From: Amanda Loftus [mailto:Amanda.Loftus@corrs.com.au]
Sent: Friday, 15 July 2016 3:32 PM
To: Chambers - Ross J; Tonia Sakkas
Cc: Janine Young; John Tuck
Subject: AM2014/202 - Fire Fighting Industry Award 2010

Dear Associate and Ms Sakkas

Please see **attached**, for filing with the Commission and by way of service, reply submissions of the MFB and the CFA to the UFU's answers to questions on notice dated 24 June 2016.

We also wish to clarify one matter arising from the hearing on 17 June 2016. At that time, we provided the Full Bench with a copy of the ACT Fire and Rescue Enterprise Agreement 2013 – 2017, which replaced the ACT Fire and Rescue Enterprise Agreement 2011 – 2013. President Ross enquired whether this affected the fire services 'Attachment A document' (see transcript at PN4728 – PN4737). We said that it did not, on the mistaken assumption that the President was referring to Attachment A to the fire services' final submissions. On reflection, we understand that President Ross was referring to Attachment A to the fire services' submissions dated 29 February 2016.

To that end, we also **attach** an updated Attachment A to the fire services' submissions of 29 February 2016 which reflects the new ACT Fire and Rescue Enterprise Agreement 2013 - 2017.

Kind regards

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IN THE FAIR WORK COMMISSION
Fair Work Act 2009
s.156 – Four Yearly Review of Modern Awards
AM2014/202

REPLY SUBMISSIONS OF THE MFB AND THE CFA TO THE UFUA'S ANSWERS TO QUESTIONS ON NOTICE DATED 24 JUNE 2016

1. These submissions reply to the UFU's Answers to Questions on Notice, dated 24 June 2016 (the **UFU Answers**). The UFU's Answers are to the Questions on Notice by the Fair Work Commission dated 16 June 2016. On 17 June 2016, Ross J directed that the Metropolitan Fire and Emergency Service Board (**MFB**) and the Country Fire Authority (**CFA**) (together the **fire services**) were to file any reply to the UFU Answers by 15 July 2016.

Questions for the UFU

Question 1

2. The fire services join issue with the UFU and refer to and repeat paragraphs 14, 16 and 23 of the final submissions dated 16 May 2016 (**Final Submissions**) and paragraphs 13–14 of the reply submissions dated 14 June 2016 (**Reply Submissions**).

3. Paragraph 3 of the UFU Answers state that the issue (of whether the Commission or its predecessors has considered the merits of including part-time work in the award) has been addressed by the Full Bench and refer to paragraph 31 of the Answers. The reference to paragraph 31 is unclear and does not appear to address this issue.

Question 2

4. The fire services join issue with the premise underlying the statement of the UFU, at paragraph 4 of the UFU Answers, that the proposed award variation "*would…compromise the safety and welfare of employees*", and refer to and repeat paragraphs 96–132 of the Final Submissions and paragraphs 62–85 of the Reply Submissions.

Question 3

5. In response to paragraph 6 of the UFU Answers, the fire services dispute the assertion that "*nearly all*" of the interstate fire services' industrial instruments that provide for part-time work have a narrower scope than the draft determination. Of

the six states/territories that provide for part-time work in their industrial instruments (all except Victoria and Western Australia), four out of six of the relevant awards make 'blanket' or 'carte blanche' provision for part-time work (in Queensland, the Australian Capital Territory, South Australia, and Tasmania). The fire services otherwise refer to and repeat paragraph 15 of the Reply Submissions.

Question 4

6. The fire services submit that the UFU has not answered the question, either in oral submissions or in its written Answers.

7. The fire services otherwise refer to and repeat paragraph 50 of the Final Submissions and paragraphs 14(e), and 15–18 of the Reply Submissions.

Question 5

8. The fire services reject the assertion, at paragraph 11 of the Answers, that the fire services' witnesses accepted that "*foundational change*" would be required if the proposed variation was made.

