IN THE FAIR WORK COMMISSION
Fair Work Act 2009
s.156—4 yearly review of modern awards
4 Yearly Review of Modern Awards
AM2014/202

SUBMISSIONS ON BEHALF OF
THE METROPOLITAN FIRE AND EMERGENCY SERVICES BOARD

Introduction

1. These Submissions are made on behalf of the Metropolitan Fire and Emergency Services Board (MFB) in the context of the Fair Work Commission’s (Commission) 4 Yearly Review of Modern Awards, and are filed in accordance with Directions issued by the President on 21 October 2015.

2. The Submissions are made in respect of the Fire Fighting Industry Award 2010 (Fire Fighting Industry Award), which is being considered as part of the Commission’s Group 2 proceedings.

3. The Submissions deal with the technical and drafting issues relating to the exposure draft for the Fire Fighting Industry Award as published by the Commission on 16 October 2015 (Exposure Draft).

4. The Submissions also reassert a substantive claim, made in the MFB’s previous submissions in this matter, relating to ‘types of employment’, in particular part-time employment under the Fire Fighting Industry Award and the Exposure Draft.

5. The submissions are divided into three parts as follows:

Part A – Background

Part B – Types of Employment

Part C – Issues Raised by the Commission

Part D - Evidentiary material and referral to a separately constituted Full Bench
PART A - BACKGROUND

6. The MFB is a statutory authority constituted under the Metropolitan Fire Brigades Act 1958 (Vic) (MFB Act). Its functions, as set out at section 7 of the MFB Act, include:

   6.1 providing for fire suppression and fire prevention services in the metropolitan district;
   
   6.2 providing for emergency prevention and response services in the metropolitan district; and
   
   6.3 carrying out any other functions conferred on the Board.

7. The MFB currently employs approximately 1,845 firefighters who provide a 24-hour response to emergencies across the Melbourne metropolitan fire district. In addition, the MFB employees provide community protection, education services and emergency response from strategically located fire stations and specialist departments.

8. Throughout Victoria, the Country Fire Authority (CFA), a statutory body set up under a separate Act of the Victorian parliament, carries out similar services in regional and country areas and Melbourne’s outer urban areas. Smaller private sector employers also provide discreet services throughout the state. The MFB, CFA and Victorian private sector employers are covered by the Fire Fighting Industry Award.

9. Other states and Territories also have their own publically funded fire fighting services as well as a number of private operators. The nature of the fire fighting services in each state is 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 the majority of state and Territory fire services being covered by state-based awards.

PART B – TYPES OF EMPLOYMENT

10. In its submissions in this matter dated 21 November 2014, the MFB set out the historical context to the making of the Fire Fighting Industry Award.
11. In particular, the MFB made submissions that the Commission ought to revisit the inclusion of provisions relating to part-time employment in the Fire Fighting Industry Award.


13. As it presently stands, clause 6 of the Exposure Draft provides that a public sector employer in the industry ‘may only employ a person in a classification in this award on a full-time basis’. A full-time employee for this purpose is ‘an employee who is engaged to work an average of 38 ordinary hours per week’.

14. By way of contrast, clause 7.1 refers to the private sector, where ‘an employer...may employ a person in a classification in this award on a full-time; or part time basis’. The remainder of clause 7 goes on to define full-time and part-time employment for employees in the private sector.

15. The MFB submits that there is no proper basis for a distinction between the public and private sectors in relation to part-time employment: All employers in the Firefighting Industry should be able to engage employees on a full-time or part-time basis as best suits the requirements of their undertaking. There is no rationale for treating firefighters in the public sector differently from firefighters in the private sector.

16. It is also anomalous that public firefighters cannot be engaged on a part-time basis in those States where public firefighters are engaged by constitutional corporations (Victoria, Tasmania, South Australia) and/or where the relevant government has referred its legislative power in relation to firefighters to the Commonwealth (Victoria), but that they can be engaged on such a basis in the remaining States. The MFB submits that there is nothing about the engagement of public firefighters in Victoria which warrants differential treatment in relation to forms of engagement.

17. No considerations of industrial merit can support a prohibition on part-time employment, which are effectively State-based differentials on this point, or support different treatment of public sector and private sector employees.

18. The MFB further submits that enabling part-time employment of firefighters in the public sector in Victoria would help promote equality of opportunity in a manner consistent with the policies of successive State governments in Victoria and
elsewhere – as reflected, for example, in section 8(c) of the Public Administration Act 2004 (Vic). We refer the Commission to section 153 of the Fair Work Act 2009.

19. For example, part-time employment would permit workers whose circumstances make it difficult for them to work on a full-time basis to be able to consider employment in the sector. This might include persons (especially women) with family responsibilities who would find it difficult to combine full-time work with those responsibilities. Availability of part-time work might also facilitate the engagement of retired firefighters who would be interested in working on a part-time, but not full-time, basis.

20. Variation of clause 6 of the Exposure Draft to accommodate more flexible working arrangements in the public-sector, in particular the possibility of engaging firefighters on a part-time basis, is overdue and necessary (the Primary Amendment).

