



TRANSCRIPT OF PROCEEDINGS

Fair Work Act 2009

1053389

COMMISSIONER WILSON

AM2014/202

s.156 - 4 yearly review of modern awards

Four yearly review of modern awards

(AM2014/202)

Fire Fighting Industry Award 2010

Melbourne

2.11 PM, THURSDAY, 28 APRIL 2016

Continued from 21/04/2016

PN3895

THE COMMISSIONER: Good afternoon parties, thank you for attending. Yes, Mr Moore.

PN3896

MR MOORE: Good afternoon, Commissioner. Could I update you as to the intentions this afternoon.

PN3897

THE COMMISSIONER: That would be very helpful, thank you.

PN3898

MR MOORE: And to deal with a couple of housekeeping matters. One matter left over from last week was a number of inquiries made by the President around obtaining comparative safety data, and we'd indicated to the President as I recall that we were using our best efforts to make various inquiries. We've continued to

- - -

PN3899

THE COMMISSIONER: I think you said you weren't certain that it existed or might be in a proper form.

PN3900

MR MOORE: That's right, and there's an agency called AFAC which seems to be the best place potentially to have information of the type that the President was interested in. We've made inquiries of that agency and the information it produces and there's nothing available that we think can assist. So we feel like we've exhausted our inquiries in that regard. I do think though that there's - there may be some information of relevance around comparative safety indicators. I say that generally in the Productivity Commission Report which was tendered into evidence, and so that can be a matter of submission in due course.

PN3901

THE COMMISSIONER: Indeed, and perhaps if I can undertake to relay those positions back to the President - - -

PN3902

MR MOORE: Yes.

PN3903

THE COMMISSIONER: - - - and no doubt if there are further questions then they'll be brought to your attention.

PN3904

MR MOORE: I'd be grateful for that, Commissioner.

PN3905

THE COMMISSIONER: Thank you.

PN3906

MR MOORE: The second housekeeping matter there was a document tendered on a confidential basis last week. We need to finalise an appropriate order to deal with that. I just wanted to indicate to you, Commissioner, we haven't forgotten that. We will attend to that. We have prepared a draft and we'll liaise with my learned friends and provide an order as soon as possible in that regard.

PN3907

THE COMMISSIONER: Thank you very much for that.

PN3908

MR MOORE: The next thing to deal with if I may, Commissioner, is there were filed with the Commission this morning and served on the union two further witness statements. I'm not sure if they have reached the Commission's file.

PN3909

THE COMMISSIONER: They have. That would be Mr Leach and Mr Byatt.

PN3910

MR MOORE: That's correct. Do you need further copies of those now, Commissioner? We have them at hand if it would assist.

PN3911

THE COMMISSIONER: I don't, they're on my file. However, the question I did have for you was in respect of the evidence - well, is there any evidence, oral evidence, that needs to be taken?

PN3912

MR MOORE: No, I've spoken to Mr Kenzie about that this afternoon and he's indicated that those persons are not required for cross-examination. So if it's convenient to the Commission I seek to tender those statements now. The statements to which I refer, the one entitled "Further witness statement of Gregory Leach", dated 28 April, 10 paragraphs with one annexure GL1 and the statement called "Reply statement of Bruce Raymond Byatt" of 28 April 2016, 10 paragraphs with an attachment BB3. If it's convenient to the Commission, I tender those now.

PN3913

THE COMMISSIONER: There's no objection Mr Kenzie?

PN3914

MR KENZIE: No objection.

PN3915

THE COMMISSIONER: In that case I'll mark the further statement of Gregory Leach as exhibit number MFB/CFA23. I'll mark the further statement of Bruce Byatt as MFB/CFA24.

**EXHIBIT #MFB/CFA23 FURTHER WITNESS STATEMENT OF
GREGORY LEACH DATED 28/04/2016**

**EXHIBIT #MFB/CFA24 FURTHER WITNESS STATEMENT OF
BRUCE BYATT DATED 28/04/2016**

PN3916

MR MOORE: Thank you, Commissioner. Now the next item of business is really just to tell you, Commissioner, how we propose to proceed today if it's convenient for you, Commissioner.

PN3917

THE COMMISSIONER: Thank you.

PN3918

MR MOORE: We would propose calling Chief Superintendent Malcolm Connellan in relation to whom a witness statement was filed, I believe, on Tuesday and that's a statement of 26 April. He is required for cross-examination and the Chief Superintendent is here today. So that should be able to be dealt with today. Following that, there's then the two outstanding union witnesses, Mr Thomas and Mr Martin, who it's proposed, subject to your convenience, to call after Chief Superintendent Connellan.

PN3919

THE COMMISSIONER: Thank you for that, Mr Moore. You're content with that process are you, Mr Kenzie?

PN3920

MR KENZIE: Certainly, Commissioner.

PN3921

THE COMMISSIONER: Thank you. In that case let's proceed with Mr Connellan.

PN3922

MR MOORE: Yes. I call Chief Superintendent Malcolm Connellan, thank you.

PN3923

THE ASSOCIATE: Please state your full name and address.

PN3924

MR CONNELLAN: Malcolm Connellan, 226 Elizabeth Street, Sydney.

<MALCOLM CONNELLAN, AFFIRMED **[2.16 PM]**

EXAMINATION-IN-CHIEF BY MR MOORE **[2.16 PM]**

PN3925

THE COMMISSIONER: Thank you, Mr Connellan. Please be seated. Yes, Mr Moore.

PN3926

MR MOORE: Chief Superintendent, could you please re-state for the Commission and the transcript your full name and work address?---Yes, Malcolm Connellan, 227 Elizabeth Street, Sydney.

*** MALCOLM CONNELLAN

XN MR MOORE

PN3927

Thank you. You are the Chief Superintendent of Fire and Rescue, New South Wales?---Correct.

PN3928

Chief, you have prepared a witness statement for use in this proceeding have you?---Yes.

PN3929

Have you got a copy of that with you?---I do.

PN3930

Can you confirm that that's a statement dated 26 April 2016, comprised of 49 paragraphs and a single attachment marked MC1?---Yes, that's correct.

PN3931

Have you read it - that is the statement - recently?---I have.

PN3932

Do you have any changes or corrections you wish to make to it?---Yes, I do. Paragraph 15.

PN3933

Yes?---A minor change. It says on the first line, "Comprising 23 senior executives", that number should be 24.

PN3934

Yes?---Which makes the total employees 7261.

PN3935

So the number also on the first line 7260 should read 7261?---Yes, that's correct.

PN3936

Thank you. Are there any other changes or corrections?---No.

PN3937

Is the contents of your statement true and correct?---Yes, to the best of my knowledge.

PN3938

Thank you. I tender that.

PN3939

MR KENZIE: No objection, Commissioner.

PN3940

THE COMMISSIONER: Thank you. In that case I'll mark that as MFB/CFA25, the witness statement of Malcolm Connellan.

*** MALCOLM CONNELLAN

XN MR MOORE

**EXHIBIT #MFB/CFA25 WITNESS STATEMENT OF MALCOLM
CONNELLAN DATED 26/04/2016**

PN3941

MR MOORE: Thank you, Commissioner.

PN3942

THE COMMISSIONER: Mr Kenzie.

CROSS-EXAMINATION BY MR KENZIE

[2.18 PM]

PN3943

MR KENZIE: Thank you, Commissioner. Chief Superintendent, could I take you first to paragraph 14 of your witness statement. The FRNSW is covered by the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016?---Correct.

PN3944

Are you aware that there is an award in New South Wales covering rural firefighters known as the NSW Rural - I'm sorry the Crown Employees (Rural Firefighters) Award?---No.

PN3945

Just in terms of geographical coverage of the FRNSW, what is its area of operation in a geographical sense?---In the State of New South Wales Fire and Rescue NSW covers - the terminology is 90 per cent of the population and 10 per cent of the landmass. So all the major cities and all the major towns and communities. The Rural Fire Service covers the 90 per cent of the landmass and 10 per cent of the population, if that makes sense.

PN3946

Yes. So you haven't concerned yourself with them and don't know anything about the award coverage in relation to the people who deal with 90 per cent of the landmass and 10 per cent of the population?---No, they're a different state-based organisation.

PN3947

Can I just indicate and really I am giving an advance notice that we will in due course tender a copy of the award that I've identified, Commissioner. It's the Crown Employees (Rural Firefighters) Award. Now in paragraph 15, Fire and Rescue NSW has 3441 - 3400-odd permanent career firefighters and 3300-odd retained fire officers?---Correct.

PN3948

Almost an even divided as between the permanent career firefighters and the retained firefighters?---Correct.

PN3949

You deal later in your statement with the position in relation to retained firefighters at around paragraph 44. Is that correct?---That's correct.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN3950

Again, do you know about the award coverage of retained firefighters?---I do.

PN3951

The position is that retained firefighters are covered by their own award?---That's correct.

PN3952

Yes. Then in paragraph - still in paragraph 15, there's a reference there to casuals. Who are the casual employees?---The casual employees would not be firefighters, they would be trades or contractors, support staff. They would not be uniform employees.

PN3953

Thank you. Now then in paragraph 17 and following, you under the heading of "Flexible working in FRNSW permanent firefighters" you describe developments including award developments in relation to what you describe as flexible working in FRNSW?---Yes.

PN3954

Then in paragraph 19, you tell us that part-time work was first introduced in 2007 through a trial part-time roster for persons with carer's responsibilities?---That's correct.

PN3955

So in paragraph 19, which is the one with the reference to K Platoon and L Platoon in it, you don't identify any award change made in 2007. That's correct, isn't it?---That's correct.

PN3956

Because there was no award change that was involved with the practical introduction of K Platoon and L Platoon?---That's correct.

PN3957

You would be aware that prior to 2007 there had been an award - a provision in the award covering FRNSW providing for the position of a female employee returning to full-time duty after maternity leave?---Yes.

PN3958

Such a provision had been in the award for many years, had it not?---I couldn't state how many years had it been in for.

PN3959

In any event, it was there by 2007?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN3960

You may or may not know but was that the basis upon which the process that you describe in paragraph 19 was introduced?---No, it wasn't. It was more broadly to support people with carer's responsibilities, so it wasn't only female firefighters

returning from maternity leave but it was also people that wanted to participate in paternity leave and had carer's responsibilities and single parents.

PN3961

Now could I suggest to you that in 2007, the date that you refer to in paragraph 19, the only provision that contained a reference to part-time employment in the award was the provision providing for return from maternity leave?---In the award, yes.

PN3962

Now in paragraph 18, you say that;

PN3963

The 2014 award provided for the first time provisions which allowed flexibility away from the previous 10/14 roster -

PN3964

and you say -

PN3965

including by providing for part-time employment.

PN3966

?---Facilitating. I would rather term it as facilitating part-time employment.

PN3967

Facilitating, yes. Now are you familiar with the provision in the award that was introduced in 2014 to achieve the result that you describe in paragraph 18?---I'm not sure the - - -

PN3968

Are you aware of the nature of the change to the 2014 award that introduced the change that you describe?---Yes.

PN3969

Commissioner, just pardon me a moment.

PN3970

THE COMMISSIONER: Of course.

PN3971

MR KENZIE: Is the change that you were describing in paragraph 18, a change which involved the introduction of what was described as a part-time roster system?---Is that in clause 8? Are you talking about - - -

PN3972

Yes, in clause 8?---Part-time roster or are you talking about alternative rosters?

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN3973

Well let me just show you a copy of the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2014, and I've opened - - -?---Yes. Clause 8.6(a)

PN3974

Yes. The clause you're identifying is 8.6(a) is it not?---Yes.

PN3975

That provides for part-time roster system and refers to the K hours and the L hours which mirrors the general approach in the earlier step that you described?---Yes.

PN3976

I think you - so that provision was incorporated as one of the roster options described in the award?---Yes.

PN3977

The other roster - there were other rostered options which ranged from the standard 10/14 roster system, the back to back roster system, the overlap roster system and the special roster system?---Yes.

PN3978

I tender the Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2014 if it please the Commission. I don't have huge numbers of copies but - - -

PN3979

MR MOORE: It's in the folders.

PN3980

MR KENZIE: Is it?

PN3981

MR MOORE: Yes, the big folders that we gave the Full Bench.

PN3982

MR KENZIE: I am instructed by Mr Moore that it's in the folders, in the very large amount of paper that already is before the Commission and in those circumstances I won't - we certainly won't multiply production of material.

PN3983

THE COMMISSIONER: So that's in a bundle, I think, Nationwide Industrial Instruments Emergency Services.

PN3984

MR KENZIE: Yes, thank you, Commissioner. Clause 8.6(a), Mr Connellan, formally replaced the de facto position described in paragraph 19 of your statement?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN3985

Then in paragraph 22 of your statement you say that the 2016 award now provides even more flexibility than the 2014 award?---Correct.

PN3986

But is it correct, isn't it, that in your statement at least you haven't identified any of the relevant provisions. Is that correct?---I don't understand the - - -

PN3987

In your statement, your written statement - - -?---Yes.

PN3988

- - - you don't - you make comments about the amount of flexibility incorporated in the award but you don't actually identify any of the provisions in question?---No. Do you want me to explain what the flexibility part means?

PN3989

Well I won't stop you, Mr Connellan, but I just want to ask you some questions first. I promise you that if there's something you think needs to be said by way of explanation I won't prevent you, indeed I'll ask you, but I just want to put some matters first. It is the case, isn't it, that if we pick up the 2016 award clause 8.6(a) of the 2014 award was removed?---That's correct.

PN3990

Presumably there was a reason for that?---Yes.

PN3991

What was that?---The reason is the alternative work arrangements that were included in the 2016 award made clause 8.6(a) superfluous because clause 8.6(a) can be enacted by an employee under the alternative work arrangements.

PN3992

So it was subsequently perceived that the part-time roster system could be accommodated by the other roster arrangements in the award and there was no need for an independent coverage?---And expanded on.

PN3993

Now if we look at the 2016 award, Mr Connellan, would you agree with me that you don't find a reference to part-time employment other than in clause 29?---Yes.

PN3994

You agree with me, don't you?---Yes.

PN3995

Clause 29 and I am referring in particular to clause 29.1.2 of the award, is the clause that I was asking you about before. Namely, the clause that provides for a female employee returning to full-time duty after less than full entitlement to maternity leave?---I'm not sure you've got the number. 29 is relocation - transfer employees compensation. I think you're after clause 24. No, sorry, carer's leave. 22, carer's leave or is it maternity leave, 21. I think it's 21.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN3996

21.9?---Yes.

PN3997

21.9.2?---Yes.

PN3998

Is the provision relating to female employees returning to full-time duty after less than their full entitlement of maternity leave?---Yes.

PN3999

That I think you've agreed with me is the mirror of the clause that's been in the award for a long time?---Yes.

PN4000

You don't know precisely how long but certainly was there as at 2007?---Yes.

PN4001

Is that correct? So you will agree with me then won't you that other than that clause, we don't find any reference to part-time employment in the award?---No, only alternative work arrangements.

PN4002

Yes, there are provisions - there are rostering provisions - - -?---Yes.

PN4003

- - - which you say facilitate part-time but there is no - the award's never been modified to incorporate the identification of a part-time employee in circumstances other than identified in clause 21.9?---I disagree because the alternative work arrangements and the subsequently frequently asked questions, which is the operating documents that go to that clause outlines the ability to work other work rosters, and therefore other hours and being paid at a pro rata rate based on the hours of work performed.

PN4004

The roster provisions in the award don't themselves mandate part-time employment?---No.

PN4005

But what you say is they are roster provisions that can facilitate work by a part-time employee?---Yes.

