance Award 2010 [MA000019]	Yes. Full-time (10.1), -part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements.
Black Coal Mining Industry Award 2010 [MA000001]	Yes. Full-time, part-time & casual basis (10.1).	10.1: Casual – only for staff employee classifications in schedule B. No detailed parameters around accessing part-time entitlements.
Book Industry Award 2010 [MA000078]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Broadcasting and Recorded Entertainment Award 2010 [MA000091]	Yes. Full-time, part-time & casual basis (10.1).	10.6: Special provisions for employees in cinemas <ul style="list-style-type: none"> • Clauses 10.2 – 10.5 (definitions and requirements for full-time, part-time and casual employment) will not apply to employees in cinemas. 54 – Types of Employment <ul style="list-style-type: none"> • 54.2-52.4 sets out the terms of the categories of employment

Award	Provision for part-time and/or casual employment	Additional comments
		<ul style="list-style-type: none"> • So cinema employees can still be employed on a part-time or casual basis but the requirements for each category are different to other employees under the award • No detailed parameters around accessing part-time entitlements (parameters around hours worked).
Building and Construction General On-site Award 2010 [MA000020]	Yes Daily hire, full-time weekly hire, part-time weekly hire & casual basis (10.1).	Under (13) definition of part-time weekly hire employee is part-time employee. <ul style="list-style-type: none"> • Difference is between a weekly and daily hire employee • 11: Daily hire employee is a tradesperson or labourer subject to different notice/termination rules (ie one day's notice of termination). No detailed parameters around accessing part-time weekly hire entitlements
Business Equipment Award 2010 [MA000021]	Yes. Full-time (11), part-time (12) & casual (13).	No detailed parameters around accessing part-time entitlements
Car Parking Award 2010 [MA000095]	Yes. Full-time, part-time & casual (10.1).	No detailed parameters around accessing part-time entitlements
Cement and Lime Award 2010 [MA000055]	Yes. Full-time, part-time & casual (10.1).	No detailed parameters around accessing part-time entitlements
Cemetery Industry Award 2010 [MA000070]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Children's Services Award 2010 [MA000120]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Cleaning Services Award 2010 [MA000022]	Yes. Full-time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements
Clerks—Private Sector Award 2010 [MA000002]	Yes. Full-time (11), part-time (12) & casual (13).	No detailed parameters around accessing part-time entitlements
Coal Export Terminals Award 2010 [MA000045]	Yes. Full-time (10.1), -part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Commercial Sales Award 2010 [MA000083]	Yes. Full-time (10.2), part-time (10.3), casual (10.4).	No detailed parameters around accessing part-time entitlements
Concrete Products Award 2010 [MA000056]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Contract Call Centres Award 2010 [MA000023]	Yes. Full-time (11), part-time (12) & casual (13).	No detailed parameters around accessing part-time entitlements
Corrections and Detention (Private Sector) Award 2010 [MA000110]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Cotton Ginning Award 2010 [MA000024]	Yes. Full-time, part-time & casual basis (10.1)..	No detailed parameters around accessing part-time entitlements
Dredging Industry Award 2010 [MA000085]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Dry Cleaning and Laundry Industry Award 2010 [MA000096]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Educational Services (Post-Secondary Education) Award 2010 [MA000075]	Yes. Full-time, part-time, casual & seasonal basis (10.1).	No detailed parameters around accessing part-time entitlements
Educational Services (Schools) General Staff Award 2010 [MA000076]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Educational Services (Teachers) Award 2010 [MA000077]	Yes. Full-time, part-time, casual & fixed term basis (10.1).	No detailed parameters around accessing part-time entitlements
Electrical, Electronic and Communications Contracting Award 2010 [MA000025]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Electrical Power Industry Award 2010 [MA000088]	Yes. Full-time (10), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements
Fast Food Industry Award 2010 [MA000003]	Yes. 10.1 – full-time, part-time & casual.	No detailed parameters around accessing part-time entitlements
Fire Fighting Industry Award 2010 [MA000111]	Yes (private sector only) Full-time or part-time (11.1).	Part-time <u>not</u> available in the public sector (10).
Fitness Industry Award 2010 [MA000094]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Food, Beverage and Tobacco Manufacturing Award 2010 [MA000073]	Yes. Full-time (11), part-time (12.) & casual (13).	No detailed parameters around accessing part-time entitlements
Funeral Industry Award 2010 [MA000105]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Gardening and Landscaping Services Award 2010 [MA000101]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Gas Industry Award 2010 [MA000061]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
General Retail Industry Award 2010 [MA000004]	Yes. Full-time (11), part-time (12) & casual basis (13).	No detailed parameters around accessing part-time entitlements
Graphic Arts, Printing and Publishing Award 2010 [MA000026]	Yes. Full-time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements
Hair and Beauty Industry Award 2010 [MA000005]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Health Professionals and Support Services Award 2010 [MA000027]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Higher Education Industry—Academic Staff—Award 2010 [MA000006]	Yes. Full-time (11.1), part-time (11.2) & fixed term (11.3)	11.3 - fixed term employment limited to certain work. NB: all under a contract of employment. No detailed parameters around accessing part-time entitlements save for clause 11.2 which provides: “Part-time employment may contain a reasonable probationary period that is directly related to the nature of the work to be carried out under the contract.”
Higher Education Industry—General Staff—Award 2010 [MA000007]	Yes. Full-time (10.1), part-time (10.2), fixed term (10.3) & casual (12).	11.3 - fixed term employment limited to certain work. NB: full-time, part & fixed term under a contract of employment (10). No detailed parameters around accessing part-time entitlements save for clause 10.2 which