9. The fire services otherwise join issue with the UFU and refer to and repeat paragraphs 51–61 of the Final Submissions and paragraphs 19–25 of the Reply Submissions.

Question 6

10. The fire services join issue with the UFU and refer to and repeat paragraphs 73–74 of the Final Submissions.

Question 7

11. The fire services dispute the assertion by the UFU in paragraphs 16 and 17 of the UFU Answers that the proposed variation would allow irregular attendance and irregular employment. There is no basis on which to make those assertions.

12. The fire services otherwise join issue with the UFU and refer to and repeat paragraphs 81 and 84 of the Final Submissions and paragraphs 55–57 of the Reply Submissions.

Question 8

13. The fire services oppose the draft determination filed by the UFU under cover of the UFU Answers on the following bases.

14. First, the UFU has had the fire services' draft determination since 26 February 2016 and the fire services note the late provision of an alternative draft determination by the UFU. The parties have conducted their cases and adduced and tested evidence on the basis and by reference to the draft determination proposed by the fire services.

15. Second and in any event, the fire services oppose the draft determination submitted by the UFU because it simply maintains the status quo and does not address the underlying issues relating to the current prohibition on part-time work raised by the fire services. Part-time work is still prohibited (cl 10.1). There is no scope for a firefighter to perform ordinary operational work and work part-time, because the proposed draft determination prohibits employment of part-time firefighters on the 10/14 roster, and instead mandates employment on the 'not the 10/14 roster' (cl 10.3), which the UFU acknowledges does not provide for operational work other than incidentally (paragraph 25 of the Answers).

16. Third, while the right to request flexible working arrangements in s 65 of the FW Act is acknowledged by proposed clause 10.2, the rights in s 65 are limited. Only persons meeting the circumstances in s 65(1A) are entitled to *ask* an employer for a change in working arrangements. And there is no *obligation* on an employer to provide flexible work arrangements if 'reasonable business grounds' exist for that employer to refuse. Moreover, there is no remedy available to an employee who is refused permission to work part-time, per s 44(2) of the FW Act.

17. Fourth, to restrict the right to work part-time in the modern award to the right to exercise a statutory right to request part-time work would place the *Fire Fighting Industry Award* at odds with all other 117 modern awards that provide for part-time work. No other modern award provides for part-time work to be available to employees and employers in such a restricted and limited manner. To limit part-time work in the manner proposed by the UFU is inconsistent with the function of the modern award to act as a safety net of minimum terms and conditions of employment.

18. Fifth, the fire services strongly object to the inclusion of the words "*based on reasons of service delivery, safety and welfare of employees*" in proposed clause 10.3. The issue of whether part-time work has any impact on service delivery, safety, and employee welfare is a strongly contested issue between the parties. The fire services submit that it is not open to the Full Bench, on the evidence, to make such a finding. Further, the fire services submit that it is completely inappropriate for a party to ask

the Full Bench to elevate one party's *position* to the status of an award clause, particularly in circumstances where the Commission and its predecessors have declined to include any such explanation for award terms in the past. For example, in the award simplification proceedings in 1999, the Commission declined to include any reference to the 'appropriateness' or otherwise of part-time work in the award, despite the agreed submissions of the UFU and the CFA to that effect (see Annexure to Question 18 of the UFU Answers, at [15]).

19. The fire services address the compatibility of the current and proposed modern award terms with s 65 of the NES from paragraph 44 below.

Question 9

20. The fire services make no reply to this Answer.

Question 10

21. The fire services refer to and repeat its opposition to this course, as stated in oral submissions on 17 June 2016 (see PN 4913).

Question 11

22. The fire services join issue with the UFU and refer to and repeat paragraphs 96–132 of the Final Submissions (regarding welfare and safety), and paragraph 6 of the Reply Submissions (regarding the proper approach to the construction of 'necessity' in s 138 of the FW Act).