PN4006

But there's no provision for a part-time employee in the award is there?---Isn't that what you just said, that it facilitates it, so I accept - I accept that you can't employ someone on a part-time basis but we can facilitate someone working on a part-time basis.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4007

So your evidence is that although there's no other reference to part-time employment in the award, the various roster provisions, whilst they don't permit the employment of a part-time employee facilitate the subsequent treatment of an employee by permitting what is, in effect, part-time employment?---That's what I just said, yes.

PN4008

Now in paragraph 21 of your statement you refer to the - I'll withdraw that. Coming back to paragraph 19 where you say that the part-time roster for persons with carer's responsibilities was introduced in 2007 through a trial part-time roster. Do I take it from your statement, paragraphs 19 and relating to 2007, and paragraph 18 which introduced the change as you describe, that the trial was a trial that was undertaken over a period of seven years?---Yes.

PN4009

Thank you. That was because even in relation to the area of - the limited area of coverage and by limited I mean carer's responsibilities to take your evidence, the authority regarded as important to have a proper look at the actual operation of the rostering provisions in relation to carer's duties before they were formalised?---I'm not sure. If I understand your question you're saying that we had to prove someone had carer's responsibility before we'd permit it or - - -

PN4010

No, I'm sorry it's my fault not yours. What I'm putting to you is that FRNSW took a seven year look at the operation of the carer's responsibility roster in practice before incorporating it in the award. That's the case isn't it?---I wouldn't say a seven year look. We certainly introduced that as a trial that ended up as an extended trial because it performed fairly well and we weren't getting complaints out of. People were happy doing it. It was certainly a consent between us and our industrial body and then it became a - it just went on for seven years.

PN4011

I think you said there was consensus?---Yes.

PN4012

Did that mean that it was run past the union?---Yes.

PN4013

It wasn't a point of contention?---No.

PN4014

Even so, a seven year period elapsed before it was incorporated into the award?---Yes.

PN4015

Then in paragraph 21, you refer to the trial of job share?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4016

That appears to have been something that wasn't seen to require any changes to the award?---It progressed along the same manner as the K and L roster, the part-

time roster. It started off as a trial in 2010. It never made it into the award for reasons I'm not too sure of and then again events have overtaken that and that's been rolled up with the alternative work arrangements.

PN4017

So the trial continued until 2014?---Yes.

PN4018

It was then formally replaced by the new provisions in the 2014 award?---Yes.

PN4019

Those provisions in the 2014 award don't provide for job share as such?---They don't use those words.

PN4020

They are flexible roster arrangements?---Yes.

PN4021

Can you tell us this, in the trial what happened to job share within the organisation? Was that taken up?---It was taken up on a limited basis. It wasn't as successful as the other options. We certainly did have a number of people participate in those arrangements. Typically they were people that had childcare arrangements that had a variety of reasons to work less hours than - it was suitable for them to work less hours and remain in touch with the job until the children got old enough and they could come back.

PN4022

So these were people who could have taken advantage of the other roster changes that you've identified?---The K and L?

PN4023

Yes?---No, it operated different. The K and L - see K and L doesn't have flexible in its title because you work every Friday and Saturday night and every Saturday and Sunday. With a typical job share arrangement I might work some days and you might work some nights or I might work this set of shifts and you might work the next set of shifts giving me more time at home. So it was a different process.

PN4024

More flexible in that respect?---Yes.

PN4025

You said it wasn't as successful, to use your words?---No.

PN4026

What happened and what were the problems?---We didn't get many problems. We got some take up but it wasn't as successful as the other one, the K and L roster. I think I oversaw two or three of them and I'd moved on from that area so I'm not sure what the final numbers were in that trial.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4027

So would it be fair to say, and I don't want to put words in your mouth that it appeared to have a limited take up?---Yes.

PN4028

Then in paragraph - just before I pass on, do you still have K and L Platoons?---Yes and no. No, we don't, we have alternate rostering arrangements which means you can work any rostering that you can. We would still have K and L Platoons sitting within our electronic rostering system but they'd probably be broadened out to make them more flexible, because you could technically work those hours on a weekly basis or you could work those hours on a different day of the week basis. So it would be - K and L would sit in the back of the system. I know some people have remained on those rosters and being a fire service it's very hard to lose terminology once you've put it into the vernacular.

PN4029

So are there some people still working pursuant to the arrangements that you've described?---Yes.

PN4030

Notwithstanding that, the reference to it and the fact that people were working pursuant to it was taken out of the award in 2014?---Yes, because it was superfluous to the new arrangements. They sat within the new arrangements.

PN4031

Now in paragraph 23 you say that;

PN4032

All permanent operational firefighters can elect to work part-time by working fewer than 40 ordinary hours.

PN4033

?---Yes.

PN4034

Can I take it you don't mean that literally, Mr Connellan?---No.

PN4035

What you mean is that they can seek to work part-time by working fewer than 40 ordinary hours?---They could certainly apply to work less hours and then there's an approval process within that.

PN4036

That - I'll call it an election but it's not an election, it's a request which needs approval?---Yes.

PN4037

That would be unlimited as to rank?---I would assume so, yes.

PN4038

Unlimited - - -?---Because the award covers all ranks.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4039

Unlimited as to the number of hours that they choose to work?---Yes.

PN4040

Does it include recruits?---No.

PN4041

Is there something in the award that differentiates recruits from others in terms of their capacity?---No.

PN4042

So when you say it doesn't include recruits, it doesn't include recruits because management has determined that such an approach is not appropriate for recruits in the initial stage of their training?---That's correct.

PN4043

That would be because of the intensity of the training that is required of recruits for that period of time?---That's correct.

PN4044

It seemed to be inappropriate for people at that initial stage of their involvement - - -?---Whilst they're on the recruit training scheme, yes.

PN4045

They're doing a lot of work to come up to speed at that time?---Yes.

PN4046

The notion that they can be doing that on a part-time basis is simply seen as contradictory I would put to you?---They wouldn't be able to fulfill the training requirements.

PN4047

Yes. Now in paragraph 24 you identify the rostering options specifically identified in the 2016 award?---Yes.

PN4048

Do you still have the 2016 award in front of you, Mr Connellan?---Yes.

PN4049

If you look at paragraph 24(d) of your statement?---Yes.

PN4050

This refers to any other alternative roster that is agreed to FRNSW at a local level and meets the criteria set out at 8.2.2 of the award?---Yes.

PN4051

If you turn to 8.2.2 of the award, do you see that?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4052

That, you'll agree with me, like the rest of the award doesn't refer to part-time people anywhere?---No.

PN4053

But 8.2.2 contains other limitations on the type of roster applicable?---Yes.

PN4054

In paragraph 27 of your statement you refer to the 24 hour roster as one of the alternative rosters?---Yes.

PN4055

Being an alternative roster, it is a roster that you say meets the criteria set out at clause 8.2.2 of the award?---Yes.

PN4056

8.2.2.3 if you look provides that;

PN4057

An alternative roster must operate within the hours of the operational firefighters default roster.

PN4058

Although there's a capacity to depart from that in relation to a two hour limit?---Yes.

PN4059

Is this right, the reason the 24 hour roster described in paragraph 27 fits within the rosters described in paragraph 24 and complies is because both the 10/14 roster and the 24 hour roster involve a comparable amount of participation over a 14 day cycle?---The intent of that clause was the roster had to be within the hours of the default roster. So the 10/14 roster is a 24/7 roster, we have firefighters on duty 24 hours a day, seven days a week. The purpose of that clause is aimed purely at the special roster, which is Monday to Friday day work with a back to back roster which is four days on, four days off. That's the terminology of within the default roster.

PN4060

Is the 24 hour roster in fact the equivalent of 42 hours in the eight day cycle as per the 10/14 roster?---It's equivalent to the 336 hours in the eight week cycle, yes.

PN4061

Thank you?---We work on an eight week cycle for average hours.

PN4062

Now in paragraph 30, you've accepted the view firstly that the management takes the view that it's inappropriate to have recruits employed on a part-time basis?---That's correct.

PN4063

You say that;

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4064

Apart from this any firefighter can apply to work an alternative roster which would include a part-time roster.

PN4065

?---Yes.

PN4066

Continuing:

PN4067

Fewer than the standard 40 hours a week.

PN4068

?---Yes.

PN4069

So in circumstances where there is no - do you accept there's no provision in the award providing for part-time employment as such, your position is that the development of the rostering provisions and the insertion of the rostering provisions in the award, have without mentioning part-time employment introduced the concept of part-time employment into the award?---Yes, but apart from the award you have to read the FAQs in conjunction with that because the roster was the framework for alternative rosters and then the frequently asked question which was a jointly constructed document between us and our industrial body, was constructed as the guiding principles for alternative rosters, which included people swapping shifts, 24 hour roster or reduced hours.

PN4070

Yes, but whatever else they are, the frequently answered questions don't provide the basis for people - the legal basis for people working do they?---(No audible reply)

PN4071

They're not an award or an agreement?---I think they're notes - I could be wrong, they could be notes to an award.

PN4072

But in any event, is it your understanding that the developments that you have described in your statement have underpinned the development of part-time work within your organisation?---Yes. Yes.

PN4073

Thank you. In paragraph 32 and again I think in 36 you refer to;

PN4074

Firefighters on flexible rostering systems being assigned one local station officer and one local commander who will remain constant, regardless of the roster or station worked.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4075

?---Yes.

PN4076

So is this right, firstly as far as a local commander the local commander in question might not work on the station that the individual firefighter works at. Is that correct?---That's correct.

PN4077

As far as the local station officer is concerned, elsewhere in your statement you refer to flexibility and firefighters moving around?---Yes.

PN4078

It follows from that does it not that what is true for the local commander is true for the station officer, that is that the responsible station officer may not work at the station, at which the individual firefighter works?---That's right.

PN4079

So as a matter of fact, in your organisation the welfare point of contact could be physically removed from the actual side of duty of the firefighter?---The welfare contact has multiple layers, so there's certainly a day by day contact with whichever supervisor you're working with, and that's not only applicable for employees that we're talking about here but relieving staff or staff that move around that are excess that move to fill holes. So there's definitely a point of contact physically right where they are, regardless of the location they work or whether they've moved. Early on in the part-time roster the K and L, they found for continuity, for who was ordering equipment, for those administration type tasks it was simpler to avoid doubling up and to give that person one point of contact to create that one point of contact.

PN4080

Will you agree with me that it's an inevitable result of the system that there is no constant point of contact at the station at which the firefighter works, because the firefighter himself or herself is working at different places?---No, I disagree because there's a station officer at every station they work at.

PN4081

Is it the position that FRNSW relies on the various station commanders who might be responsible for an employee at a particular time, to ensure that skills maintenance and welfare is monitored?---Yes.

PN4082

The process of recording skills maintenance is one that records maintenance individually against employees?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4083

But can I suggest to you there's no single point of contact where a station commander can access a total record of an employee's skills maintenance regime?---Not currently. Sorry, but that's the same for rural employees. As I said

before, we have relieving staff, their task is to travel from station to station to fill casual and planned vacancies.

PN4084

Currently, the way it works is the onus is on the employee to ensure that they adhere to the necessary skills maintenance regime?---Yes. I'd use the terminology shared responsibility.

PN4085

Tell me this, do - so employees would often - I think the expression is cross-platoon?---In some cases, yes.

PN4086

They would then be reporting to the relevant station commander platoon of the platoon at the time they're on duty?---Yes.

PN4087

Does that present issues in relation to the management of firefighter welfare?---No, I don't believe it does.

PN4088

Do you also have flexibility amongst your managing officers?---Yes.

PN4089

So the managing officers themselves can operate from station to station and area to area?---Yes.

PN4090

It's a very flexible situation that you're describing isn't it?---Yes.

PN4091

Designedly so?---Yes.

PN4092

So it may well be that the line manager works across platoons as well as the firefighters they're supervising?---Yes.

PN4093

In circumstances where there is no general monitor that a manager can look at to determine the state of play in terms of an individual firefighter's skills maintenance, is that correct?---They could pull up an electronic record currently and we're developing a more sophisticated model of that.

PN4094

Well you agree with me that whatever that model might display, it won't disclose the development - the level of development of proficiency of - as opposed to competence of an individual firefighter?---I am not sure what you're getting at.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4095

The way the world works is that firefighters - firstly, they are responsible for the acquisition requisite skills?---Yes.

PN4096

They are themselves responsible for the maintenance of those skills?---Yes.

PN4097

The way the system works is that firefighters are drilled for the purpose of making sure that their skills are able to be maximised to the best extent possible?---Yes.

PN4098

That's a constant process?---Yes.

PN4099

It's a process that is undertaken consciously to ensure the development of the greatest proficiency among firefighters?---Yes.

PN4100

That's a conscious part of the way the system operates?---Yes.

PN4101

It's an important part of the way the system operates because of the inherent dangers that your firefighters face?---I know where you're heading and I disagree with what you're saying because on any day of the week we have vacancies, we move people around, we have relieving staff coming and going and we bring people in on overtime. The concept that a group of people do the same thing with the same people every day of the week doesn't hold true anymore. That is why we have standardised training, we have standardised officer skills, we have standardised processes for welfare checks to - and standardised equipment and appliances to cover all of those off.

PN4102

Yes, your organisation has consciously moved away from the position which is directed to the team environment, to a more flexible environment?---No, we're moving to a bigger team.

PN4103

Bigger team?---A bigger team.

PN4104

Now in paragraphs 34 and 35 you refer to a standard drill program setting out various subjects?---Yes.

PN4105

These are scheduled drills?---They're not scheduled, no.

PN4106

These are drills that may be held at varied times depending upon things like operational requirements?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4107

In paragraph 35 you say that the adequacy of training is managed at a station level?---Yes.

PN4108

With the local commander being responsible for monitoring and ensuring training requirements are met?---That's a shared responsibility. I think that starts out as a shared responsibility of each employee and the organisation.

PN4109

Yes, it's a shared responsibility but the responsibility includes the responsibility of the local commander?---Yes.

PN4110

In paragraph 37 you say that because of the flexibility and variation provided by the roster system and the ability to work part-time, teams are changing on a regular basis?---Yes.

PN4111

That is indeed the very thing that you were explaining to me a moment ago which underpins the developments that have taken place?---Yes. One of the things we're pushing for in our organisation is increased mobility. Increased mobility gives you people of broader range of skills and experiences that best prepares them to perform their tasks.

PN4112

Fire and Rescue New South Wales feels itself able, capable of operating on a basis that permits the sort of approach that you describe in paragraph 37?---Yes.

PN4113

Thank you. Now in paragraph 44 you refer to the cadre of retained firefighters?---Yes.

PN4114

As you say in paragraph 15, you have 3300-odd retained firefighters?---Yes.

PN4115

So this is almost the same number as operational professional firefighters?---Yes.

PN4116

The retained firefighters that you have in your organisation are obviously quite different to the volunteers that we see in rural organisations?---I disagree. They're - I think I'd almost classify them as paid volunteers.

PN4117

Well first of all they're professional firefighters?---They're retained firefighters.

PN4118

Yes?---They're paid.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4119

They're paid?---Yes.

PN4120

They have their own award?---Yes.

PN4121

They're on call?---Yes.

PN4122

They've been made subject to training and probationary requirements?---Yes.

PN4123

They're not people who can decide whether they're going to come to Sunday's drill or not if they feel like it. They have responsibilities that they've undertaken in order to qualify as a retained firefighter. Is that correct?---They do but it's not as harsh as that. There are certainly parameters that they can - there's percentages that they have to comply with but it's not 100 per cent of everything.

PN4124

So they were the subject of proceedings in 2014 before the Industrial Commission, in relation to their award?---Yes.