21. Amendment of the Exposure Draft to incorporate the Primary Amendment would necessitate consequential amendments to other clauses as follows:

(i) Clause 9 – Ordinary hours of work and rostering – public sector
(ii) Clause 20 – Overtime
(iii) Clause 21 – Penalty Rates
(iv) Clause 22 – Annual leave

22. Theses issues were also raised by the MFB in its submissions in this matter dated 21 November 2015. The MFB now refers to and repeats paragraphs [37] – [45] of its submissions in this matter dated 21 November 2015.

PART C – ISSUES RAISED BY THE COMMISSION

23. Can public sector employees work other than a shift roster?¹

23.1 The 10/14 roster is the standard method for arranging the work of most firefighters in the various public sector fire services in Australia.

23.2 In the MFB’s view this does not (and should not) prevent public sector employers from employing firefighters on different arrangements.

¹ Issue raised by the Commission at clause 9 of the Exposure Draft
23.3 This has been acknowledged by the AIRC which, when making the Fire Fighting Industry Award, observed:

_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...In the public sector it [the Fire Fighting Industry Award 2010] permits employment on bases other than the 10/14 roster. We have also included “special roster’ provisions adopted from the part of the Victorian Firefighting Award that applies to the Country Fire Authority (CFA) on the basis that this is 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._ [Emphasis added]

23.4 Employment of employees on arrangements other than a 10/14 shift roster is required to facilitate the accommodation of more flexible employment arrangements, the Primary Submission of the MFB referred to above.

24. **The definition of a 10/14 roster**

The MFB agrees that the definition of a 10/14 roster in the Exposure Draft reflects the submissions of the UFUA in the award modernisation proceedings, and has no objection to the definition being incorporated in the award.

25. **Authorised or Unauthorised Absence**

25.1 The MFB considers that the words ‘to sanction an authorised absence’ should be replaced with ‘to sanction an unauthorised absence’ in the second sentence in clause 9.4(h).

25.2 It also suggests that the comma which appears after the words ‘absent member’ in that sentence should be deleted. This would make clear the

---

2 Issue raised by the Commission at clause 9.2 of the Exposure Draft
3 Issue raised by the Commission at clause 9.4 of the Exposure Draft
apparent intention of the clause that, where persons who are supposed
to be on shift are absent, the mere detention of other persons already on
duty should not be deemed to:

(i) “sanction an unauthorised absence”; or

(ii) “relieve the absent member from a liability to be charged with being
absent without leave and dealt with accordingly”.

26. Reference to ‘minimum weekly rate’ or to ‘total weekly wage’
The MFB considers that ‘the average of two hours a week of overtime’ referred
to in clause 20.1(c) is reflected in the minimum weekly wage, plus shift loading,
plus average 40 hours loading set out in the table in clause 13. It follows that
clause 20.1(c) should refer to the ‘total weekly wage’ rather than to ‘the minimum
weekly rate’.

27. Overtime for shift workers who are not on a 10/14 roster
The MFB submits that, should operational personnel be engaged other than on a
10/14 roster arrangement, it is likely to be appropriate for overtime to payable on
the same basis as for workers on a 10/14 roster. However, more flexible
overtime provisions would be required to accommodate the Primary Submission
of the MFB.

28. Public holiday payments for day workers
The MFB submits that the reference to 50% is correct on the basis that a day
worker who elects to be paid at 50% of their ordinary hourly rate under clause
21.3(a) is also granted an additional one day’s leave (together, equivalent to
150%).

29. Payment of annual leave
The MFB considers that the current wording at clause 22 of the Exposure Award
regarding the rate of pay for an employee on annual leave is adequate.

---

4 Issue raised by the Commission at clause 20.1 of the Exposure Draft
5 Issue raised by the Commission at clause 20.2 of the Exposure Draft
6 Issue raised by the Commission at clause 21.3 of the Exposure Draft
7 Issue raised by the Commission at clause 22.3 of the Exposure Draft
30. **Definition of ‘public sector employer’ and ‘private sector employee’**

   The MFB does not consider that any useful purpose would be served by including in the new award a definition of either the term ‘public sector employer’ or ‘private sector employer’.

---

**PART D – EVIDENTIARY MATERIAL AND REFERRAL TO A SEPARATELY CONSTITUTED FULL BENCH**

31. The MFB has not specified the evidentiary material that it may wish to file in relation to the above matters – the material required will depend on the submissions of other interested parties, as will whether it is necessary to refer the matter to a separately constituted Full Bench.

32. It is most likely that the MFB’s substantive submissions concerning a variation to permit flexible employment in the public sector, as opposed to the matters specifically referred to by the Commission, would require evidentiary material as well as a hearing before a Full Bench. The MFB strongly submits that the Commission ought to revisit this issue as part of its current review. The MFB will call evidence to support its submissions on this issue if required.

---

*20 November 2015*

**Corrs Chambers Westgarth**

---

8 Issue raised by the Commission at Schedule D of the Exposure Draft