Question 12

23. The Answer to Question 12 is inconsistent.

24. The UFU first states that the applicants are not required to show 'changed circumstances' to invoke the Commission's jurisdiction under s 156 of the FW Act. The UFU then proceed from the basis that, because the modern award is assumed to have met the modern awards objective at the time it was made, the Commission "*would be further satisfied*" that circumstances have changed since that time: at paragraph 36.

25. The fire services otherwise refer to and repeat paragraph 36 of the Reply Submissions.

Question 13

26. The fire services join issue with the UFU and refer to and repeat paragraphs 33–36 of the Reply Submissions.

Question 14

27. The CFA is not able to say with certainty whether the evidence of Thomas and Lia was the subject of cross-examination in the award simplification proceedings in 1998–2000, but believes that they were not cross-examined.

28. The fire services note further that the material relied on by the UFU relates to the CFA only, and did not include the MFB.

29. As to paragraph 40 of the Answers, the fire services dispute that the contents of clause 29 of the CFA Agreement, and clause 37 of the MFB Agreement, are evidence of the fact that the welfare and safety of employees will be negatively affected by the introduction of part-time work for operational firefighters.

Question 15

30. The fire services join issue with the UFU and refer to and repeat paragraphs 15–24 of the Final Submissions and paragraphs 10–14 of the Reply Submissions.

Question 16

31. The fire services join issue with the UFU and refer to and repeat the matters addressed in oral submissions on 17 June 2016 at PN 4834.

Question 17

32. See the joint submission of the parties dated 24 June 2016.

Question 18

33. The fire services say that the Answer provided by the UFU does not demonstrate that there was any determination of a contested issue by the Australian Industrial Relations Commission in 2000.

Question 19

34. The fire services make no reply to this Answer.

Question 20

35. The fire services note that the UFU has not answered that part of question 20 that asked if the award should be varied to prohibit secondary employment for all employees.

36. The fire services refer to and repeat its response to this question as stated in oral submissions on 17 June 2016 (see PN 4917).

Question 21

37. On the question of whether part-time work "might ultimately include irregular and intermittent work", the fire services refer to and repeat paragraphs 11 to 12 above (reply to the Answer to Question 7).

Question 22

38. The fire services make no reply to this Answer.

Questions for All Parties

Question 1

39. The fire services refer to and repeat its response to this question as stated in oral submissions on 17 June 2016 (see PN 4929).

Question 2

40. In response to the UFU's Answer to this question, the fire services say that the proposition that the fire services once 'believed' that part-time work was inappropriate, and have, without explanation, changed their position, was not explored during cross-examination of any of the witnesses called by the fire services. In the circumstances, it is not now open to the UFU to ask the Commission to make a negative finding about the 'failure' of the fire services' to explain their previous consent to those terms in the Enterprise Agreement.

41. The cases relied on by the union, at paragraph 59 of the UFU Answers, do not assist the union. *Equuscorp* and *Alphapharm* do no more than state the obvious proposition that parties are bound by agreements they have entered into. The fire services do not and have not ever disputed that they are bound by the enterprise agreements. That proposition is immaterial to the Commission's task in conducting the four-yearly review of modern awards, about which those authorities are, understandably, silent.

42. Further, while the High Court found in *NT Power Generation* that statements made by a company in its (statutorily mandated) Annual Report constituted admissions about the nature of its business, it is not open to the Full Bench to infer that the content of clause 29 of the CFA Agreement, and clause 37 of the MFB Agreement, are conclusive proof of the truth of the matters contained therein: *Evidence Act* s 59.

43. To the extent the UFU rely, in paragraph 58 of the Answers, on the focus by the Commission in the Maritime case on the industrial history of the sector, then the fire services say that the industrial history of the sector *as a whole* (not just in Victoria) is demonstrative of a tolerance and acceptance of part-time and other forms of non-full-time work for operational firefighters. The fire services otherwise refer to and repeat the oral submissions about this subject at PN 4900.