PN4125

In 2014, the Commission introduced an award which made significant changes to the world of retained firefighters?---Yes.

PN4126

It introduced a requirement that all the retained firefighters be available for 80 per cent of the calls received by their station in a 24 hour period per week?---No, I don't believe it did.

PN4127

I see. Do you understand that it introduced a requirement as to availability?---Yes.

PN4128

What's your understanding of the requirement - - -?---So from what - the changes to the 2014 award was for some stations that were struggling with availability, that we would pay them an additional amount of money to then be available for that amount of - 80 per cent of those calls within the week. But it doesn't apply to all stations. It's only for where - stations that were struggling with availability.

PN4129

Now this was designed to facilitate their role, that is the role of retained firefighters in relation to rostering arrangements at those stations?---Availability arrangements?

PN4130

Yes?---It's semantics I know but it's - - -

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4131

The changes involved the inclusion of a retained telephone alerting system allowance?---I believe that's always been in there. RTAS has always been part of their award.

PN4132

Well in any event whether it was introduced at that time or before, there is such a thing?---Yes.

PN4133

I want to suggest to you that the changes that were introduced included the requirement that all retained firefighters be available for 80 per cent of the calls received by their station in a 24 hour period per week?---That's not my recollection. I thought it was if they were having trouble with availability then they paid them the higher retainer which made them schedule their attendance. Once they scheduled their attendance, they had to then perform at least 80 per cent of those calls.

PN4134

A requirement that if retained firefighters were to qualify for a retained telephone alerting system allowance, they agree to attend the station or incident within 30 minutes of an incident call?---Yes, or they don't get paid.

PN4135

Yes. You may not recall this but I suggest that Fire and Rescue New South Wales submitted that the new award that was introduced in 2014 represented the most significant changes to the conditions of retained firefighters and their history in excess of 100 years. Do you remember that being put?---Yes.

PN4136

That was the fact, wasn't it?---It was. The retained - for historical reasons the retained award always came on the back of the career award and everyone was too tired, too worn out to pay it too much attention. So therefore in relation to a rural decline, because most of those retained stations are in isolated rural areas, we were trying to incentivise them to attend calls.

PN4137

So you have thousands of retrained firefighters available to you, don't you?---Yes.

PN4138

But the whole system works on the basis that there is an entirely flexible approach to the question of who is actually present and part of the team?---When you say there's thousands of retained firefighters available to us, it's over I think 700,000 square kilometres. So the firefighters at Wilcannia can't fill in in Sydney and vice versa. So as I said, the predominant distribution of career firefighters are in the major cities and the major urban built up areas, whereas in the regional areas it's predominantly retained firefighters.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4139

Clearly, Mr Connellan, I'm the last person to suggest that administering anything in New South Wales is easy but the fact of the matter is that although it is a large geographical area, there are to be accommodated within the system that your organisation administers, 3000-odd of these people available within the system?---Yes.

PN4140

That's in addition to rural firefighters?---Yes.

PN4141

We'll accommodate this in - if it please the Commission I'll simply foreshadow and I'm not sure whether any or all of this appears in the materials. But to the extent that it doesn't we will - I'll identify what it is that we're seeking to put to - we'll be seeking to put forward in light of the matters that I've been asking the witness, and we'll provide copies.

PN4142

THE COMMISSIONER: Certainly from my perspective I know that the witness has a copy of the 2016 award.

PN4143

MR KENZIE: Yes.

PN4144

THE COMMISSIONER: If that could be tendered in due course. The other thing which I would request that you tender or at least give me the citation for is the decision that you're referring to of the industrial commission.

PN4145

MR KENZIE: We will make available, Commissioner, the decision of Walton J in Crown Employees (Fire and Rescue NSW Retain Firefighting Staff) Award 2014, which is [2014] NSWARC 33.

PN4146

THE COMMISSIONER: My associate has just given me a copy of that, so - - -

PN4147

MR KENZIE: Yes. We will also - could I also identify - we'll make multiple copies because obviously we will need to have to provide a distribution. I've only got the one copy at the moment. But I will - we will identify the Crown Employees (Fire and Rescue NSW Retained Firefighting Staff) Award 2014.

PN4148

THE COMMISSIONER: All right, well, maybe if you could provide that in due course and as we talk on previous proceedings we'll have that added to the website information which is available to the parties and the public.

PN4149

MR KENZIE: If it please you, sir.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4150

THE COMMISSIONER: While we're on that subject, perhaps if I indicate the same in respect of the 2016 award, the correct title of which is Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016. If you could in due course provide a copy of that award - - -

PN4151

MR KENZIE: We will certainly undertake to do that, if it please the Commission. In paragraph 41 of your statement, Mr Connellan, you tell us that at the moment you have 23 part-time permanent operational firefighters on shift?---Yes.

PN4152

Now - and the expression, "part-time permanent operational firefighters," is a reference to part-time employees?---People that aren't working the 10/14 and aren't working the 24-hour pattern.

PN4153

You'll agree with me that in - that represents, as you acknowledge in your chart in paragraph 43 - an infinitesimal part of your workforce?---Yes, but like all figures, in some areas we are over-subscribed, some areas the numbers - - -

PN4154

Sure, but 23 is 23 at the end of the day, isn't it?---It's 23, and we're happy with 23.

PN4155

You're happy with 23?---Yes.

PN4156

Right. That means you don't want more?---No, not at all - in some areas, as I said, we've got more people than we can take capability-wise and capacity-wise. But in other areas where there would be spots for them to work - there are certainly other, alternative rosters that people could come up with that we would entertain, that could push that 23 a lot higher.

PN4157

This is the case, isn't it, that in your statement you've described the steps that have been taken since 2007 to facilitate flexible rostering in a manner in which you say accommodates part-time employment?---Yes.

PN4158

You've acknowledged that there is a provision in the award - clause 21 - which goes back some years, which specifically accommodates the position of part-time work for women returning from maternity leave?---Yes, so what we've done is expanded on that to the whole workforce.

PN4159

All right, but with all of that at the end of the day in 2016 there is a grand total of 23, is that right?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4160

Do I take it from your earlier evidence where you describe an imbalance in areas that is reflected in the 23 that that is - reflects a view that there may not be enough in some areas and an over-supply in other areas or - what's the position?---As I said, it's very hard to look at this whole thing just through the eyes of the award. If you look through the frequently-asked questions, it talks about the ability for people to request and the ability for management to give reasons on supporting it or not supporting it. So in some areas those areas fill to their capacity to maintain capability and run it in those areas. However, other areas there's certainly increased capability to facilitate that work, ongoing throughout the workforce.

PN4161

So can you give me an example of an area which is at capacity?---Yes - inner-city.

PN4162

Why - when you say, "at capacity," what do you mean by that?---It's a very young workforce in there. It's - the predominance of our female firefighters are there. They have very tight slack in their relieving ratios and so that's where the predominance of that is. There's a fairly high transitional workforce in that area. People that live interstate fly-in, fly-out or work in the city. They're taking up the part-time rosters in that - sorry, the alternative rostering arrangements as well.

PN4163

Is that an example of an area where you see little room for further part-time or an area where you see further room for part-time?---At the end of the day this is part of our devolution program and it's not up for me to make that call. That's up to the people who are responsible for their people.

PN4164

What do you mean by, "capacity?" I think you used the word, "capacity"?---Yes. Again, the feedback I'm getting from the area commanders and the superintendents in those areas is they don't have the capacity to - they're at - they want to see how they go with what they've got. They want to explore how it's working out. They want to make sure that their shifts are balanced, the qualifications are balanced, they can still provide a service to the community and if all those answers are, "yes," it's up to them on whether they want to expand the program or not.

PN4165

As things stand at the moment there is not a confidence on their part, at least on the capacity to expand beyond the situation that we say in your statement?---I wouldn't say, "confidence." I think they want to test their budgets and test their response capability.

PN4166

Do you have - can you help us in terms of some of the problems or issues that underpin those reactions that you describe?---No, because as I said this is part of the devolution model. The area commanders are responsible for their budgets. They're responsible for the approval and the knock-backs.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4167

In paragraph 41 you say that the employees that - generally form part of your minimum establishing numbers?---Yes.

PN4168

Does that mean that they don't always form part of your minimum establishment numbers?---Yes.

PN4169

So they may or may not be above strength?---Yes.

PN4170

Yes. Clause 8.2.2 of the award provides that alternative roster arrangements would be above minimum manning, is that correct? You might like to look at that. 8.2.2 - - -?---No, it says, "Must not allow a reduction in the minimum operational firefighter staffing required at the station location in question."

PN4171

Is that something different from a preclusion from operating below minimum manning?---I think it is.

PN4172

Can you just explain that? It's my ignorance, not - I assure you?---Well, operational minimum manning for that station is that - the numbers there to run the shift, so it means that the minimum manning of the station officer and three roles out on the truck every day.

PN4173

So is it the fact or is it not that the introduction of the flexible rosters you describe in your statement can interfere with minimum manning, or can't?---Can't.

PN4174

Can't, right, okay. Relievers - Mr Connellan, there's a descriptor in the award of relievers?---Yes.

PN4175

That's a description of people who are actually operating away from the station to which they're posted?---Yes.

PN4176

Or words to that effect?---Yes.

PN4177

That's not a category of employee as such; it's simply a description of what an employee is at a particular time?---No. It's a descriptor for employees as well; so we have a relieving staff.

PN4178

Yes, so that means that you actually have a cadre of people whose job is to relieve?---Yes.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4179

How many of those do you have approximately?---I couldn't tell you off the top of my head.

PN4180

Is it a large number?---Yes.

PN4181

Around - - -?---Say 20 per cent.

PN4182

Yes. So your operation - again, this is a hallmark of the flexibility of your whole organisation, isn't it?---Yes.

PN4183

You organise yourself on the basis that 20 per cent of your staff will be in the relieving role?---Yes.

PN4184

Yes. Your modus operandi - which you've described in your statement - is designed to facilitate that?---Yes.

PN4185

Yes. In paragraph 43 you look at the gender of female firefighters and at the moment we have 170 out of - - -?---3,400.

PN4186

- - out of 3,400?---Yes.

PN4187

Do you have any - can you assist us in terms of what that figure looked like before 2014?---No.

PN4188

You have no idea what's happened to that figure in recent years?---We got our first female firefighters in 1983 and we've been on a slow increase right through to this year. It's been very slow in the first few years. I believe - if I can remember the recruitment campaigns last year out of 100 I think we had about 30 females, which was consistent, I think - I'm not sure whether it was consistent with the year before. It's no secret we're going on a gender-balancing act.

PN4189

Yes, and how long has that been going on for?---What's that?

PN4190

The gender-balancing act?---Well, we've tried to attract females in the traditional form since 1985 and we'd say we failed and so this year we're embarking on a 50/50 program.

*** MALCOLM CONNELLAN

XXN MR KENZIE

PN4191

But - where we stand at the moment is we have 170 female operational firefighters?---Yes, and if we can pull off our 50/50 program we'll increase that by 60 a year.

PN4192

Yes. So would this be correct, that insofar as changes to female participation is concerned, it would be correct to deduce from your material that whatever else might be taken from it, the availability of part-time hasn't assisted in raising those figures, has it?---I can't say with any certainty.

PN4193

Well, you've got a very small number of part-time people, haven't you?---We do, but the ones that are on it are all happy being on it. I wonder if we would have kept employing them if we didn't have it.

PN4194

Okay, so excepting that that - to the extent that that is so, it is a very limited extent; you'll agree, won't you? It follows as night follow day, doesn't it?---Yes.

PN4195

Okay. Thank you, Mr Connellan; I'm sorry to have been so long?---That's okay.

PN4196

THE COMMISSIONER: Thanks, Mr Kenzie; Mr Moore.

RE-EXAMINATION BY MR MOORE

[3.24 PM]

PN4197

MR MOORE: A couple of matters, chief superintendent: you gave some evidence that there were some areas you felt where there was less capacity for additional part-time - firefighters working on arrangements which permitted part-time to occur?---Yes.

PN4198

But that there were other areas in which there was room for growth?---Yes.

PN4199

Do you know what areas they are?---I couldn't say off the top of my head. I do know the inner-city feel that they want to see progress before they expand the program any more. So the inner-city would consist of approximately 65 stations but the outer-lying areas - so western Sydney, southern Sydney, Newcastle and surrounds - all certainly have capacity.

PN4200

I see; thank you. You were asked a question about retained firefighters and you said in answer to a question - you made reference to that there were percentages that they have to comply with?---Yes.

*** MALCOLM CONNELLAN

RXN MR MOORE

PN4201

I wasn't clear what you meant by that?---I can't remember the percentages off the top of my head but retained - a typical retained firefighter station is typically a stand-alone station. We do have so many stations. I retained firefighter station will have one firetruck so they need a minimum of four to turn out on that truck. They would have a staffing strength of 16 to 20 to achieve that four. So that is a typical fire station. Now, saying they need a minimum of four to turn out doesn't mean they could have six or eight or 10. But they can - it gives them that flexibility of being available or not being available. But within that there are percentages of fire calls that they have to attend overall. I know they changed the percentages a couple of years ago or a few years ago. I can't remember what they changed them to. So there's a minimum attendance requirement at all calls and there's a - I'm pretty sure it's a 75 per cent attendance at all training and drill.

PN4202

I see, thank you. It was suggested to you by my learned friend that the NSW fire service was moving away from a team environment and you suggested it was moving to a bigger team?---Yes.

PN4203

Can you tell the Commission what you mean by that?---Certainly: we've remodelled a number of cultural elements over the last few years. One of them is the devolution of responsibility and accountability to the lowest possible level. We're trying to encourage mobility, so we've changed our promotional programs where people get a wide range of experiences are most likely to get - more likely to be promoted through a portfolio of evidence. We're trying to encourage people to - that shared responsibility. We're trying to be inclusive in nature, because we do have a little bit of a disconnected management. But the big thing we're trying to drive is historically fire services are a commander/control environment and bound by rules and that's totally appropriate for emergency incidents. But when it comes back to managing the workplace it's a workplace and a workplace should be a nice, enjoyable, inclusive place to go to. If we can take on the requirements or the suggestions from the workplace and the alternative rosters came out of workforce suggestions - it wasn't something imposed on them by us, it was their suggestion to us and their suggestion through the industrial body and we can facilitate it we will facilitate it.

PN4204

Thank you. I think you gave evidence that the 2014 award, dealing with permanent firefighting, was a consent award: was that the case with the 2016 award?---Yes; yes, I was a leader in the 2016 award. There was some unintended consequences in the 2014 award around promotions and timelines. We made some other changes in relation to annual leave and the ability to take annual leave and some housekeeping. The only time we took up the Commission's time was to have it ratified at the end. It was a consent award.

PN4205

At other times in your evidence today you've referred to the industrial body; what are you referring to there?---The Fire Brigade Employees' Union, which is the employee's union for firefighters in New South Wales.

*** MALCOLM CONNELLAN

RXN MR MOORE

PN4206

All right, thank you. Early in your evidence this afternoon you said - and you refer to this in your statement - that there are even more flexibilities in the 2016 award than the 2014 award. I don't think you got around to telling the Commission what they were. Would you like to do that now?---Yes. I used the KNL rosters as an example because they were prescribed in the 2014 award. So we had things prescribed in the award, and that being one of them. So in this 2016 award, that was truly the flexibility part of it, so we took the prescription out of those awards and gave people the ability to propose whatever they thought would work for them. We encouraged them to team up with other employees because groups of four work really well in fire stations.