Award	Provision for part-time and/or casual employment	Additional comments
		provides: “Part-time employment may contain a reasonable probationary period that is directly related to the nature of the work to be carried out under the contract.”
Horse and Greyhound Training Award 2010 [MA000008]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Horticulture Award 2010 [MA000028]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Hospitality Industry (General) Award 2010 [MA000009]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Hydrocarbons Field Geologists Award 2010 [MA000064]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Hydrocarbons Industry (Upstream) Award 2010 [MA000062]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Joinery and Building Trades Award 2010 [MA000029]	Yes. Full-time (10), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements
Journalists Published Media Award 2010 [MA000067]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Labour Market Assistance Industry Award 2010 [MA000099]	Yes. Full-time, part-time, casual & sessional basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Legal Services Award 2010 [MA000116]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Live Performance Award 2010 [MA000081]	Yes. Full-time, part-time, weekly & casual (10.1).	No detailed parameters around accessing part-time entitlements
Local Government Industry Award 2010 [MA000112]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Mannequins and Models Award 2010 [MA000117]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Manufacturing and Associated Industries and Occupations Award 2010 [MA000010]	Yes. Full-time (12), part-time (13) & casual (14).	No detailed parameters around accessing part-time entitlements
Marine Tourism and Charter Vessels Award 2010 [MA000093]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Marine Towage Award 2010 [MA000050]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Maritime Offshore Oil and Gas Award 2010 [MA000086]	No. Full-time & relief basis (10.1).	10.3 – relief employment. A relief employee is: (a) engaged to cover one-off periods of relief; or (b) engaged to work on a project of finite life; and (c) receives, on a pro rata basis, equivalent pay and conditions to full-time employees. Part-time entitlements do not apply.
Market and Social Research Award 2010 [MA000030]	Yes. Full-time, part-time & casual basis (11).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Meat Industry Award 2010 [MA000059]	Yes. Full-time, part-time, casual & daily hire (including part-time daily hire) basis (11.1).	11.1 – daily hire (including part-time daily hire) is only for meat processing. No detailed parameters around accessing part-time entitlements except that pattern of work pertaining to part-time daily hire does not apply to a meat processing establishment (clause 13.4).
Medical Practitioners Award 2010 [MA000031]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Mining Industry Award 2010 [MA000011]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Miscellaneous Award 2010 [MA000104]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Mobile Crane Hiring Award 2010 [MA000032]	Full-time weekly hire & casual basis (10.1). Part-time available only for casual employees.	No provision for part-time if not a casual employee. Part-time entitlements do not apply.
Nursery Award 2010 [MA000033]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Nurses Award 2010 [MA000034]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Oil Refining and Manufacturing Award 2010 [MA000072]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Passenger Vehicle Transportation Award 2010 [MA000063]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Pastoral Award 2010 [MA000035]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Pest Control Industry Award 2010 [MA000097]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Pharmaceutical Industry Award 2010 [MA000069]	Yes. Full-time (1), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements
Pharmacy Industry Award 2010 [MA000012]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Plumbing and Fire Sprinklers Award 2010 [MA000036]	Yes Part-time (13) & casual (14).	<p>Type of employment is specified as daily hire, weekly hire or casual.</p> <ul style="list-style-type: none"> 10.1 – daily hire only applies to public & mechanical services. <p>Presumably daily hire or weekly hire can be employed as part-time:</p> <ul style="list-style-type: none"> 12.2 specifies that a “full-time weekly hire” works an average of 38 ordinary hours/week Daily hire does not specify hours. As a matter of construction would seem by implication either can be part-time (less than 38 hours/week). <p>No detailed parameters around accessing part-time entitlements</p>
Port Authorities Award 2010 [MA000051]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Ports, Harbours and Enclosed Water Vessels Award 2010 [MA000052]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Poultry Processing Award 2010 [MA000074]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Premixed Concrete Award 2010 [MA000057]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Professional Diving Industry (Industrial) Award 2010 [MA000108]	Yes (<u>casual but no part-time</u>). Full-time & casual basis (10.1).	10.2 – full-time employee restrictions: (a) inshore drivers must be employed by the week (b) For offshore divers, employment for the first four weeks will be on a weekly basis and thereafter will be on a calendar month basis. Part-time entitlements do not apply.
Professional Diving Industry (Recreational) Award 2010 [MA000109]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Professional Employees Award 2010 [MA000065]	Yes. (Contract of employment) – full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Quarrying Award 2010 [MA000037]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Racing Clubs Events Award 2010 [MA000013]	Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Racing Industry Ground Maintenance Award 2010 [MA000014]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Rail Industry Award 2010 [MA000015]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Real Estate Industry Award 2010 [MA000106]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Registered and Licensed Clubs Award 2010 [MA000058]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Restaurant Industry Award 2010 [MA000119]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Road Transport and Distribution Award 2010 [MA000038]	Yes. Full-time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements
Road Transport (Long Distance Operations) Award 2010 [MA000039]	Yes (<u>casual but no part-time</u>). Full-time & casual (10.1).	CI 4.2 which provides that the award does not cover an employee who is temporarily required to perform driving duties which are not on a long distance operation. In this case, the employee is covered by the Road Transport and Distribution Award 2010, which does provide for part-time employment. Part-time entitlements do not apply.
Salt Industry Award 2010 [MA000107]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Seafood Processing Award 2010 [MA000068]	Yes. Full-time(10), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Seagoing Industry Award 2010 [MA000122]	No. Full-time & relief (10.1).	10.3 – relief employment: <ul style="list-style-type: none"> An employee who is engaged as such. Part-time entitlements do not apply.
Security Services Industry Award 2010 [MA000016]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Silviculture Award 2010 [MA000040]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Sporting Organisations Award 2010 [MA000082]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
State Government Agencies Award 2010 [MA000121]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Stevedoring Industry Award 2010 [MA000053]	Yes (<u>casual but no part-time</u>). Full-time, guaranteed wage & casual basis(10.1).	10.2 – guaranteed wage employees: <ul style="list-style-type: none"> an employee who is guaranteed a minimum number or an average number of full shifts each week, or instead of that engagement, is provided the equivalent payment. <i>NB: somewhat similar to part-time employment.</i> No detailed parameters around accessing “guaranteed wage” entitlements