Question 3

44. During the hearing of final submissions on 17 June 2016, the President asked the parties to address "*the interaction between the [fire services'] proposed variation, the Award as it currently stands, and the operation of s 65 of the NES*" (at PN 4934–35). The President posited the question: "*If part-time employment is prohibited in the award, is that consistent with the legislative intent in s 65?*"

45. For the reasons set out below, the answer to the question posed by the President is "no".

46. Other than stating that it was "aware" of the provision made by s 65 and the provision made by clauses 6 and 7 of the Award, the UFU has not otherwise addressed this question (see paragraphs 60 and 21 of the UFU Answers).

47. Section 65(1) provides that, in any of the circumstances identified in subsection (1A), [1] "*the employee may request the employer for a change in working arrangements relating to those circumstances*". Subject to certain eligibility and formal requirements (see subsections (2) and (3)), the employer must provide a written response to any request made by an employee within 21 days, stating whether the request is granted or refused (subsection (4)). The employer may refuse

[1] The circumstances identified are where: the employee is the parent, or has responsibility for the care, of a child who is of school age or younger; the employee is a carer; the employee has a disability; the employee is 55 or older; the employee is experiencing violence from a member of the employee's family; and where the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

the request only on "*reasonable business grounds*": section 65(5) and (5A) and, if the request is refused, the employer's written response must include details of the reasons for the refusal (subsection (6)).

48. The nature of a "change in working arrangements" which might be the subject of a request under s 65(1) must be taken to include a request by an employee to work on a part-time basis. Beyond the ordinary meaning of those words, so much is clear from subsection (1B) which provides that, for the avoidance of doubt and without limiting subsection (1), an employee who is a parent, or has responsibility for the care of a child and is returning to work after taking leave in relation to the birth or adoption of the child, may request to work part-time to assist the employee to care for the child.

49. Section 55 deals with the interaction between the NES and modern awards. A modern award (or an enterprise agreement) "*must not exclude*" the NES or any provision of the NES: s 55(1). Although modern awards may include terms that are ancillary or incidental to the operation of an entitlement of an employee under the NES or which supplement the NES, it is notable that they may only do so to the extent that the effect of those terms "*is not detrimental to an employee in any respect, when compared to the NES*": s 55(4).

50. Pursuant to s 56, a term of the modern award has no effect to the extent that it contravenes s 55.

51. In the context of enterprise agreements, a Full Bench of the Commission has held that it is not necessary that an exclusion for the purpose of s 55(1) be constituted by a provision "*ousting the operation of an NES provision in express terms*".[2] The Full Bench stated that:[3]

> On the ordinary meaning of the language used in section 55(1), we consider that if the provisions of an agreement would in their operation result in an outcome whereby employees do not receive (in full or at all) a benefit provided by the NES, that constitutes a prohibited exclusion of the NES.

52. The Full Bench has applied this approach in dealing with inconsistency between the NES and modern awards in the context of the 4 yearly review of modern awards. In *Re Four Yearly Review of Modern Awards – Alleged NES Inconsistencies*,[4] a Full

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2 *Re Canavan Building Pty Ltd* [2014] FWCFB 3202, [36].
3 Ibid.
4 (2015) 249 IR 358.

Bench cited the above statement in *Re Canavan* for the proposition that a provision of a modern award excluded a provision made by the NES within the meaning of s 55(1) of the Act "*in the sense that in their operation they negate the effect of the subsection*".[5]

53. Clause 10 "negates the effect" of s 65 of the NES and has the outcome that employees do not receive the full benefit provided by the section. It has this effect because it prohibits employment on anything other than a full-time basis. As noted above, the right provided for by the NES in s 65 to request a change in working arrangements necessarily contemplates the establishment of work arrangements other than full-time employment, such as part-time employment. In other words, s 65 clearly contemplates the establishment of work arrangements which are prohibited by the Award, namely, employment on other than a full-time basis.

54. The apparent and clear purpose of the provision made by s 65 is to entitle employees to change their work arrangements by reason of the identified circumstances, unless there are reasonable business grounds for an employer not to agree to such a change. Clause 10 of the Award is inconsistent with this legislative intent because it prevents the fire services from agreeing to working arrangements which involve anything other than full-time employment.