PN4207

Not all the changes are part-time work arrangements; it's just how we fill that 24/7 gap. So if we had a group of four employees that came up with a different pattern that worked with their hours then we would have to say yes to that because it works. So the flexibility became that we gave them the ability to really propose to us what hours they wanted to work or worked for them. I know we focussed on the part-time arrangements but the part-time arrangements is a subset of the alternative arrangements, just as a 24-hour roster is a subset of the alternative working arrangements. It all came about from the workforce.

PN4208

The 10/14 roster, they talk about it being flexible; it's a rigid roster that marches on one day after week. I worked there for 22 years and I thought it was great. However, for people with carer's responsibilities, for people who are trying to organise child care, for people that are single parents, it's very hard to organise your life around a roster that marches forward one day every week.

PN4209

How do you actually book those places? They won't let you book them. So we've provided a mechanism for a firefighter or a group of firefighters to get together and maybe work a static roster where they don't move on every week. I know of firefighters that are working 24-hour shifts but they work the same days every week and what that does is it gives them the ability to manage their lives around that. Then they don't get their whole hours within that group, in that break, but they come in for an additional day to make up those hours, to make their full ordinary hours. So I know we've concentrated on the part-time arrangements but it's a subset of the flexible working arrangements that we've tried to facilitate for the workforce.

PN4210

MR MOORE: One last question: you've given some evidence in answer to your question last asked you, you referred to the 24-hour roster?---Yes.

*** MALCOLM CONNELLAN

RXN MR MOORE

PN4211

You've referred to that a number of times in your evidence today. Do you know what proportion of permanent firefighters have taken up the 24-hour roster?---Just about all of them - I don't have the number of the stations that aren't working the

24-hour roster now but it's only a handful and again, it's the same as the alternative working arrangements; they apply for an eight-week block and they roll on with it. But the take-up, all the way to inspector level, everyone's shift has been phenomenal and they drove that; the workforce drove that. We had one station go on it for the first eight-week period and then it's been a logarithmic expansion all the way through that. It's - the feedback we're getting is it's providing a better work/life balance so the 10/14 roster you work Saturday, Sunday day shift or Friday and Saturday night shift whereas this - if you actually fall in all weekend you only work one day of the weekend rather than both of them. So it's actually giving people a bit more flexibility through their weekends to manage their lives but just about all of our 10/14 stations are now working a 24-hour roster but they have to elect to work it. We don't push them on to it. They elect to work it and we've had some stations that were unsure. They can elect to do it for eight weeks and then come back off it and then review it and stay on it or whatever. So it certainly has taken - all those 10/14 stations basically are now 24-hour rosters.

PN4212

Sorry - have you identified whether or not the shift away from the 10/14 roster has been associated with any adverse outcomes in terms of the operational or safety performance of the service?---No, early on we did review our fatigue-management policies, to the policy procedure guidelines, the fact sheets. We took into account guidance from Safe Work and from the heavy motor vehicle drivers and made some adjustments to that. The feedback we get from firefighters is for fatigue management it actually works better, because if you have a bad shift you're actually in your own bed the next night, which helps with fatigue management. But with modern firefighting and the advent of equipment and clothing and advances in technology, we already are on a high rotation at major incidents for active firefighting arrests and rehab. So with the longer shifts it's just a natural progression that that applies through their work day and their work night. So if we've got a major factory fire we were already rotating crews more frequently because of the heat stress we were putting on people or we perceived we were putting on people. We were getting them in, using them and sending them back. That's exactly the same to manage all that: we don't have high work cycles and if we do it's a 24-hour thing and it's gone; 24 hours. It's - we're not getting any push-back from the staff or we're not seeing any adverse effects through our OHS notification process, that is creating issues.

PN4213

As the take-up of the 24-hour roster has increased, has there been any change in the level of sick leave being taken?---Yes, there has.

*** MALCOLM CONNELLAN

RXN MR MOORE

PN4214

What is that change?---It appears that sick leave has decreased. Whether that's a halo effect, because a new proposal has been running for approximately 18 months now but it's been a gradual build-up, so with a whole workforce on it's probably only been about nine months. We think that sick leave has decreased. We're getting more participation out of a day with the firefighters. We don't have the second change-over during the day so we find that people could work through

better. It certainly assists training, that - train in the afternoon, pack up, a new group comes on. Well, that's just a continuous process now. We're getting an increased participation in discretionary leave; so they're using the leave that they're entitled to use. It appears they're taking more of that.

PN4215

Yes, thank you.

PN4216

THE COMMISSIONER: Thank you, Mr Moore, and thank you for making yourself available to give evidence this afternoon, chief superintendent. Much appreciated - you're released and free to go?---Thank you.

<THE WITNESS WITHDREW

[3.37 PM]

PN4217

THE COMMISSIONER: Mr Kenzie, we turn to your witnesses.

PN4218

MR KENZIE: The next witness is Michael or Tony Martin. I call Mr Martin.

PN4219

THE COMMISSIONER: Did you wish to adjourn for a few minutes?

PN4220

MR KENZIE: Well, I think we don't need to, from the messages that have been given to me, Commissioner.

PN4221

THE COMMISSIONER: One thing I did notice from the previous round of hearings was that I think there was a discussion about the status of Mr Murphy's witness statement. The note that I had was that that was not to be relied on as evidence but to be received as a submission. Should in that case I mark the document? I don't think we did that on the previous occasion.

PN4222

MR KENZIE: Yes, I mean, without changing its status it can be marked. Everyone knows what it is. Marking it as an exhibit is not going to change the agreement as between the parties about it, Commissioner, so the answer is yes.

PN4223

THE COMMISSIONER: In that case, I'll mark that as exhibit UFU13, being the statement or submission of Jeremy Murphy.

EXHIBIT #UFU13 SUBMISSION OF JEREMY MURPHY

PN4224

MR KENZIE: Thank you. I call Mr Martin. I apologise for that delay, Commissioner.

*** MALCOLM CONNELLAN

RXN MR MOORE

<MICHAEL ANTHONY MARTIN, SWORN

[3.39 PM]

EXAMINATION-IN-CHIEF BY MR KENZIE

[3.39 PM]

PN4225

THE COMMISSIONER: Mr Martin, please be seated?---Thank you.

PN4226

MR KENZIE: Mr Martin, could I just ask you to restate your name and business address for the purpose of the record, please?---Okay: Michael Anthony Martin, 284-290 Hume Highway, Craigieburn.

PN4227

Thank you. In relation to this matter, Mr Martin, did you make a written statement dated 6 April 2016?---Yes, I did.

PN4228

You've got a copy of that statement in front of you?---I have.

PN4229

Mr Martin, I understand that in relation to paragraph 13 you wish to make one minor amendment; is that correct?---Yes, please.

PN4230

Is that in the first line of paragraph 13 and the word - I'm sorry, in the last line of paragraph 13, the word, "only" - you desire to delete that and insert the word, "also"?---Yes, please.

PN4231

Yes.

PN4232

THE COMMISSIONER: I'm sorry, what's the word inserted?

PN4233

MR KENZIE: "Also."

PN4234

THE COMMISSIONER: Also.

PN4235

MR KENZIE: Mr Martin, with that amendment, do you say that the contents of the statement are, to the best of your knowledge and belief, true and correct?---I do.

PN4236

I tender the statement of Mr Martin, if it please, Commissioner.

*** MICHAEL ANTHONY MARTIN

XN MR KENZIE

PN4237

THE COMMISSIONER: Thank you, Mr Kenzie. There were no other alterations made to that on the previous occasion, were there?

PN4238

MR KENZIE: I don't think so, on my recollection.

PN4239

THE COMMISSIONER: In that case we'll mark that as exhibit UFU14, the statement of Michael Anthony Martin.

EXHIBIT #UFU14 WITNESS STATEMENT OF MICHAEL ANTHONY MARTIN DATED 06/04/2016

PN4240

MR KENZIE: Thank you, Commissioner.

PN4241

THE COMMISSIONER: Mr Moore.

PN4242

MR MOORE: Thank you, Commissioner.

CROSS-EXAMINATION BY MR MOORE

[3.41 PM]

PN4243

MR MOORE: Good afternoon, Mr Martin; I want to ask you some questions about your statement. Now, in your statement you've expressed a number of concerns about part-time employment and part-time firefighters. What I want to do first of all is understand the specific type of engagement or employment arrangement you're referring to when you're referring to part-time work and part-time firefighters in your statement. Evidence has been given by a number of witnesses called by the union in this proceeding that the concept of part-time employment⁶ and part-time firefighters, about which they've expressed concern, is employment on an irregular and casual basis. Is that your position? When you're referring to part-time employment and part-time firefighters are you referring to firefighters employed on an irregular and casual basis?---I'm referring to any employment outside of a 10/14 system and our special industry duties, the 42-hour week.

PN4244

I see. So it's any employment different from the 10/14 or the special administrative duties arrangements?---I'm talking about the 42-hour week, like I just said - - -

PN4245

Yes?---And what goes in there.

PN4246

So it's anything other than those arrangements that currently exist?---The way I see it, yes.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4247

Yes?---Anything that's not full-time.

PN4248

All right. Now, you've been an instructor for 12 years - about 12 years, is that right?---Yes, about 12 years, yes.

PN4249

Where are you based?---Currently out of Craigieburn.

PN4250

So where the training centre is?---Yes.

PN4251

Yes. While you've been an instructor there for the last 12 years, you've been a day worker?---That's what we're called, is day workers - - -

PN4252

Yes?--- - - but under the special admin duties environment, yes.

PN4253

Yes. That work - what that involves, you working in terms of the roster is four 10-hour days, is that right?---That's right.

PN4254

Yes. So it would be correct for us to proceed that on the basis that over the last 12 years you haven't worked on the 10/14 roster?---No, I have.

PN4255

You have, have you?---Yes.

PN4256

Right, when have you done that?---Pardon?

PN4257

When have you done that?---I've done about - I did a total of about five full roster in the last eight years.

PN4258

Five full rosters; so how many weeks is that, approximately?---That would be approximately - we've got 20-plus weeks.

PN4259

I see?---Maybe 25, thereabouts - and also during the fire seasons I've done surge capacity, which is on shift - day shift, as needed, and on-call for strike teams when we've got to crew the appliances and trucks.

PN4260

All right?---Hopefully I made sense in that answer.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4261

Well, I'll just ask you a few more specific questions in relation to the answer you just gave?---Right, yes.

PN4262

So did you say that over the last eight years you've worked about 20 to 25 weeks on a 10/14 roster?---Yes.

PN4263

Yes?---Correct; that's approximately.

PN4264

Yes?---Yes.

PN4265

When you've - you mentioned surge capacity?---Yes.

PN4266

What does that mean, just generally speaking?---It means when there is a lot going on, total fire ban days as such - - -

PN4267

Yes?--- - - or extreme weather conditions, that we'll crew the trucks that we have at training or any spare trucks - - -

PN4268

Yes?--- - - and go to calls as required; calls for assistance as required.

PN4269

So that's - that's something you would frequently do, I take it, particularly in the summer season?---Yes, and it's all year round; we've had it for storms as well.

PN4270

It's all year round, is it?---As needed.

PN4271

As needed?---Yes.

PN4272

As the alerts get heightened, you need to maintain a heightened level of readiness?---Yes, for sure.

PN4273

And be deployed from time to time to deal with those emergency incidents which happen?---Yes.

PN4274

You do that while you're working as a day worker?---Correct.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4275

Yes?---Yes.

PN4276

That's a - the situation you've just described in terms of maintaining a heightened level of operational readiness and in fact being deployed by way of surge capacity to deal with emergencies as they happen, that's a common occurrence throughout the year?---Crystal ball.

PN4277

No, in the past - I'm not asking you to look into the future?---Yes, it has - we have done that, yes, sure.

PN4278

All right. Separately to the surge capacity situation you've just been giving evidence about, from time to time you form part of a strike team, is that right?---As required, yes.

PN4279

As required?---Yes.

PN4280

How often has that occurred? Is that something that happens several times a year or is it more frequent than that?---That has happened, yes.

PN4281

Yes?---Yes, I would say it would be a couple of times a year, yes.

PN4282

I see. That's to deal - when you form part of a strike team, what occurs is that you do that as a day worker and then you have to be part of a strike team, that's right?---Yes, if you're asked to, yes.

PN4283

Yes. You would then be a member in the strike team, working on whatever the appliances are, attending to whatever the particular emergency situation at hand is?---Yes.

PN4284

That's right. I take it that when you've responded to emergencies either in a strike team or in a search capacity situation, you've found yourself working alongside firefighters working on the 10/14 roster?---With that question as the respondent, we stand by as parked to be called on. It doesn't mean we always go.

PN4285

I see?---We're prepared to go.

PN4286

I see. I understand what you're saying. So you're prepared to go. You're on standby, if you like, for - to go. But sometimes you do have to do and you do need to deploy?---That being the case - - -

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4287

That's right?---That has happened before.

PN4288

Yes, and when that occurs you would find yourself working side by side with firefighters on the 10/14 roster?---Yes.

PN4289

Yes, and you would be working side by side with firefighters on the 10/14 roster, some of whom you may not know?---Yes.

PN4290

I take it that that scenario, where you're deployed as a day worker in a search situation or in a strike team working alongside 10/14 firefighters that you may not know, that that didn't affect your ability to do your job safely and properly?---For me to do my job safely and properly, it's as directed as per the procedures - - -

PN4291

So is your answer to the question yes?---Could you ask it again, please?

PN4292

Yes. I take it that in circumstances where you've had to deploy to attend to an emergency as part of a surge capacity situation or a strike force, strike team, as a day worker working alongside 10/14 firefighters, some of whom you may not know, that in your experience and your view that that didn't affect your ability to do your job safely and properly?---My ability? No.

PN4293

No, nor the persons with whom you worked, so far as you understood?---I can't really speak for them. I can only speak on my own reflections of my experiences.

PN4294

So far as you're aware no-one complained about your participation in those emergency incidents?---Not that I'm aware.

PN4295

No. So far as you know, your participation in those incidents didn't jeopardise yours or anyone else's safety?---No.

PN4296

I take it that fundamentally that's because even though you may not have known the people you were working with and that they were on a 10/14 roster and you weren't you had and they had confidence in the fact that you all had the right skills to do the job?---Can I clarify something there. Because when I go on a truck I'm not on with people 10/14, I'm in a truck. I'm on with day workers as well, the special administrative duties staff at the college, so our crew is under the control of the officer-in-charge of there. So I'm dealing with them, I'm not dealing with the 10/14 people as such in the instances that I've gone. Does that make sense?

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4297

Yes. So when you're on the truck you're on the truck with other colleagues from the training centre?---Correct.

PN4298

And then that truck gets deployed with other trucks to an emergency incident?---Yes, and they could be all from the training centre or they could be operational ones as well.

PN4299

Yes, and it's in that scenario where you would find yourself from time to time working with firefighters on a 10/14 roster that you didn't know?---Yes.

PN4300

Yes, I understand. So coming back to the question I asked you a moment ago, that scenario where you find yourself working side by side with people you don't know where you're a day worker and they're a 10/14 roster, it's right to say that that doesn't cause you any problem because at the end of the day you have confidence and faith that you and them have the required skills and have maintained the required skills to do your job safely and properly?---Yes.

PN4301

Would you accept that if it could be assumed, and I am asking you to make an assumption here, if it could be assumed that arrangements could be established which ensured the part-time firefighters acquired and maintained the same level of skill and proficiency as permanent firefighters that that would address a large part of your concern about part-time firefighters?---No, I wouldn't accept that.