Award	Provision for part-time and/or casual employment	Additional comments
Storage Services and Wholesale Award 2010 [MA000084]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Sugar Industry Award 2010 [MA000087]	Yes. Full-time (11.1), part-time (11.2) & casual (11.3).	No detailed parameters around accessing part-time entitlements
Supported Employment Services Award 2010 [MA000103]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Surveying Award 2010 [MA000066]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Telecommunications Services Award 2010 [MA000041]	Yes. Full-time, part-time & casual (11).	No detailed parameters around accessing part-time entitlements
Textile, Clothing, Footwear and Associated Industries Award 2010 [MA000017]	Yes. Full-time (12), part-time (13), casual (14).	No detailed parameters around accessing part-time entitlements but note the following: <ul style="list-style-type: none"> An employer must not require a part-time employee to attend for duty more than once on any one day (clause 13.8) – this does not appear in other awards
Timber Industry Award 2010 [MA000071]	Yes. Full-time (12.1), casual (12.2), part-time (12.4), pieceworker (general timber stream) (12.5).	No detailed parameters around accessing part-time entitlements
Transport (Cash in Transit) Award 2010 [MA000042]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Travelling Shows Award 2010 [MA000102]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Vehicle Manufacturing, Repair, Services and Retail Award 2010 [MA000089]	Yes. Full-time, part-time & casual basis (10.1).	Caveat in 12.1 – part-time employment: <ul style="list-style-type: none"> does not apply to a person employed principally as a vehicle