55. For these reasons, the inconsistency between clause 10 of the Award and s 65 of the Act has the consequence that, pursuant to s 56 of the Act, clause 10 of the Award has no effect and as such should be amended in the manner proposed by the fire services. The variation proposed by the fire services manifestly addresses the inconsistency between clause 10 and s 65 of the Act by providing for part-time work, being a working arrangement which may be the subject of a request under s 65.

56. The effect of clause 10 in light of the provision made by s 65 of the Act is not ameliorated by clauses 6 and 7 of the Award as alluded to by the UFU.[6] Clause 6 of the Award simply provides that the NES and the Award contain the minimum conditions of employment for employees covered by this Award. Clause 7 of the Award deals with award flexibility and provides that an employer and an individual may agree to vary the application of certain terms of the Award to meet the genuine individual needs of the employer and the individual employee: sub-clause 7.1.

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5 Ibid at [37].

6 UFU Answers, paragraph 21(ii).

57. An agreement under clause 7 of the Award is however confined to a variation in the application of one of the terms listed in clause 7.1: sub-clause 7.3(a). The only matter referred to in clause 7.1 of potential relevance and upon which the UFU appears to rely is the matter of "*arrangements for when work is performed*". That subject matter does not embrace and is separate to the subject matter of "*types of employment*" dealt with by clause 10. As such, there is no scope under the Award for the fire services to agree with an individual employee to vary the terms of clause 10.

58. The draft determination proposed by the UFU does not remedy the inconsistency between s 65 of the NES and clause 10 of the Award. That is because the union's proposed variation maintains the status quo:

    (a) part-time work is prohibited by clause 10.1;

    (b) the employer is only able to offer flexible work to employees in the limited circumstances in the UFU's proposed clause 22.3; and

    (c) 'reasonable business grounds' for refusing an employees' request for flexible work are arguably predetermined or fettered by the terms of clause 10.3.

59. Further, even if the employer agrees to offer an employee flexible work arrangements, it is not clear how the union's proposed variation works with clause 8.2 of the modern award, which requires the employer to consult with and give consideration to the views of the employee *and their representatives* about any proposed change to an employee's roster or ordinary hours of work.

60. By contrast, the fire services' proposed variation enables the fire services to comply not just with the letter, but the evident purpose, of the law in s 65 of the FW Act. By removing the prohibition on part-time work, the fire services are able to properly consider whether an employee's request for part-time work can be accommodated within the fire services.

Additional question: *Parks Victoria*

61. In the hearing before the Full Bench on 17 June 2013,[7] the President referred to the Full Court's criticism in *United Firefighters' Union of Australia v Country Fire Authority* (the **CFA Case**)[8] of the statement by the Full Bench in *Parks Victoria v*

7 PN 4712.
8 [2015] FCAFC 1

Australian Workers Union (**Parks Victoria**)[9] that in *Re AEU*[10] the High Court was developing a "*specific sub rule*" to the *Melbourne Corporation* principle.

62. It is important to clarify and reiterate that the fire services' reliance on *Parks Victoria* (see at [160] of the Final Submissions) does not turn upon the above the passage in the Full Bench's decision which was the subject of criticism by the Full Court in the CFA case.

63. Instead, at [160] of their Final Submissions, the fire services rely on the analogy between: (a) the Full Bench's finding in *Parks Victoria* that the restrictions on the engagement of seasonal employees (including project fire fighters) in clause 5.3(a) of the industrial action related workplace determination was inconsistent with the statutory iteration of the rule in *Re AEU*[11] in section 5(1)(a) of the *Fair Work (Commonwealth Powers) Act 2009* (Vic); and (b) the restrictions upon the engagement of part-time employees set out in clause 10 of the Award. There is nothing in the decision of the Full Court in the *CFA Case* to suggest that the Full Bench's decision in relation to clause 5.3(a) is other than sound.