PN4302

All right. In your statement you say in paragraph 18 that part-time or day work for operational shifts would adversely affect the cohesion of the team, and you refer to the team approach, meaning that firefighters are familiar with fellow firefighters on shift and knowing that they can depend on them, and you go on to say that you wouldn't have the same familiarity or confidence if they were day workers or part-time. I just want to ask you about that. I read that paragraph as indicating that what you're referring to principally is the situation where the part-time worker is a person, the part-time firefighter, is a person not known, not actually known to those on the shift. Is that right?---No, what I'm referring to there is the team work that I learnt from day one and what I help teach recruits and other people all about.

PN4303

Yes?---And in saying about recruits, in saying that as well is as part of that team they come out and you've got to get them to know what they're about. We've all got strengths and weaknesses as such, but we mentor them as they come out of the station environment. So if you've got someone who's part-time as such there there's a lot of question marks.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4304

And the question marks, what I am getting at, what I am putting to you is that the question marks that you perceive arise because that part-time worker to whom you're referring is not known to you and it's not known if they have got the same level of skills and have maintained the same level of skills as you and everyone else. Do you agree with that?---Not the not known bit, because whether they're known or not known to me they've got the same skills, they've done the same training as me from recruits onwards.

PN4305

Let me come at it from a different direction. Let us say the concerns you have identified in paragraph 18 wouldn't arise if for example the part-time worker in question is someone let's say who had worked for a decade on the 10/14 roster, right. Are you following me so far?---M'mm.

PN4306

And then who have for their own reasons decided to reduce their hours of work onto a part-time basis. Your concerns that you have expressed wouldn't arise in relation to that particular scenario, would they?---As in cohesion with the team?

PN4307

Yes?---Yes, they would.

PN4308

That person is known, that person has done the example I have just given you 10 years with the team. Do you follow?---Yes, I do.

PN4309

So the concerns that you have identified wouldn't arise, would they?---Yes, it would. Can I use myself as an example, because I've been on - out of the training college for a lot of the time. I'm competent in all I do and the training that I know, but I go out on the station, yes, that's real life situations, it's not in a safe training controlled environment. So I've got to realise that those guys, my cohesion with them, isn't there when I go out, because I've still got to do - step away from the training environment. My competencies of all my procedures and all that I do know I've got to put them in a real life work.

PN4310

And in practical terms the way you manage that scenario that you have just given an example of is, in practical common sense terms, that's about talking and communication when you arrive in the example you have just given at a station where you might not be known by people. That's right?---Because they know I've done everything that they have.

PN4311

It is about talking and communication, and for example those that are at the station and you turn up then ascertaining, "What have you done? How do you regard your own proficiencies and competencies?" That's what happens, isn't it?---In a real life scenario they're far more skilled at the fire station life than what I am.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4312

Yes, and what I am saying to you is that the way the outsider scenario plays out and is dealt with on a day to day basis is by communication just happening, occurring in a normal way so that there's an understanding as to what the incoming person's skills, expertise, background is, and there's an exchange of views between that person and the existing crew. That's what happens, isn't it?---We're relying big on communication.

PN4313

Yes. So you have done 27 years with the MFB, am I right in thinking that?---It only feels like 15, but, yes, 27.

PN4314

And in that time of course you have only ever worked on a full-time basis?---Yes.

PN4315

And you've only ever worked alongside firefighters employed on a full-time basis?---Yes.

PN4316

What did you do before you started at the MFB?---I worked in the hospitality industry - sorry, sorry, I tell - I'm getting my years mixed up a bit now. I was a full-time curator, but I'm going back a fair way.

PN4317

A full-time art curator?---No, not that good, but doing cricket wickets and stuff.

PN4318

Like a sporting pitch curator?---Yes, for sure, grass. And then prior to that I was in the hospitality industry and prior to that I was in the army, armed service, coming out of school.

PN4319

So do I take it that throughout your working career as you have just sketched it that you've been employed on a full-time basis throughout in the different roles you've worked in?---Yes. Yes.

PN4320

All right. So it's correct then for the Commission to proceed on the basis that the views you express about the suitability of part-time work are not based on any direct experience by you of part-time work; that's right?---Are we talking about my whole life?

PN4321

Your working experience. It's correct for the Commission to proceed on the basis that the views you express about part-time work are not derived from any direct experience you have ever had in working on a part-time basis or on a basis other than full-time. Is that so?---I haven't even considered part-time work in my private life prior to joining the brigade.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4322

I am sorry, I misheard that?---I haven't even considered part-time work as part of this at all prior to me joining the brigade, I'm only talking about my brigade life and experiences.

PN4323

I will just ask you to direct yourself to the question, and I will put it to you again. Is the Commission correct to proceed on this basis, that the views you express in your statement about part-time work are not based on any experience you have ever had of part-time work? That's right?---I find that very - what are you after? A yes or no answer.

PN4324

Well, I am not going to - you answer the question as you see fit?---Well, I just gave the answer that this wasn't based on my previous life experience, because I keep my previous life experiences away from work and I'll continue to do so.

PN4325

You express a whole of views about part-time work and part-time firefighters being unsuitable. That's right? Agreed so far?---Yes.

PN4326

So where in your life experience have you derived any understanding of part-time work, full stop?---From those have taught me and that I've relayed those teachings onto recruits about team work, looking after each other and that everyone goes home safely and skills maintenance, training and being the best you are at what you do.

PN4327

So your understanding about part-time work is based upon learnings you've experienced over the years from teachers and instructors in the MFB. Is that right?---That's about the job we do and what we learn and continue to learn how to do better.

PN4328

Is the answer to my question yes or no?---I just gave you the answer, if that's suitable.

PN4329

Well, I just really want you - it would be a lot easier if you just answer the questions. Am I right in understanding that your understanding of part-time work is based on the learnings you've accrued over the years from what you've been told by teachers and instructors in the MFB. Is that right or wrong?---And my life experiences within the MFB.

PN4330

Yes?---Yes.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4331

Okay, thank you. Have you ever - you haven't ever worked for any other emergency services?---No, not that I can remember. No.

PN4332

Have you ever worked for any interstate fire agencies?---No.

PN4333

Have you ever been on a secondment anywhere to another agency?---No.

PN4334

Does it surprise you that in all other states and territories around Australia there are options for operational firefighters to work part-time? Do you know that?---I know of that.

PN4335

Yes. Does that surprise you?---Yes.

PN4336

Yes. Does it follow from your evidence and your criticisms about part-time work by operational firefighters that insofar as any other fire agencies in Australia employ operational firefighters on a part-time basis that they're operating an unsafe system of work. Is that your view?---I can only speak on my experience once again and I have been around this country a few times and done sporting activities with other agencies around the country and internationally, and I can only go on their feedback of what's part of my life experiences.

PN4337

What sporting activities are you talking about?---We're still in the Guinness Book of Records for running around Australia, a non-stop relay, the longest one and also did a relay run from Anzac Cove to London and did a memorial run from LA to New York, all firefighters.

PN4338

What connection is there between those athletic achievements and part-time work?---We get to know each other's - - -

PN4339

Views about part-time firefighters, is that right?---Whole life experiences that we all do.

PN4340

Is that part of the learnings to which you referred to do?---Their whole life experiences; whether they be going to calls or what they do for a living.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4341

All right. Now, I just want to ask you about another topic. You say in your statement at paragraph 11 that it wouldn't be possible for a firefighter below - leading firefighter - to work part-time due to the requirement to maintain, consolidate and develop skills through regular training, skills, maintenance and attendance at fire incidents in order to achieve and maintain competence. So I

want to ask you about skills maintenance, and the skills maintenance to which you are principally referring, what - the way that that is achieved mainly on a day-to-day basis is through the conduct of drills at stations?---Both practically and theoretically.

PN4342

Yes?---And also in a district environment conducted by district training officers.

PN4343

And when you say "practically and theoretically", you mean practically, that means the actual conduct of a drill in practical terms?---Yes. Using your hands.

PN4344

Using your hands?---Yes.

PN4345

And "theoretically" is more about training room, classroom setting experience?---Yes.

PN4346

You understand that within the MFB the requirement is on each station to run four drills each 28 days?---I do understand that.

PN4347

Yes, and the drills are set by the district training officer, but they are delivered - I withdraw that. It's up to the station officer or the senior station officer to run the drill. That's right?---The coordinator, yes.

PN4348

Yes. Then when the drill is done it's recorded in the skills maintenance data base?---Yes.

PN4349

The station officer or senior station officer can always check the data base to see who has undertaken particular drills?---They can, yes.

PN4350

So do you agree with me that the requirement is on the station to conduct the drills. There is no express requirement on the individual to have undertaken the drills. Do you agree with that?---It is also the individual's duty to do the drills as well, by taking them.

PN4351

All right. If they don't do the drills - I withdraw that. If a drill is conducted, there is an expectation that the firefighters participate in the drill. That's right?---Yes.

PN4352

Yes. If firefighter does not undertake the four drills per 28 days, they are not then prevented from working?---Not that I'm aware of.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4353

All right. The scheduling of when skills maintenance training sessions, drills - either practical or theoretical - when they're undertaken is determined by the officer in charge of the station?---By a district training officer who will - when I say - they will send it through to the officer, as in talk about it and we will check the diary and see whether it can go ahead.

PN4354

I see. So there's some communication that occurs at the district level and the officer-in-charge level - - -?---Yes.

PN4355

- - - about the timing and scheduling of drills and skills maintenance?---Of particular drills.

PN4356

I see. You are referring there to some types of drills that might require some coordination at the district level?---Yes. Skills maintenance, where we all go and we will do something together or we can be shown something by the DTOs, practically.

PN4357

I see. The DTOs being the district training officers?---Sorry, yes. The district training officer.

PN4358

I see. So where there is a need or desire for the district training officer to be involved, the scheduling for training needs to be worked out, including the district chief officer. The district office?---Yes.

PN4359

I understand. But other than that scenario, it's up to the officer in charge to work out when drills are going to be conducted?---Yes, it is. Yes.

PN4360

The scheduling of training drills, theoretical and practical, necessarily needs to be approached in a flexible way, given the unpredictable nature of operational demands of the business that firefighters are in?---As per what is already booked into the diary.

PN4361

Well, when you say "as per what is booked into the diary", you mean a booking of a drill in the diary?---No, it could be some form of community education we'd be going or we might be going to another station for whatever it might be. It might be an EMR, an emergency medical response drill, attendance at that. All different things go on; checking keys - many different things.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4362

Yes. Perhaps we're slightly at cross-purposes. What I am suggesting to you is that because the operational requirements of firefighting are unpredictable, the

actual timing of when drills, theoretical or practical, occur needs to be flexible. It doesn't occur - it won't necessarily occur every Friday morning for example?---No.

PN4363

That's right?---Yes.

PN4364

So it needs to be approached in a flexible and accommodating way to, first, operational demands?---Mm-hm.

PN4365

That's right?---Yes.

PN4366

And it also needs to be approached in a flexible and accommodating way, having regard to the fact that firefighters are not rostered on seven days a week. People are not always present, that's right?---I don't know what you mean by that. Sorry. Can you clarify?

PN4367

Yes, certainly. Well, firefighters working under the 10/14 shift work four days on?---Two days on.

PN4368

I'm sorry, two days on?---Two days.

PN4369

That's right. But they work the 10/14 roster?---Yes.

PN4370

That's when they are at work. That's right?---Yes.

PN4371

And they're also, when they might otherwise be rostered on, firefighters are often legitimately absent from work if they're on any of their leave entitlements?---Yes. They get leave, yes.

PN4372

So what I am suggesting to you in a long-winded way, and forgive me for being so long-winded about this, another reason why the conduct of skills maintenance and drills needs to be scheduled in a flexible and accommodating way is because people - firefighters - are not always at the station. They're off on leave or they're not rostered on?---Yes, for those four drills for a month, and others will still go ahead if someone is on leave.

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4373

That's right, but if someone is on leave and it might be, for example, from time to time if a firefighter or a number of firefighters are absent on leave, there might be

a need to do the drill again when they are around?---When they come back the following month.

PN4374

Yes?---Possibly, depending on what the drill is.

PN4375

Yes, and that's an example of the sort of flexibility that you need to bring to scheduling drills?---Like I said, there's a lot of considerations on the station environment and what the trucks are required for.

PN4376

Yes. Would you accept then that in terms of skills maintenance and the conduct of drills, because of the flexibility that already needs to be applied in the scheduling of skills maintenance and drills, there's nothing insurmountable to those drills being arranged and scheduled to accommodate employees who, let us say, are employed on a part-time basis. That, in principle, would be an achievable end. Would you accept that?---I understood the last bit of what you said, but it was a long one, that one. Can you make it a bit shorter, please?

PN4377

Certainly. Do you accept that because - we agree that skills maintenance and drills need to be scheduled in a flexible way, yes?---As per station demands.

PN4378

Yes, as per station demands and to accommodate people's absences?---Not to accommodate people's absences, because it's done for that one roster.

PN4379

All right?---And who is on duty.

PN4380

So your position is that it needs to be flexible to accommodate operational demands?---Yes.

PN4381

And what I'm suggesting to you is that because skills maintenance and drills need to be approached flexibly, because of operational demands, there is nothing insurmountable - there would be nothing insurmountable in scheduling drills and skills maintenance around people who are working less than 42 hours on average. Would you accept that?---Well, at district training level, I don't accept that, because of the practical drills that we do have, they're designed to be done at certain times.

PN4382

That's in relation to the district level, but at the station level, do you accept what I've just suggested to you?---You are talking about the four that are on the computer?

*** MICHAEL ANTHONY MARTIN

XXN MR MOORE

PN4383

Yes, the four - the minimum four that need to be done every 28 days. I'm suggesting to you there is nothing insurmountable in the station meeting the requirement of conducting the drills to deal with people who might be working less than 42 hours?---Like I say, if I can answer that, skills maintenance is bigger than the four - minimum four drills that are at the station level. If we only worked on the four drills at the station level, there's a lot more to do.

PN4384

No, I understand skills maintenance is broader than that, but you agreed with me earlier that a principal way in which skills maintenance occurs is through drills, either in the training room for theory or in practical. Do you remember that?---Yes, I do.

PN4385

Yes. So I am just asking you about the drills, in theory or in practice, at a station level. Do you accept that there is nothing insurmountable in scheduling such drills, such skills maintenance around people who might be working less than 42 hours a week?---No, I don't accept it.

PN4386

All right. Thank you, Commissioner.

PN4387

THE COMMISSIONER: Thank you, Mr Moore and indeed, Mr Martin, thank you for giving evidence this afternoon. You are released and free to go?---Thank you.

PN4388

MR KENZIE: I just have one - - -

PN4389

THE COMMISSIONER: I do apologise. As soon as I said that I realised that was entirely the wrong thing to say. It's getting late, Mr Kenzie.

PN4390

You are not realised unfortunately, Mr Martin. I need to give Mr Kenzie the right of re-examination.

RE-EXAMINATION BY MR KENZIE

[4.15 PM]

PN4391

MR KENZIE: Just one matter, Mr Martin, if you can deal with this. You've just been asked by my friend whether you accept that because of flexibility needed for the training that whether there is anything insurmountable in accommodating part-time employees and you wouldn't accept that proposition?---No.

PN4392

Do you remember that?---Yes.

*** MICHAEL ANTHONY MARTIN

RXN MR KENZIE

PN4393

Can I just ask you why you answered that in the way that you did?---Because if we had the part-time employees - we arrange - I'm sorry, if it was to be done - the drills are arranged to go with the crew that are at the station, okay? If we had to schedule around a part-time employee or reschedule, it would just throw everything into chaos.

PN4394

Thank you. Might he be excused?

PN4395

THE COMMISSIONER: Thank you very much and, indeed, Mr Martin, you are released now and free to go, so thank you.

<THE WITNESS WITHDREW [4.16 PM]

PN4396

THE COMMISSIONER: That brings us to Mr Thomas. Can we just have a short break before we come to his evidence?