Award	Provision for part-time and/or casual employment	Additional comments
		<p>salesman.</p> <p>However (44) – special provisions for persons employed principally to sell vehicles</p> <ul style="list-style-type: none"> • 44.2 – allows part-time employment but subject to different hours to general requirements in 12.1 <p>No detailed parameters around accessing part-time entitlements aside from what is noted above.</p>
Waste Management Award 2010 [MA000043]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Water Industry Award 2010 [MA000113]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Wine Industry Award 2010 [MA000090]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Wool Storage, Sampling and Testing Award 2010 [MA000044]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Attachment 3— National Jurisdiction Comparison Industrial Agreements 2015—updated, version 4 – June 2015

NATIONAL JURISDICTION COMPARISON INDUSTRIAL AGREEMENTS 2015

UPDATED - VERSION 4 - June 2015

PART-TIME WORK PROVISIONS IN EMERGENCY SERVICES INDUSTRIAL INSTRUMENTS

= Recently updated

JURISDICTION	VIC - MFB	VIC - CFA	VIC - AV	VIC Vic Police	ACT	NSW	QUEENSLAND	NT	WA DEFS	SA	TASMANIA			
NAME OF AWARD or AGREEMENT	Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010	Country Fire Authority/ United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010	Ambulance Victoria Enterprise Agreement 2015	Victoria Police Force Enterprise Agreement 2011	ACT Public Service ACT Fire & Rescue Enterprise Agreement 2011-2013	Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016	Queensland Fire and Emergency Services Determination 2013	Queensland Fire and Rescue Service Award - State 2012	Northern Territory Public Sector Fire and Rescue Service 2011-2013 Enterprise Agreement	Western Australian Fire Service Enterprise Bargaining Agreement 2014	Fire Brigade Employees' Award 1990	South Australian Metropolitan Fire Service Enterprise Agreement 2014	Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007	Tasmanian Fire Fighting Industry Employees' Industrial Agreement 2014
EXPIRY DATE	30/09/2013	30/09/2013	31/12/2016	29/11/2015	30/06/2013	18/02/2016	1/10/2016	7/11/2013	9/06/2017	1/01/2017			30/06/2016	
DURATION OF AGREEMENT	30/09/10 - 30/09/13	28/10/2010 - 30/09/2013	14/05/2015 - 31/12/2016	29/11/2011 - 29/11/2015	11/10/12 - 30/06/13	14/11/14 - 18/02/16	08/12/2013 - 01/10/2016	Commenced 14/06/2012	14/09/11 - 07/11/13	10/06/14 - 09/06/17		21/05/14 - 01/01/17	Commenced 1/04/2007	1/12/2014-30/06/2016
INVOLVEMENT OF UFU	UFU is a party.	UFU is a party.	N/A	N/A	Clause 3: covers the UFU.	FBEU is the union party.	CII 2(c),7: covers UFU by virtue of Clause 1.6 of the Award.	United Voice is the union party.	The UFU is a party.	The UFU is a party to both the Agreement and the Award.			Clause 2: the UFU is a party.	
RELATIONSHIP OF AGREEMENT TO THE AWARD	Read in conjunction with VFIEI Award	Awards do not apply	Operates to the exclusion of the Ambulance and Patient Transport Modern Award	N/A	No (only legislation)	N/A	Read and interpreted in conjunction with 6 identified Awards. Agreement prevails in the event of inconsistencies.	Read in conjunction with the PSEM By-laws and Determinations. Agreement prevails to the extent of any inconsistency.	Read in conjunction with the Fire Brigade Employees' Award 1990 No. A28 of 1989. The agreement prevails to the extent of any inconsistency.	Read and interpreted in conjunction with the Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007, or its successor. Agreement prevails to the extent of any inconsistency.			Read in conjunction with the Tasmania Fire Fighting Industry Employees Award and the State Service Act 2000. Agreement prevails to the extent of any inconsistency.	
HOURS OF WORK	Clause 72.2: 10/14 roster.	Clause 75.1.1: 10/14 roster. CII 75.1.3, 77, 78, 80: other.	Clause 35: 10/14 roster and ordinary 38 hour work.	Clause 32: rosters and shift work.	Clause 31: 10/14 roster. Clause 32: day shift.	Clause 8.3: 10/14 roster. Clause 8.4: day shift (back to back)	CII 19, 47: 10/14 roster.	Clause 34: 10/14 roster. Clause 33: day work.	Clause 14(2): 10/14 roster. Clause 14(3): day shift.	Clause 8(1): 10/14 roster. Clause 8(2): day shift.	Clause 25: 10/14 roster OTR 4 x 10 hour days rotating fortnight. Port Pirie 24 hours on 3 days off. Mount Gambier 5 day week 8 hours per day. Day Working Personnel - roster of 168 hours per 4 week cycle.	Clause 16.1.1: 10/14 roster. Clause 16.1.2: day roster - 168 hours per 4 week cycle.	10/14 roster in award. Major emergency incidents for rostered shift workers, and interstate/international deployments, in agreement.	