PN4397

MR KENZIE: Certainly, Commissioner.

PN4398

THE COMMISSIONER: We will just adjourn for about five minutes.

SHORT ADJOURNMENT [4.16 PM]

RESUMED [4.26 PM]

PN4399

THE COMMISSIONER: Yes, Mr Kenzie?

PN4400

MR KENZIE: Thank you, Commissioner. The last witness for today is Mr Barry Thomas. I call Mr Thomas.

PN4401

THE ASSOCIATE: Please state your full name and work address?

PN4402

MR THOMAS: Barry David Thomas, Corio Fire Station, 20-32 Birdwood Avenue, Norlane.

<BARRY DAVID THOMAS, SWORN [4.27 PM]

EXAMINATION-IN-CHIEF BY MR KENZIE [4.27 PM]

PN4403

THE COMMISSIONER: Now, Mr Kenzie, there's a replacement

- - -

*** BARRY DAVID THOMAS

XN MR KENZIE

PN4404

MR KENZIE: There is. I was going to mention that at the outset. There are no amendments of any substance to the statement that was originally filed. There are some annexures to an earlier statement of Mr Thomas, which have been included. But on my instruction, I can't take you, amendment by amendment through the statement that's dated 28 April, but I'm instructed that there are amendments that are there and the reason for the uplifting are minor.

PN4405

THE COMMISSIONER: All right, thank you, Mr Kenzie.

PN4406

MR KENZIE: Mr Thomas, again, for the purpose of the record, could you state your name and address again, please?---Barry David Thomas, Corio Fire Station, 20-32 Birdwood Avenue, Norlane.

PN4407

Thank you. Mr Thomas, in relation to this proceeding have you made a witness statement which, in its replaced form, bares the date of 28 April 2016?---Yes, I have.

PN4408

Do you say, to the best of your knowledge and belief, that the contents of that statement are true and correct?---Yes, I do.

PN4409

I tender the statement of Mr Thomas, if it please.

PN4410

THE COMMISSIONER: Thank you. Now, I take it that on the previous occasion there were no corrections or amendments?

PN4411

MR KENZIE: No.

PN4412

THE COMMISSIONER: In that case, I'll mark the amended witness statement as UFU15, the witness statement of Barry Thomas.

EXHIBIT #UFU15 AMENDED WITNESS STATEMENT OF BARRY THOMAS DATED 28/04/2016

PN4413

MR KENZIE: Thank you.

PN4414

THE COMMISSIONER: Mr Moore?

CROSS-EXAMINATION BY MR MOORE

[4.29 PM]

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4415

MR MOORE: Thank you, Commissioner. Hello, Mr Thomas, I just want to ask you some questions about your witness statement. So you've been with the CFA for 40 years, is that right?---That's correct.

PN4416

I take it that over that time you've seen significant change in the nature of firefighting and emergency services work generally?---Yes, I have. Yes.

PN4417

Radical changes?---I'm not sure what a definition of "radical" is, but I've certainly seen some change.

PN4418

All right. There are many ways in which firefighting has changed, you agree with that?---Yes.

PN4419

I think the previous witness, a Mr Michael Tony Martin, who is from the MFB gave evidence that during his period of employment, and he'd been there 27 years, MFB firefighting has become more and more complex. Would you agree with that, in relation to the CFA?---Yes, it has.

PN4420

There are other complexities, of course, in terms of, most significantly, the need to work closely with other emergency services providers?---I think we've always had a need to work with other emergency services. Certainly, more recently, we've worked closer with the MFB.

PN4421

Yes, since 2009, Black Saturday, there's been a focus on this thing called interoperability?---That's correct.

PN4422

Which is, if I can - that involves, as an ambition, emergency services agencies to work more seamlessly together?---That's correct, yes.

PN4423

That's a new thing, post Black Saturday?---Yes, that's correct.

PN4424

Yes. You're currently the operations officer at Corio, that's right?---That's correct.

PN4425

In terms of your, the statement, your earlier statement, which is attached to your statement of 28 April, reading that statement that tells me that you were at Corio when that statement was - when you made that statement, that's right?---That's correct.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4426

The statement, the earlier statement, bares the date 26 August 1999, on the bottom - on the footer of each page. Is the Commission right to understand that that's the date upon which you prepared that statement?---That's correct, yes.

PN4427

So am I right to understand that you've remained at the Corio Station between 1999 and the present time?---That's correct.

PN4428

Before 1999 you say, in paragraph 3 of your earlier statement, that you list the stations at which you previously worked, and all of those stations, save for the one at Warrnambool, are in the Geelong area?---That's correct.

PN4429

How long were you at Warrnambool?---I relieved there - they would have been for four week periods a number of occasions, I wouldn't be able to tell you how many.

PN4430

I see. Have you ever worked, on secondment, with another agency?---No, I haven't.

PN4431

Have you ever worked with an interstate fire service?---Yes. I've been to deployments to New South Wales.

PN4432

Did you say "deployments"?---Yes.

PN4433

To New South Wales. Was that as part of a strike force, or some such thing?---Yes, it was.

PN4434

I see. How many times have you done that?---Once.

PN4435

Have you ever worked with any overseas fire agencies?---No, I haven't.

PN4436

So it would be right to understand that your understanding of firefighting, that industry, and firefighting work, from your 40 years in the CFA, is really derived, overwhelmingly, from working in the Geelong area?---No, that's not correct.

PN4437

All right. Well, are you suggesting that you've developed understandings about firefighting and the firefighting industry from other sources, other than where you've worked?---Yes, that's correct.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4438

I see. From the training that you've done?---No. Since 1999 I've worked at a number of other locations. I was also a member of the state committee management of the UFU, so I had a need to communicate with firefighters and fire officers around the state.

PN4439

I see. I understand. So in terms of your role in the committee of management of the union you no doubt came to meet other firefighters from various places?---That's correct.

PN4440

You said that you've worked a number of other locations since 1999. I understood your evidence earlier that you had worked at Corio from 1999 until the present time?---That's correct.

PN4441

So is that wrong, or can you just explain what that - - -?---So I've relieved at other stations, Ballarat, Mildura, where they've had a need for the rank that I was holding at the time.

PN4442

I see. So you've done relieving work at other stations, from time to time?---That's correct.

PN4443

I see. All right. But can I suggest to you that, in terms of your understanding of firefighting work, and the firefighting industry, it's an understanding derived, principally from your experience, you accept that?---Yes.

PN4444

And that experience is, overwhelmingly, confined to experience in the Geelong area, over 40 years?---No, I don't accept that.

PN4445

All right. What did you do before you joined the CFA as an employee?---I was a surveyor.

PN4446

A surveyor?---For the Country Roads Board.

PN4447

Sorry, I missed that?---For the Country Roads Board.

PN4448

How long did you do that for?---Six years.

PN4449

What did you do before that?---I was a student.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4450

And when you were a surveyor for the Country Roads Board, did you work for the Country Roads Board on a full-time basis?---Yes, I did.

PN4451

So it's right to understand then that the entirety of your working life has been as a full-time employee?---No. When I was a student I worked as a casual at Myers.

PN4452

I see. Right. So would I be right in - how long did you work as a casual at Myers?---It would have been over the Christmas period, five to six weeks.

PN4453

One year?---Yes, that's correct.

PN4454

So you'd accept that overwhelmingly your professional work experience has been in employment on a full-time, permanent basis?---That's correct.

PN4455

You've never worked alongside an operational firefighter employed on anything other than a full-time basis?---Certainly with the NRE they had - - -

PN4456

Sorry, could you just tell us what the NRE is?---Was then the Natural Resources and Environment, now Department of
- - -

PN4457

The state department?---The Forest - the Forest Commission people. They certainly had contract crews.

PN4458

Firefighters?---Firefighting crews. I've worked with a number of those people.

PN4459

So these are firefighters working for, I'll just get the name of the agency, is it the Department of Environment, Water, Land?---It's been a number of names, the Forest Commission, NRE, DELP.

PN4460

Yes, inconveniently they keep changing their names. All right. So that agency has employed firefighters, is that your understanding?---Yes.

PN4461

Have you had occasion to work alongside them, over the
- - -?---Yes, I have.

PN4462

Has that been a frequent thing or an infrequent?---They've been on strike teams. So deployments to bushfires within the state.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4463

I see. Has that been something that's happened a number of times, or one off things?---A number of times. Look, over 40 years I really couldn't tell you how many times.

PN4464

No, I understand. Did you know anything about their employment arrangements?---Look, I had some knowledge of their employment arrangements, their hours of work. I wouldn't be able to tell you anything about their pays or anything like that.

PN4465

No. So would this be right, you had some of your own views or speculations about how they might have been employed, but you didn't know for sure?---Look, I don't think it was my own views, it would have been some knowledge of the time, from those people that had spoken to me about what they'd done.

PN4466

What, was it your understanding that they were employed other than on a full-time basis?---Yes, they were usually university students employed over the summer period.

PN4467

Now, in your statement you refer to part-time employment and part-time firefighters. I want to get a clearer understanding of exactly what you're referring to there. Evidence has been given, by a number of union - I'm sorry. Evidence has been given, by a number of witnesses, called by the union in this proceeding, that the concept of part-time firefighters and part-time employment, about which they have expressed concern, is employment on an irregular and casual basis. Is that your position, when one reads your witness statement, that when you're referring to part-time employment and part-time firefighters, you're referring to those employed on an irregular and casual basis?---No, that's not correct.

PN4468

Is your understanding of part-time firefighters and part-time employment, in your witness statement, include but is not limited to those who might be employed on an irregular and casual basis?---My definition is regular hours of work that aren't full-time.

PN4469

I see. Does your definition - so that's how, when we read your witness statement, when it says part-time firefighters or part-time employment, one reads that as regular hours of work, less than full-time?---That's correct.

PN4470

Is there a specific number of hours that you have in mind, in referring to that?---No.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4471

So it could be anything from five hours a week to 35 hours a week?---Or 41 hours a week.

PN4472

Yes, it doesn't matter?---No.

PN4473

Your concerns are the same, are they, whether or not the part-time firefighter or part-time employment, to which you refer, is someone who's employed for five hours a week or 41 hours a week?---No. My concerns are in relation to their exposure to training, their proficiency. So whether that's 41 hours a week, as a definition of part-time, certainly there's a massive difference between 41 hours and one hour, in terms of the exposure to the environment.

PN4474

Yes. So your concerns - I take it from that, that the concerns you express, of which you've got a good number of concerns, are much less, insofar as a part-time firefighter might be employed on something approaching 42 hours a week, as compared to someone who's working five hours a week?---I'm not sure that your words (indistinct) are that appropriate. So the firefighting industry has changed to the extent that it would certainly be my argument that at 42 hours a week we're not maintaining the skills that we need. So there's an argument, for someone based on 42 hours a week, we need to adjust the way we do our business so that we can actually achieve more skills maintenance and proficiency of the role. So I guess, in the scenario you're giving me, of 41 hours a week, it is an hour less than what I consider to me a minimum anyway. So, yes, I guess what I'm saying is anything below 42 hours a week, there's a massive concern.

PN4475

Sorry, I missed what you just said at the end there?---So anything less than 42 hours a week, on our current practices, is a massive concern.

PN4476

Is a massive concern?---That's correct.

PN4477

Is it - am I right then in understanding your evidence to be that anything less than 42 hours a week is a massive concern, whether or not it's five hours a week or 40 hours a week, is that your evidence?---I'm not sure of the easy way of explaining this, so every minute less of training you do you increase the risk of firefighter injury, death or loss of property. So I'm not sure that there's an objective measure of that, but certainly every minute less you do could be that minute that someone learns the skill that could save his or someone else's life.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4478

I wasn't asking about training and what's required to save someone's life. I just want to understand whether you're saying to the Commission that your concerns are of the same degree, the same character, whether or not a part-time firefighter

is working 40 hours or 10 hours. Is that your evidence?---I actually think I answered your question, so I guess I'm really not understanding your question.

PN4479

Okay. I'll come at it a different way. You say that every minute of training a firefighter has can make a difference between whether or not their safety and the safety of their colleagues and members of the public is preserved or not. Do I understand - - -?---Yes.

PN4480

I understand that. So that's evidence which supports the proposition, does it, Mr Thomas, that the more training the better?---That's correct.

PN4481

Am I right then in understanding from that that underpinning your concerns about part-time work is whether or not part-time workers, however many hours they might work, would receive a requisite satisfactory, sufficient level of training?---That's correct.

PN4482

That's the heart of your concerns. Am I right in understanding that?---Well, I'm not sure whether it's the heart of my concerns. I'm not sure what your question is - - -

PN4483

That's one of your key concerns, is it?---It's certainly one of the key concerns.

PN4484

If that key concern about the provision of sufficient training to part-time employees was addressed - assume that that was addressed - your concerns in relation to part-time work would be substantially addressed. Is that correct?---No, that's not correct.

PN4485

Do I understand your evidence to be that 42 hours a week is an insufficient period of employment for firefighters to maintain the required level of training to do their job safely and properly?---I think the way we do our business at the moment with multiskilling, the changes in the skill base required and the knowledge required, and the proficiency required, we are at the point where we're not meeting the capacity to have our multiskilled workforce.

PN4486

Coming back to a question I asked you a moment ago, do you accept that the extent and nature of the various concerns you express about part-time firefighters will vary significantly by the number of hours upon which a firefighter employed on a part-time basis might work each week?---Sorry, could I have that question again?

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4487

Certainly. Do you accept that the extent of the various concerns you express about part-time firefighters - that the extent of those concerns must necessarily depend upon the number of hours that a part-time firefighter would work in a particular week?---I'm not sure that I can really answer that. It appears to be a broad question, so - it's only talking about training. It's not talking about exposure to other firefighters or the environment - the firefighting environment. I'm not really sure that I can answer your question.

PN4488

I didn't mention the word "training" in my question to you. I'll ask you in a slightly different way if this assists. Do you accept that the extent of the various concerns you have about part-time firefighters - the extent of those concerns must necessarily depend upon the number of hours a part-time firefighter would work in any particular week?---No, that's not correct.

PN4489

So ultimately your position is, is it, that the concerns you express about part-time firefighters are absolute concerns which arise whether or not a firefighter is working 10 hours a week or 40 hours a week. Is that the bottom line in terms of your evidence to this Commission?---I think my evidence is broader than that. My evidence actually talks about the teamwork and the exposure to teamwork, as well as training.

PN4490

I understand your evidence is broader than that, but I've asked you a question which you're required to answer absent an objection from Mr Kenzie. Do you wish to answer it?---I think you actually asked me about my concerns in my statement, so I'm giving you an answer in relation to the concerns in my statement which are broader than just what you were talking about.

PN4491

I understand you have got various concerns about part-time work. I understand that. What I'm suggesting to you is, as I understand your evidence, you're saying that those concerns are of an absolute character and not affected by whether or not a part-time firefighter is working 10 hours or 40 hours a week. Is that right?---No, I'm saying that it is dependent upon the hours that he works.

PN4492

I see. So the extent of your concerns will vary whether or not we're dealing with, let us say, a proposition for a part-time firefighter to work 10 hours a week or a proposition of a part-time firefighter working 40 hours a week?---Well, it's a 42-hour week. I'm not sure whether you're talking about a week or - what I'm saying is the exposure to the environment needs to be a full-time exposure.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4493

You say in paragraph 9 of your witness statement that your attached statement from 1999 was provided to the Commission as part of a submission in relation to the exposure draft of the Firefighting Industry Award in 2010. I take it from the

heading of your attached statement from 1999, that it was in fact initially prepared as part of the award simplification proceedings?---That's correct.

PN4494

I take it from reading your attached statement - and I can direct your attention, if this assists, to paragraph 30 where you state:

PN4495

The CFA's proposal for part-time employment would be detrimental to the CFA's ability to provide an effective fire service.

PN4496

You go on to say in the third last line:

PN4497

Below I address the operational problems which have arisen from implementing this proposal under the following headings.

PN4498

In paragraph 35, you refer to the proposed hours of employment for part-time employees proposed by Mr Reeves and Mr Davies in their statements. In paragraph 39, you refer to Mr Reeves again and a proposal that they will spend 10 hours - almost half of their working hours - engaged in skills maintenance. I just took you through that to ask you this question: that statement was filed in award simplification proceedings in opposition to a specific proposal then advanced by the CFA for part-time work. Is that correct?---That's correct.

PN4499

Without going into the details, it was a specific proposal around particular hours of work and arrangements attaching to that?---That's correct, yes.

PN4500

A fairly detailed proposal?---That's correct.

PN4501

So you prepared that statement on 26 August 1999. In adopting that statement in this proceeding, as you do, you haven't attempted to re-visit its contents in light of what you've identified earlier today as the significant changes in firefighting and emergency services?---No, I haven't.

PN4502

I take it you haven't re-visited that statement and the concerns set out in 1999 because, to cut to the chase, you have an in-principle objection to employment on a part-time basis; namely, on any hours less than 42 hours a week. Is that a fair statement?---No, I don't think so. What I would say is I haven't been presented with anything that would encourage me to think otherwise.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4503

You mean by that you were opposed to part-time work in 1999 for the reasons set out in your statement and nothing has been put in front of you since that time to

lead you to change your mind?---I have read some things about working day shifts, working night shifts and none of those things have been enough to alter my view that that isn't in the interests of the safety of employees or the efficiency of the organisation.

PN4504

All right. You see, you say in paragraph 8 of your 1999 statement - I'm sorry, I've misled you. I apologise. You say in paragraph 8 of your statement of 28 April that you oppose the introduction of part-time work into the CFA generally. You go on to say "and especially as part of the 10/14 roster and/or minimum staffing." In paragraph 12, you say that you don't consider any option for part-time work as acceptable, right? That's your evidence?---That's correct.

PN4505

When you say you oppose the introduction of part-time work into the CFA generally, am I correct in understanding then that your opposition to part-time work isn't limited to it being part of 10/14 or minimum staffing?---What I'm saying is that the information I have available doesn't assist me in changing that view, although in paragraph 13 you will note that I've said that if it had to be introduced, then it should be not as part of the 10/14 system on a job share basis.

PN4506

But your principal position is that you don't believe job sharing would work?---I don't believe it's efficient for the organisation.

PN4507

Yes, and you don't believe it will work?---I haven't had any evidence given to me to change that view, so I'm flexible in whether I change that view or not, but I haven't seen anything that would be better than what we do now.

PN4508

You say you're flexible. You have not, with respect, indicated any flexibility in your views from 1999 in light of the significant changes in firefighting and emergency services work. The position is, isn't it, that you have an in-principle underlying objection to part-time work for firefighters in any shape or form in the CFA. That's correct, isn't it?---No.

PN4509

All right. You have, if I might say, a well-developed set of views about part-time work and its suitability or unsuitability for firefighting. Where have you derived your understanding about part-time work from, from your own experience?---I guess I've been involved in rostering since 1979, both for the UFU and for the CFA. I've been part of consultative committees. I am still part of the ops officers, ops managers consultative committee. I consider myself fairly open-minded in terms of working through flexibilities of that sort and, as I've said, I have not seen anything yet that would change my view that what we currently do is a safer option than part-time. That doesn't mean to say that someone can come to me with some evidence to say that it's safer.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4510

My question was different. My question was where have you in your experience derived an understanding of part-time employment?---In terms of exposure - I'm not sure I really understand the question, but in 1999 I had to do quite a deal of analysis.

PN4511

You mean the preparation of your statement?---Yes. I had to do quite a deal of analysis in terms of what would work and what wouldn't work. Other than my 43 years' worth of history in CFA, that formed the basis for the rostering and safety components.

PN4512

You 40 years' experience with the CFA has been as a permanent full-time firefighter?---No, that's not correct.

PN4513

That's not correct. Is it not correct because you have, in that time, worked in different roles other than as a firefighter?---No, I was a volunteer before I came into career - - -

PN4514

I see. Putting aside your experience as a volunteer, as an employee of CFA, a firefighter, that has been for 40-odd years?---(No audible reply)

PN4515

You just need to speak your answer for the transcript?---39 years.

PN4516

39 years. That's correct?---That's correct.

PN4517

You've always been full-time?---That's correct.

PN4518

The fellow firefighters of the CRA that you have worked alongside have, likewise, been full-time firefighters?---That's correct.

PN4519

That's right. So in 40 years, you've never had any experience whatsoever in either yourself working as a part-time employee or working alongside part-time employees. That's correct?---That's correct.

PN4520

If that is correct, your understanding of what part-time work would be like and what is entailed with it, where do you derive that understanding from? Is it from your family? Is it from your friends?---No. My understanding of part-time work is doing less than what career firefighters currently do.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4521

I'm just trying to understand the sources of that understanding. Are the sources of your understanding what you read in the newspaper? Is that where we get to?---It's a fairly broad question. I guess certainly you read things in the newspaper. I've been presented with documents from the CFA about part-time work. I've been to meetings with the chairman of the Country Fire Authority where part-time work has been discussed.

PN4522

Part of those sources of information, I take it, is the views and publications expressed by the union about part-time work?---I've certainly read those views. I guess one of the things with being around for 40-odd years, you actually get to voice your own opinion fairly strongly.

PN4523

All right. Now, in terms of your opposition to part-time work as part of the 10/14 roster and without descending to the details, am I correct in understanding from your earlier witness statement that your view essentially is that to ensure the safety of firefighters and for fires to be fought offensively, it's essential that firefighters do so as part of a 10/14 team? Is that what you - - -?---That's part of the argument, yes.

PN4524

Part of the argument?---Yes.

PN4525

All right. You have been the operations officer at Corio for the last five years?---That's correct.

PN4526

Am I correct in my understanding that you're currently on sick leave?---It's a combination of sick leave and working. I have an injured neck and between the CFA doctor and my doctor, they give me certificates that enable me to work within my limitations - - -

PN4527

I see?--- - - - in conjunction with my ops manager.

PN4528

So you're working modified hours?---That's correct.

PN4529

How long has that been for?---18 months or thereabouts.

PN4530

Before that 18 months, while you were the operations officer - so before you went onto those modified hours - your hours of work as operations officer at Corio were day work. Is that right?---No.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4531

No?---It's effectively work as required. I was supplied with an emergency vehicle, a pager and a phone. I manage my own hours and that would involve being called out in the middle of the night or being the duty officer and responding to fires. Being available to volunteers and staff.

PN4532

So you're on call. Is that right?---Yes.

PN4533

You're on call 24 hours a day, seven days a week?---Except when I'm on annual leave. That's correct.

PN4534

Is it your evidence to the Commission that you didn't work a day work roster of four days on, four days off?---No, that's correct.

PN4535

Your evidence to the Commission is you are on call all the time?---That's correct.

PN4536

I take it that as operations officer, you are required to attend emergencies from time to time?---That's correct.

PN4537

Quite often, no doubt. I withdraw that question. I'll move on. As operations officer at Corio - I'll withdraw that. I'll come at it the other way. The other firefighters working at Corio are on the 10/14 roster?---That's correct.

PN4538

Other career firefighters at other stations in the greater Geelong area are on the 10/14 roster?---That's correct.

PN4539

You're on call, you say. You're not working the 10/14 roster?---No, I'm not.

PN4540

There was no difficulty, when you did attend emergencies from time to time, in terms of your involvement in those incidents in terms of the health, safety and welfare of other firefighters and members of the public?---No, there wasn't.

PN4541

Do you accept that that indicates from your own personal experience and your involvement as an experienced firefighter who now does not work a 10/14 roster, that the working of that roster is not essential in order to ensure the safety of firefighters and for fires to be fought offensively?---That's not correct.

PN4542

Coming back to your earlier statement, it apparent that that contains your view about part-time work back in 1999. Your earlier statement?---Yes.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4543

You say, "I have not been presented with anything which leads me to change my view"?---That's correct.

PN4544

"My view remains unchanged"?---That's correct.

PN4545

"Notwithstanding the significant changes in fire services and emergency services, I remain of that view"?---That's correct.

PN4546

In your various roles with the union and as someone interested in rostering matters, and with a long period of service, I take it you've become aware since 1999 that part-time work has become available for firefighters in all other states?---I'm aware that New South Wales has a retain system. I'm not sure that I'm aware of any part-time systems that are available.

PN4547

That's news to you, what I've just put to you, is it?---Yes.

PN4548

You have never heard of that?---Not until today.

PN4549

Right?---Well, I may have heard of it, but it's not something I can recall ever hearing.

PN4550

The evidence before this Commission is that every other state and territory has arrangements available for operational firefighters to work part-time. You do not know that?---No, I haven't.

PN4551

Would that give you pause to reflect on the views that you've expressed about the unsuitability of part-time firefighters?---Not in the least.

PN4552

You wouldn't want to go and have a look at those alternative arrangements and see what they are?---I'm sure at some stage or other CFA, through the appropriate consultative processes, would produce it if they thought it was effective.

PN4553

That's not what I'm asking you. In light of what I've just told you about, do you accept that there is a need for you to go and reflect upon and revise your views that you originally formed in 1999 to see if they remain valid and sound?---I don't think there's a need.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4554

Do you think that would be a sensible thing to do?---I'm quite happy to have a look at them, but I'm not sure there's a need.

PN4555

Not a need to reflect on your views in light of what I've just told you; that every other state and territory, there is capability for firefighters to work on a part-time basis. You don't think that provides good reason for you to reflect on your views from 1999?---I think as part of that you'd need to look at how the services operate.

PN4556

You see, really where we get to is that your opposition to part-time work is an article of faith in your mind. That is so, isn't it?---No, that's not correct.

PN4557

Do you accept that it occurs from time to time that firefighters at Corio have to work alongside firefighters they don't know?---That's correct.

PN4558

It happens a lot, doesn't it?---I'm not sure what "a lot" means.

PN4559

Okay. It happens - - -?---It certainly happens.

PN4560

- - - reasonably frequently?---Again, it's - - -

PN4561

Are you going to disagree with that?---No. It's a relative term - - -

PN4562

You're not disagreeing with that?---I'm not sure what "reasonably frequently" means.

PN4563

Okay. All right. It's not an uncommon occurrence?---That's correct.

PN4564

We'll agree on that. That happens for a range of reasons. Recalled firefighters?---Yes.

PN4565

People being transferred?---Yes.

PN4566

Firefighters in the CFA having to work alongside MFB firefighters?---Yes.

PN4567

Strike forces?---Yes.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4568

Large scale emergencies?---Yes.

PN4569

And also with volunteers?---Yes.

PN4570

And in all of those situations, those different scenarios where you might find yourself – firefighters might find themselves working side by side with a firefighter they don't know, aside from knowing that the firefighter will have undertaken the required training and maintained that training, you won't know anything about their particular skill level or their proficiencies or their approach to the job, that's right, isn't it?---That's correct, yes.

PN4571

And that fact is managed because of the confidence that firefighters need to have in each other's training and skill acquisition and skill maintenance, that's right?---I'm not sure what you mean by the term, "managed". It certainly - - -

PN4572

All right, I'll clarify it if you don't understand it. The circumstance, the situation which arises of firefighters working side by side with firefighters they don't know, and they don't know of their level of proficiency or their approach to the job and so on, those matters, that challenge is dealt with, addressed, by firefighters having confidence in each others' skills and skill maintenance?---I think it's actually addressed by the incident control, so the incident control would determine based on his knowledge of, or lack of knowledge of the people he's dealing with, what – the tasks he would allocate. So in my case I would, when I was performing that role, I would allocate tasks based on the safest option I had.

PN4573

All right?---Which is different than the team that I actually work with all the time, where I know quite well how they're going to operate and they know how I'm going to operate.

PN4574

So really, what's involved in that is the incident controller applying, and I don't mean this in any disrespectful way to the tremendously responsible and skilled job that incident controllers need to undertake, but it really is an instance of common sense and making judgments in a common sense way about tasks and responsibilities which are suitable to people's skills and abilities?---It's a risk assessment.

PN4575

I see. And that's done by communicating with people, essentially?---It can be done by communicating and it can be by observation.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4576

You say in paragraph 21 of your 1999 statement, you say that "When people work overtime or who otherwise aren't part of our roster work with us, I notice the difference in the method of operation. Working becomes less automatic and the

shift is commonly less effective for that reason". And I take it what you're alluding to there is that when an outsider, can I call them that, comes in, some level of express communication is required for the team, for the crew, to work effectively together?---(Indistinct reply)

PN4577

Isn't that what you're saying there? You're saying that when as the team, well, where it's all automatic because we work together, we know what each other are like and what we've done and what our skills and experience are, so we don't need to articulate expressly and ask questions about people's levels proficiency and so on and so forth, and you're saying, aren't you, that the difference when an outsider comes in is that those questions which are otherwise not questions, need to be asked and answered?---No, it's not so much of asking someone because it may be that you ask the question and they're the greatest firefighter that ever lived. I mean, that's not a safe way of doing business.

PN4578

I see?---So it's – I guess what I'm saying is that in your home team you work together for so long, you know each other's – how they operate and because that's automatic I didn't need to give orders, I didn't – you know, the risk assessment, the whole team is done and we all know where it's heading. The other person that you were talking about, coming into it, communication isn't isn't the safe way of doing business because their perception may be that they're the greatest firefighter that ever lived. It's an unknown and in terms of the risk assessment it's, you know, it is an unknown, is there a likelihood or consequence that this person can't perform the role that I expect them to do? And so your decision process is based on that unknown.

PN4579

Well, when the outsider comes in you're not saying to this Commission that in that scenario it's not a safe system of work, are you?---Providing the risk assessment is done and you do less than what you would expect to do, then it's a safe system of work.

PN4580

Right?---If you expect that person to come in and perform as the team has done in the past, then there is a likelihood that that person could get injured and another firefighter could get injured.

PN4581

Well, you've never lodged a complaint with CFA management or with the relevant authorities about some unsafe system of work arising when an outsider comes into the home team, have you?---No. As I said in my statement - - -

PN4582

Well, you would if there was a problem, wouldn't you?---No.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4583

All right, so you'd just let that go on, would you, if it was an unsafe system of work?---Well, it's - - -

PN4584

I mean, either it's safe or it's unsafe?---It's - - -

PN4585

MR KENZIE: I wonder if he can answer the question.

PN4586

MR MOORE: Sorry, certainly. Certainly?---It is unsafe if I allow them to perform a role that I am not sure they're capable of.

PN4587

And so it's managed, isn't it?---Yes.

PN4588

Yes?---At a lesser extent than what would have happened if your home team was there.

PN4589

Yes. It's managed to make sure the system of work is safe?---Yes, that's correct.

PN4590

All right. And I take it that in your work – please refresh yourself, Mr Thomas - - -?---Thank you.

PN4591

In your work, no doubt regularly, you are called on to work with Victoria Police and Ambulance Victoria staff?---In my current role, occasionally.

PN4592

Occasionally. But the firefighters at Corio would be doing that on a regular basis?---Yes, that's correct.

PN4593

Yes. And do you know that Victoria Police employs officers on a part time basis?---Yes, I do.

PN4594

And do you know that the same applies with Ambulance Victoria?---Yes, I do.