JURISDICTION	VIC - MFB	VIC - CFA	VIC - AV	VIC - Vic Police	ACT	NSW	QUEENSLAND	NT	WA DEFS	SA	TASMANIA			
NAME OF AWARD or AGREEMENT	Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010	Country Fire Authority/ United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010	Ambulance Victoria Enterprise Agreement 2015	Victoria Police Force Enterprise Agreement 2011	ACT Public Service ACT Fire & Rescue Enterprise Agreement 2011-2013	Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016	Queensland Fire and Emergency Services Determination 2013	Queensland Fire and Rescue Service Award - State 2012	Northern Territory Public Sector Fire and Rescue Service 2011-2013 Enterprise Agreement	Western Australian Fire Service Enterprise Bargaining Agreement 2014	Fire Brigade Employees' Award 1990	South Australian Metropolitan Fire Service Enterprise Agreement 2014	Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007	Tasmanian Fire Fighting Industry Employees' Industrial Agreement 2014
INDIVIDUAL FLEXIBILITY ARRANGEMENTS	Clause 12: An employer and employee may make arrangements to vary effect of terms of agreements as set out within the clause. (Sick leave only?)	Clause 12: An employer and employee may make arrangements to vary effect of terms of agreements as set out within the clause. (Study leave only?)	Clause 13.2(a): Individual flexibility arrangements permitted re when work is performed.	Clause 14: re extra annual leave and cashing out time off only. Clause 15: re care of a child.	Clause 63: employer and employee may enter into individual agreement to vary the application of certain provisions of this Agreement. CI 56.4 provides specifically for employees with caring responsibilities.	Clause 8.2.3: An employer and employee may make arrangements to vary effect of terms of agreements relating to rostering.		Clause 66: flexible work arrangements	No	No	No	No	Clause 61: flexible work for parents/family-friendly provisions.	
PART-TIME EMPLOYEES	Prohibited by Clause 37.2.	Prohibited by Clause 29.2.	Clause 16: when operational needs permit, no unreasonable refusal.	Clause 31: expressly permitted	Section J: yes, within 10/14 roster and allocated to relief roster. Eligibility - 3 years operational experience. Annual review. Can follow parental leave. Max 7 years.	Clause 8.2.3: An employer and employee may make arrangements to vary effect of terms of agreements relating to rostering. See also cll 21.3.3.2 and 21.9.1.2.	Clause 24: expressly permitted.	Clause 4.2: expressly permitted.	Clause 57: right to request part-time work, job sharing arrangements. Clause 42.15(a): can request part-time work after birth of child up to school age.	Clause 19: Communication Systems Officers and non-rostered shift workers only - not fire fighters on station. Facilitative clause in EBA to discuss part time/job sharing arrangements for all employees covered by the Agreement.	No	Clause 24.3: can return to work part-time after parental leave until child is aged 2.	Clause 11: part-time employees permitted. Clause 22.12: part-time work available if pregnant.	Clause 34: An employee may be employed on a part-time basis in accordance with s 37(3)(a) of State Service Act (ie, permanent employment). Clause 61: flexible work for parents/family-friendly provisions.
CASUAL EMPLOYEES	Prohibited by Clause 37.2.	Prohibited by Clause 29.2.	Expressly permitted by clause 16.		No.	No.	Clause 25: expressly permitted.	Clause 4.3 refers to temporary employment (not casual employment).	? reference in agreement to casual employees.	Clause 18: only employed in Country Station to assist training academy or as agreed between the parties	No	No	Reference in the Award to applicability of certain conditions to casual employees.	Clause 35: employed by the hour with 23% loading.

JURISDICTION	VIC - MFB	VIC - CFA	VIC - AV	VIC - Vic Police	ACT	NSW	QUEENSLAND	NT	WA DEFS	SA	TASMANIA			
NAME OF AWARD or AGREEMENT	Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010	Country Fire Authority/ United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010	Ambulance Victoria Enterprise Agreement 2015	Victoria Police Force Enterprise Agreement 2011	ACT Public Service ACT Fire & Rescue Enterprise Agreement 2011-2013	Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016	Queensland Fire and Emergency Services Determination 2013	Queensland Fire and Rescue Service Award - State 2012	Northern Territory Public Sector Fire and Rescue Service 2011-2013 Enterprise Agreement	Western Australian Fire Service Enterprise Bargaining Agreement 2014	Fire Brigade Employees' Award 1990	South Australian Metropolitan Fire Service Enterprise Agreement 2014	Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007	Tasmanian Fire Fighting Industry Employees' Industrial Agreement 2014
JOB SHARING	No	No	Expressly permitted by clause 17.		Clause 61: yes, in specified circumstances.	Clause 8.2.2: operational firefighters can elect to work alternative rosters including job sharing. See also FRNSW/FBEU FAQ on this issue.		Yes, see Clause 57 above.	No (but see Cl 19 above).	No	No	No.	Yes	
PARENTAL LEAVE	Clause 67: 14 weeks paid, 38 weeks unpaid.	Clause 64.2: 13 weeks paid, 39 weeks unpaid.	Clause 57.1: 10 weeks paid.	Part 15: 14 weeks paid.	CII 73, 76: 18 weeks paid, up to 3 years unpaid.	Clause 21: 14 weeks paid, 61 weeks unpaid.		Clause 7.4: the provisions of the Family Leave Award apply.	Clause 42.4: between 14-18 weeks paid leave, up to 142 weeks unpaid.	Clause 26: paid and unpaid.	Clause 28: maternity leave (all unpaid).	Clause 24.1: between 16-20 weeks paid leave.	Clause 22.3.2: 52 weeks.	Clause 53: per the terms in the Award.
OTHER RELEVANT CLAUSES		CII 30, 31: refer to the right to request flexible work, and to equal opportunity principles, but say that operational reasons prevent offering part-time work.	Clause 8: Anti-discrimination clause.	Clause 7: Anti-discrimination clause.	Clause 106: Diversity in the workplace clause.	Clause 41: Anti-discrimination clause.		Clause 4.7: Anti-discrimination clause.					Clause 10: Anti-discrimination clause.	Clause 57: Anti-discrimination clause.

Attachment 4—List of research articles and reports

Australia:

Abhayaratna, J, Andrews, L, Nuch, H and Podbury, T (2008), 'Part Time Employment" the Australian Experience', Productivity Commission Staff Working Paper, June.

This paper analyses ABS data and HILDA findings to provide a comparison of part-time work in Australia and overseas and possible reasons for our relatively high reliance on part-time work. It also discusses the changing role of part-time work and identifies workers availing themselves of part-time work, and industries that have higher proportions of part-time workers and how these have changed over time.

Baird, M and Charlesworth, S (2010), 'Flexible and Part-Time Work in Australia: Some responses to the need for work life balance', *Egalite homes/femmes et articulation travail/famille:vers un nouveau modele? Conference*, Paris, 30 September - 1 October 2010.

This article seeks to understand how to increase the availability of quality part-time work in Australia, particularly for women, by examining three case studies of organisations. It found that barriers to this objective included gendered workplace cultures that were resistant to change, managerial skill deficits in managing part-time workers, poor administrative processes and systems built around the template of full-time jobs.

Baxter, J, Hewitt, B and Rose, J (2013), 'Women and part-time employment: Easing or squeezing time pressure?', *Journal of Sociology*, March 2013, 49: 41-59.

Using data from the 2006 'Negotiating the Life Course' project, this article investigates satisfaction with time pressure for men and women with different hours of paid employment. The 2006 study differentiates between women employed for minimal part-time, half-time and reduced full-time hours, as well as women employed full-time and not in the labour force, to investigate differences in perceived time pressure at home, at work and overall time pressure. The authors conclude that being employed part-time does not alleviate time pressure for all women.

Booth, A. L. and Wood, M. (2008), Back-to-Front Down Under? Part-Time/Full-Time Wage Differentials in Australia. *Industrial Relations: A Journal of Economy and Society*, 47: 114–135.

This article investigates part-time full-time hourly wage gaps using panel data from the first four waves of the HILDA Survey (2001-2004). Once unobserved individual heterogeneity has been taken into account, this paper found that part-time men and women typically earn an hourly pay premium which varies with casual employment status, but is always positive. It explores some hypotheses as to why there is this part-time pay advantage.

Borland, J. (2011), 'The Australian labour market in the 2000s: The quiet decade', Reserve Bank of Australia Conference 2011.

In a paper for the RBA, Borland summarises changes in the Australian labour market over the 2000s. He states that there was a "shift in composition to part time jobs", and noted the growth in the part-time employment to population rate, which consistently increased. Borland also made a link between increases in female participation rates and the "growing availability of part-time and flexible employment".