PN4595

And would I be right – when you have had occasion to work with Ambulance Victoria and Victoria Police officers, you don't first inquire about their employment status, do you?---No, I don't.

PN4596

No, it just doesn't matter, does it?---No.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4597

No. And that's because you have, I presume, a generally high regard for the professionalism and expertise of Ambulance Victoria and Victoria Police?---Yes, I rely on them to do their job.

PN4598

That's right. And they do their job, overall, well, notwithstanding whatever their employment arrangements is?---That's right. That's correct.

PN4599

And they deal, of course, with demanding emergency situations just like you and your staff at Corio deal with?---Yes.

PN4600

Yes. Now in paragraph 31 of your 1999 statement you say that firefighters would be more cautious and concerned about their safety on the fire ground working with a part time employee than if they were working with people on shift and that you have no doubt that firefighters would be more reluctant to put themselves at risk when working with a part time employee. Now I take it that what you're referring to there is the part time firefighter who is not otherwise known to the existing team of firefighters?---No, part time firefighters in general.

PN4601

I see. Consider this scenario. You have a firefighter who has worked for ten years on the 10/14 roster, full time, right?---Yes.

PN4602

They decide, the firefighter decides to go part time, and they can go part time, let it be assumed, they're still in the same crew, still at the same station and they then work at say 20 hours a week. Are you seriously saying these concerns you identify at paragraph 31 would apply in relation to that firefighter who had been working at the station with the same crew for ten years?---Yes, I am.

PN4603

Right. And I just might ask you about skills maintenance which you refer to in your statement and that the principle way in which skills maintenance occurs is through the conduct of drills?---No, that's not correct.

PN4604

The principle way?---It is one of the ways.

PN4605

I see. You say that skills maintenance is achieved through other ways such as practice on the job, of attending to incidents - - -?---That, discussion around the staff room table - - -

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4606

Yes?---Checking appliances, checking a bit of equipment?---Just hanging out at the station?---Well, I'm not sure that that's a term that I'd use but the environment itself generates a learning atmosphere, so firefighters working around a station

will – even if they're cleaning the truck, they'll be talking about, you know, a job they've been to or something like that.

PN4607

Is that what they're always talking about when they're cleaning the truck?---No.

PN4608

It's the case, isn't it, that the specific way that skills are to be maintained principally is by doing drills at the station?---No, as I've said, it's one of the ways.

PN4609

All right. So putting aside conversations while cleaning the truck, put aside conversations around the tea table, putting aside informal chats about training and skills maintenance that firefighters might engage in, putting all that to one side and just focusing on drills, that happens?---That's correct.

PN4610

Right, and they're administered by the station officer or a senior station officer?---Or a leading firefighter.

PN4611

Yes, and the station officer or senior station officer decides the content of the drill, what the drill is going to be about?---Or the leading firefighter.

PN4612

I see. And the station officer or senior station officer works out the timing of the drills, when they're going to happen?---Not necessarily.

PN4613

Well, are you saying that a leading firefighter works that out?---Well, he may.

PN4614

All right?---Or maybe firefighters, themselves, just saying, I need to do some skills maintenance, and grabbing a truck and doing it.

PN4615

Yes, I see. I see. All right, so whether the skills maintenance is raised by the station officer, let's do skills maintenance on topic X, by the leading firefighter or by those on the shift, the timing of that has to be inherently flexible, does it not?---Yes, that's correct.

PN4616

Yes. And I take it that there can be the need to repeat drills because people are away?---That would be correct.

PN4617

Pardon?---That would be correct.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4618

Yes, thank you. Now as I understand it the acting officer in charge of Corio is Pat Geary?---That's correct.

PN4619

Yes, and his evidence to this Commission was that he'd been in that role for the past 21 months. His evidence was that before then you were responsible for the skills maintenance at Corio. Do you agree with that?---As the OIC - - -

PN4620

Yes?---You have ultimate responsibility, yes.

PN4621

Yes. And he gave evidence – this is for the Commission's benefit, at paragraph 3351, that before he became the officer in charge there was a very ad-hoc training plan in place at the station, would you agree with that?---I'm not sure what the definition of "ad-hoc" is. I'd say no.

PN4622

Would you prefer this characterisation, that the approach to training while you were officer in charge was inherently flexible and accommodating to operational and staffing needs?---We had a management team of which one of the shifts had a functional role of training, so at that management team we would meet about the needs of the brigade, volunteer brigade and career staff. From time to time the chief officer would give directions on what sort of training was required before the summer period. Other than that it would have been the shift managers looking at the skills of their own people, as to what skills as an individual or as a group they needed to bring up to speed.

PN4623

All right. Now in paragraph 40 of your 1999 statement you say that a part time roster would negatively affect staff morale and industrial harmony. Do you accept that a critical part of the role of an officer in charge at a station is to show leadership?---That's correct.

PN4624

And that necessarily includes managing changes of different types which may be introduced?---That's correct.

PN4625

And it includes doing what can be done to maintain morale in the face of change?---That's correct.

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4626

You would accept, wouldn't you, that if part time was introduced at the CFA, part of your role as a senior long serving firefighter and as an operations officer, would be to show leadership and maintain firefighter morale in the face of that change?---No, I think the answer to the question is, is the end aim achievable? So if the employees are that against a roster, and rostering is really about people, then those employees will do everything in their power to make sure it doesn't work. So in terms of introducing something that is not accepted, or without the tools to

say this is why it should be accepted, then I think that role would be fairly difficult to perform.

PN4627

So you're saying that if part time employment was introduced and available, introduced, let's say at Corio, at your station, and let us assume that that type of employment met with opposition by many of the firefighters currently employed at Corio, would you not accept that it would be part of your role and the role of the officer in charge, to do what could be done to address people's concerns and to show support for people working on a part time basis?---So that – sorry, the assumption is that it's being directed that - - -

PN4628

Yes?---Yes.

PN4629

Yes?---You're correct.

PN4630

You wouldn't undermine that sort of change and jeopardise the wellbeing of a part time firefighter, would you?---No, I wouldn't but I also have an obligation to ensure that there's a safe system of work, so if there is massive disharmony in the workplace then that's going to affect that safe system of work and I'd have to show some concern about that. I'm not sure of the process to rectify that but I have no doubt we have processes to rectify it.

PN4631

And your position on the question of industrial harmony really is to say – it amounts to this, isn't it, that operational employment and employment changes should only ever be introduced if they're supported by the people at the workplace?---My experience in the CFA has been that those things that work well have been generated with the acceptance of the people, and so take them on the journey with you. And as I've said, rostering is about people so if you have – and the CFA system works very well, our people respond very well to giving up their family time and everything to ensure that we provide an efficient service. If overnight something comes in that the people themselves aren't happy with, then I think our capacity to – and the goodwill to deliver that service will be affected. So we go from an organisation that rosters people, to an organisation that rosters positions, and all of a sudden you will lose that goodwill of the people.

PN4632

Would you accept as secure, the goodwill of the people who actually want to work part time? Do you accept that?---Well, I think we can do that now.

PN4633

All right, nothing further.

PN4634

THE COMMISSIONER: Thank you, Mr Moore. Mr Kenzie?

*** BARRY DAVID THOMAS

XXN MR MOORE

PN4635

MR KENZIE: Just a couple of matters, Mr Thomas. Do you remember being asked some questions about your underpinning concerns and it was put to you that the concern about the level of training was at the heart of your concerns, do you remember that?---Yes.

PN4636

And you identified that it was one of your concerns, do you remember that?---Yes.

PN4637

And you were asked whether if your concerns were addressed in this respect, your concerns in respect of part time would be substantially dealt with or overcome, do you remember that, and you said no?---That's correct.

PN4638

Why did you say no?---Our whole way of doing business is, firefighters are very focused on service delivery, saving lives and property, so one of the ways they do that is going into a structure fire. Now if it's a house fire and it's reaching flashover proportions, we're talking about an environment that's 700 degrees or thereabouts, they rely on the person outside operating the pump and the knowledge that he's not going to lose water. So that relationship on shift between the individuals on shift is the bit that gets them across the line to say, I'm in this building that if this man loses water I'm going to die – they have the confidence that that man can do it. If that isn't the case, if that person out there is part time then there is potential to lose water and, look, I've been in that situation so – as a volunteer I was a pump operator and I thought I knew everything, and I was at an industrial fire that was quite complex and I was operating the pump. Now I lost water. Now luckily there weren't any people inside this area that was on fire. Had there have been then there was the potential that those people could have been killed. I learnt very quickly. I had to get a career firefighter to give me a hand to get water back into the pump. I learnt very quickly that your knowledge is really subject to what you learn the next day.

PN4639

You were asked about your current position as the operations – or your position as the operations officer and whilst other firefighters at Corio were on the 10/14 roster, do you remember that?---Yes.

PN4640

And it was put to you that your own experience indicator, or would have indicated to you that working on the 10/14 roster was not essential, and you said that was not correct, do you remember that?---Yes.

PN4641

Why did you give that answer?---So as at – I think it was in relation to my role as an operations officer.

*** BARRY DAVID THOMAS

RXN MR KENZIE

PN4642

Yes?---So the role as an operations officer is at the high level incident management, so it's to do with warnings and advice, making sure that what's happening on the fire ground is appropriate and gets reported to the right channels at headquarters. So as part of the 10/14 system that's not part of the teamwork. It certainly relies on the incident controller trusting me that I'll do the warning and advise, or if it's a grass fire that I'll actually order a helicopter for him or something like that. But in terms of the life and death situation, I'm not really a part of that. It's the crew that's on shift that's going in to fight the fire.

PN4643

Okay. Finally, you were asked some questions about paragraph 31 of your 1999 statement, and your statement there that firefighters would be less likely to act and put others at risk with a part time firefighter, or words to that effect. And it was suggested to you that you were talking about some firefighters but not all firefighters and you said, no, you were saying that in relation to all part time firefighters, is that – did I understand you correctly?---That's correct.

PN4644

And why did you give that answer? Why is that applicable to all part time firefighters?

PN4645

I think the question was in relation to someone who had worked with you for ten years and then became part time.

PN4646

Yes?---So as I said earlier in the piece, every minute that you have off shift gives you the potential to lose contact with or not learn something that the people alongside you have learnt. I mean, it's, you know, perhaps one day after, it's not an issue, two days after, how much have you – have you lost? Is that that little bit of information that could affect his life or a firefighter's or the public, say, with that question.

PN4647

Thank you, Mr Thomas. Might Mr Thomas be excused, Commissioner?

PN4648

THE COMMISSIONER: Yes, thank you, Mr Thomas for giving evidence, you're released and free to go, thank you?---Thank you, Commissioner. Thank you.

<THE WITNESS WITHDREW

[5.44 PM]

BARRY DAVID THOMAS

RXN MR KENZIE

PN4649

MR KENZIE: Commissioner, we've received Mr Connellan's statement, I think, late Tuesday. We've been able to cross-examine Mr Connellan today, we were able to accommodate that. We're proposing if we can to file a statement in relation to the New South Wales matter and we'll obviously do our best to respond in an expeditious way because there's a need to keep this matter rolling. We understand that. There are issues in relation to the capacity to contact people in

relation to our instructions but we would propose to file that statement by obviously early next week. We can't do it earlier but we will endeavour to file that statement just as early in the course of next week, as we can. We understand well that our friend has earlier obligations than us to file submissions in this matter. The order of events means that the burden will come on Mr Moore earlier than us and we need to respond to that and we will do our best to do that but there needs to be some slack.

PN4650

THE COMMISSIONER: Thank you, Mr Kenzie, you've alerted me to the fact that I didn't bring down that part of the file, at least in respect of the obligations on Mr Moore. But perhaps if you can just remind me when you are due to file – I don't have a concept of that, at the moment.

PN4651

MR MOORE: It's 13 May.

PN4652

THE COMMISSIONER: All right.

PN4653

MR MOORE: So the concern we have, Commissioner, other than the obvious one, we don't have any objection to my friend filing the statement as he foreshadows. We would ask that it be filed by the end of Monday. We would have thought that that is sufficient time. The concern we have is that obviously not having seen this that it's possible that we may need to test that evidence. It may not come to pass. So being conscious of the President's remarks from the other week, there seems to be a keenness to progress the matter and to deal with all the evidence while it's fresh as it were, so I'm just mindful that if Mr Kenzie's clients file material, let us say, by the end of Monday, we then will need to obtain instruction about that and there might be a need for a hearing, a further day. That would seem to place in jeopardy, and we don't want to jeopardise the 13 May date, I've got instructions to proceed expeditiously so what I'm - - -

PN4654

THE COMMISSIONER: Look, I do understand that position and of course though, the way that Mr Connellan came to give evidence, I think was from a question from the Bench.

PN4655

MR MOORE: Yes, it was.

PN4656

THE COMMISSIONER: The President. I think on that basis maybe if I can request Mr Kenzie to file, if it is possible, on Monday, do you think?

PN4657

MR KENZIE: We would ask you not to make a direction on us for the first time in this proceeding.

PN4658

THE COMMISSIONER: All right.

PN4659

MR KENZIE: But can we say to the Commission that we will do our very best to file it by the end of Monday. I just can't guarantee it at this stage and I would ask you not to make a direction to that effect, but to accept that.

PN4660

THE COMMISSIONER: All right, and indeed I won't. But where I was headed in any event is to say that given where the question came from in respect of the New South Wales Fire and Rescue Service, I think I'll prevail upon the president to see whether your date, Mr Moore, can be moved at least to accommodate the need to give you the right to test the evidence or such further issues that need to be thought about. Can I approach it perhaps on this basis, that Mr Kenzie, at least, is asked to file, as soon as you can next week, but in the course of next week if Mr Moore could - - -

PN4661

MR MOORE: Commission, I was going to - I appreciate the indication to the floor. I had the bright idea, I hope it's a bright idea, that we don't want to push back the current date unless we need to. It might be that one way through this if - and I understand what my friend says and we don't insist upon a direction on it. I understand my friends will no doubt do their very best to get the statement in on Monday. It might be a convenient course is to have a telephone mention shortly after that so that we can tell the Commission where we've got to with it and whether or not there's a need for a further hearing, or whether or not the timetable for the submissions needs to be varied.

PN4662

THE COMMISSIONER: Okay, maybe if I can just ask my Associate to - if I can speak with him for a moment just to see what I'm doing in that week. Just one second. Look, that, Mr Moore, I think would be convenient. As it happens, at the moment next week is fairly free in terms of my flexibility. I could undertake to have a directions mention on Tuesday if that's convenient and then if that flows to the need to test the evidence then I can assist probably on Thursday morning or any time on Friday.

PN4663

MR MOORE: I see, thank you for that indication.

PN4664

THE COMMISSIONER: The following week then becomes a bit problematic but next week, at least for the moment, is fairly good.

PN4665

MR MOORE: I see. Well, if it's convenient perhaps a mention on Tuesday afternoon - - -

PN4666

THE COMMISSIONER: Afternoon?

PN4667

MR MOORE: That might give us sufficient time hopefully to form a view about what material Mr Kenzie's clients might file.

PN4668

THE COMMISSIONER: All right. That will be fine. Would you suggest 2 o'clock or 4 o'clock?

PN4669

MR MOORE: 4 pm.

PN4670

THE COMMISSIONER: All right, yes. If we do that by telephone at 4 pm on Tuesday, 2 May, we'll see where the matter goes from there.

PN4671

MR MOORE: Thank you, Commissioner.

PN4672

THE COMMISSIONER: All right. Is there anything further?

PN4673

MR MOORE: No, Commissioner.

PN4674

THE COMMISSIONER: All right, on that basis we will adjourn. Thank you for your attendance.

ADJOURNED INDEFINITELY

[5.50 PM]

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