Burgess (2005) 'Exploring Job Quality and Part-time Work in Australia', *Labour & Industry: a journal of the social and economic relations of work*, 15:3, 29-40.

This article explores the construction of part-time work and job quality in the Australian context, highlighting the construction and measurement of part-time work, and examining the quality of part-time jobs. It argues that the gap separating part-time from full-time jobs can constitute the starting point for addressing part-time job quality.

Campbell, I. (2005), *Long Working Hours in Australia: Working Time Deregulation and Employer Pressures*, Centre for Applied Social Research, RMIT University, Melbourne.

This article describes and explains existing data and discussion relating to work hours in Australia, within a cross-national context. Primarily drawing on official labour force data, it examines trends in long work hours. This research is tangentially relevant to trends in part-time hours as it finds that larger numbers of part-time workers desire, but are unable to obtain, additional hours of work.

Day, I and Rodgers, J (2013), 'The Premium for Part-Time Work in Australia', *Economics Working Papers 13-04*.

This paper finds substantial hourly wage increases when employees move to part-time employment and similarly large hourly wage decreases occur when they move into full-time employment. The magnitude of these wage changes is smaller when the change from full-time to part-time employment (or vice versa) occurs with a change of employer.

Harley, B & Whitehouse, G (2001) *Women In Part-Time Work: A Comparative Study Of Australia And The United Kingdom*, *Labour & Industry: a journal of the social and economic relations of work*, 12:2, 33-59,

This article compares selected indicators of the conditions of employment (hourly earnings, training, autonomy and job security) for part-time female employees in Australia and the United Kingdom, using data from the 1995 Australian Workplace Industrial Relations Survey and the 1998 Workplace Employee Relations Survey. The analysis generally shows poorer conditions for women working shorter hours, particularly in the UK survey.

Healy, J. (2015), 'The Australian labour market in 2014: Still ill?', *Journal of Industrial Relations*, Vol. 57(3): 348–365.

In this paper Healy studied the state of the Australian labour market in 2014. He found that whilst overall employment growth was slow, "of the limited employment growth that did occur most was in the part-time work force". Healy notes that there was a shift from full-time to part-time work as jobs with less than 35 hours a week were added, with few full-time positions. He commented further that this shift was "normally beneficial to females and youths".

Healy, J. (2014), 'The Australian labour market in 2013?', *Journal of Industrial Relations*, Vol. 56: 345.

In this article Healy examined the overall state of the Australian labour market over 2013. Using ABS data he found that “employment has been expanding most rapidly in part time employment”. Using data from the OECD he stated that a “distinctive feature of the Australian labour market is a much higher prevalence of part time employment for both sexes”. Healy also raises concerns with links between the high prevalence of part-time employment and underemployment: “problems with underemployment will arise if part-time employment is not what workers want”. Utilising data from the ABS he finds that “in Australia the underemployed are mostly part time workers who want more hours”. These findings are confirmed using the involuntary part-time work measure from the OECD.

Kajitani, S, McKenzie, C and Sakata, K, *Use It Too Much and Lose It? The Effect of Working Hours on Cognitive Ability*, Melbourne Institute Working Paper No. 7/16.

Kajitani, McKenzie and Sakata examine the causal impact of working hours on cognitive functioning for middle aged and older adults using a cross section sample from the HILDA Survey. Their research suggests that when working hours are less than around 25 hours a week, working hours have a positive impact on cognitive functioning. However, when working hours are more than 25 hours per week, working hours have negative impacts on cognition.

MacDonald, D, Orr, R and Pope, R (2016), ‘Differences in physical characteristics and performance measures of part-time and full-time tactical personnel: A critical narrative review’, *Journal of Military and Veterans’ Health*.

Part-time and full-time military, law enforcement and fire and rescue personnel perform physically strenuous occupational tasks, requiring strength, endurance and cardiovascular fitness. This article critically reviews existing literature comparing physical characteristics and physical performance of part-time and full-time tactical personnel. The analysis indicates that, typically, part-time tactical personnel exhibit higher BMI and body fat levels and lower aerobic capacities and strength than full-time tactical personnel. These differences may impact rates and patterns of injuries sustained while on duty, however the analysis concludes that further research is needed to more adequately profile the physical characteristics and rates and patterns of injuries in part-time tactical personnel.

Rasmussen, E. and J. Burgess (2007), *Too much of a good thing: Longer working hours in Australia and New Zealand*, The University of Auckland and the University of Newcastle.

This paper is tangentially relevant as it cites ABS statistics from 2003 to support a growing trend in part-time employment.

Wilkins, R. and Wooden, M. (2014), ‘Two decades of change: the Australian labour market, 1993-2013’, *The Australian Economic Review*, vol. 47(4): 417–31.

Wilkins and Wooden examine changes in major trends in the Australian labour market over 20 years from 1993 to 2013. The “changing distribution of working time” in Australia was one part of their analysis, using data from the ABS Labour Force Survey. They find that in the 1980s and 1990s the share of part-time work in Australia rose strongly. However after 2000, the share of part-time work rose only moderately. In the second half of their considered period, 2003 to 2013, the proportion of men working part-time rose, whereas the proportion of women changed little, whilst still being very high.

Wooden, M. and Drago, R. (2007), 'The Changing Distribution of Working Hours in Australia', Melbourne Institute of Applied Economic and Social Research, Working Paper Series No. 19/07.

Wooden and Drago present evidence on changes in the distribution of working hours in Australia, finding that "working arrangements in Australia have become more diversified in recent decades". Using ABS Labour Force data over 1979 to 2009, they find that the proportion of part-time work has risen steadily. For the whole period women worked part-time more than men did, however the growth in part-time employment was shared evenly between men and women. Of part-time workers, they found that a minority wanted to work more hours. These findings were corroborated using data from HILDA up to wave 5. Finally, using data from the OECD they found that Australia was above average in terms of its share of short hours worked, although they also commented that Australia was "not as distinctive as often claimed".

Workplace and Economic Research Section, Fair Work Commission (2016), 'Changing work patterns', Fair Work Commission research paper.

This document was prepared by the Workplace and Economic Research Section to assist the penalty rates case. It presents data on changes in the Australian labour market of work patterns and preferences. Using ABS data over the last 25 years, the paper shows that whilst full-time employment had decreased, both male and female rates of part-time employment have increased.

International:

Chris Tilley (1991), 'Reasons for the continuing growth of part-time employment', *Monthly Labor Review*, March.

This article examines involuntary part-time workers in the United States, and suggests that the rise in the share of part-time workers appears to be driven by employer demands for scheduling flexibility and a work force that commands lower compensation.

Bosch, N., Deelen, A. and Euwals, R. (2010), 'Is Part-time Employment Here to Stay? Working Hours of Dutch Women over Successive Generations', *Labour*, 24: 35–54.

The Netherlands combines a high female employment rate with a high part-time employment rate, but the removal of institutional barriers has not led to higher working hours. Using the Dutch Labour Force Survey 1992–2005, the authors find evidence of an increasing propensity to work part-time and a decreasing propensity to work full-time for the generations born after the early 1950s, which are in line with results of studies on social norms and attitudes.

Craig, L. and Roeters, A. (2014), 'Part-time work, women's work-life conflict, and job satisfaction: A cross-national comparison of Australia, the Netherlands, Germany, Sweden, and the United Kingdom', *International Journal of Comparative Sociology*, Vol. 55(3): 185–203.

Craig and Roeters conduct a cross national comparison of the outcomes of part-time work for women, and how this depends on the regulatory or policy framework of part-time work in a country. They use data from the International Social Survey Programme (ISSP) “Family and changing gender roles” (2013) survey. The two outcomes of part-time work they study are resolving the work-life conflict and job satisfaction. They found that “the impact of part time work on quality of life is only marginally contingent on the country context”. Overall they conclude “we found few cross national differences in the effects of part time work”.

Euwals, R. and Hogerbrugge, M. (2006), ‘Explaining the Growth of Part-time Employment: Factors of Supply and Demand’, *Labour*, 20: 533–557.

At the time of this research, Denmark was the country with the highest part-time employment rate of the OECD countries. Using the Dutch Labour Force Survey 1991–2001, the analysis revealed that women fulfil most part-time jobs, and that the growth of part-time employment in the 1990s relates strongly to the growth in female labour force participation. Factors of labour demand, such as the shift from manufacturing to services and the increase in the demand for flexible labour, bear a significant role as well.

Münderlein, M, Koster, F and Wielers, R (2013), ‘Part-Time Work and Work Hour Preferences. An International Comparison’, *European Sociology Review* (2014) 30 (1): 76-89 first published online August 20, 2013.

This paper attempts to explain cross-country differences in over and under employment, focusing on the effects of the growth of part-time work. It found that the increase of part-time work among women with children increases its acceptance among women and men. The authors’ thesis is that the spread of part-time work affects the full-time work hour norm. With the spread of part-time work, full-time workers show stronger preferences to reduce their working hours. They confirm this hypothesis empirically using data from the European Social Survey (2004) covering 22 Europe.