64. At the hearing on 17 June 2013,[12] the President also invited the parties to provide further comment on the following statement by the Full Court in the *CFA Case* in relation to the *Melbourne Corporation* principle: [13]

> … that principle applies where the curtailment or interference with the exercise of a state's constitutional power is significant, which is to be judged qualitatively and, in general, by reference, among other things, to its practical effects.

65. So much may be accepted. It remains the case, however, that clause 10 of the Award offends the implied limitation thus described. As is clear from the Final Submissions, the clause circumscribes the capacity of agencies of the State of Victoria from employing the numbers of employees whom it wishes to engage, and constrains its choice as to the identity of those engaged by limiting choice to those who are willing or able to work on a full-time basis. The proposition advanced by the UFU in paragraph 8 of its Additional Submissions dated 7 July 2016 (the **Additional Submissions**) that clause 10 "*deals with the 'types of work' that employees may be engaged in and does not relevantly deal with matters of 'numbers'*

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9 [2013] FWCFB 950 at [366].
10 *Re Australian Education Union; Ex parte Victoria* (1995) 184 CLR 188.
11 *Re Australian Education Union; Ex parte Victoria* (1995) 184 CLR 188.
12 PN 4712-4714.
13 [2015] FCAFC 1 at [176].

or 'identity" for the purposes of Re AEU" cannot be sustained either in logic or in fact.

66. Clause 10 has the effect that the fire services, as agencies of the State of Victoria, are constrained as to the identity of the firefighters whom they can engage (because they can engage only those who are willing or able to work on a full-time basis) and as to the numbers of fire fighters they can engage (because, for example, they cannot elect to employ larger numbers of firefighters on a part-time basis in order to encourage greater diversity in the workforce).

67. The fact that the fire services cannot engage firefighters other than on a full time basis is just that – a fact. As pointed out at paragraph 53 of the Reply Submissions, these are not matters which are amenable to proof in the ordinary way.

68. This is entirely consistent with the point made by Gaudron, Gummow and Hayne JJ in *Austin:* [14]

> The question presented by the [implied limitation] doctrine in any given case requires assessment of the impact of particular laws by such criteria as "special burden" and "curtailment" of "capacity" of the States "to function as governments". These criteria are to be applied by consideration not only of the form but also "the substance and actual operation" of the Federal law. Further, this inquiry inevitably turns upon matters of evaluation and degree and of "constitutional facts" which are not readily established by objective methods in curial proceedings.

In other words, each alleged incursion upon the implied limitation must be assessed on its facts and in context. Viewed in that light, the restrictions imposed by clause 10 are clearly not consistent with the implied limitation.

69. In paragraph 9 of its Additional Submissions, the UFU describes the Award as a "*consent instrumen*t". As was pointed out at paragraph [54] of the Reply Submissions, the Award is not a consent award, and its legal character is not analogous to that of an enterprise agreement made under the Act. Rather, it is an instrument made as a result of the exercise of power vested in the Commission's predecessor pursuant to Part 10A of the *Workplace Relations Act 1996*.

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[14] (2013) 215 CLR 185, 249.

Dated: 15 July 2016

S Moore

K Burke

NATIONAL JURISDICTION COMPARISON INDUSTRIAL AGREEMENTS 2015
UPDATED - VERSION 4 - June 2015

PART-TIME WORK PROVISIONS IN EMERGENCY SERVICES INDUSTRIAL INSTRUMENTS

= Recently updated

JURISDICTION	VIC - MFB	VIC - CFA	VIC - AV	VIC - Vic Police	ACT	NSW	QUEENSLAND		NT	WA - DEFS		SA		TASMANIA
NAME OF AWARD or AGREEMENT	***Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia Operational Staff Agreement 2010***	***Country Fire Authority/United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010***	***Ambulance Victoria Enterprise Agreeement 2015***	***Victoria Police Force Enterprise Agreement 2011***	***ACT Public Service ACT Fire & Rescue Enterprise Agreement 2013-2017***	***Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016***	***Queensland Fire and Emergency Services Determination 2013***	***Queensland Fire and Rescue Service Award - State 2012***	***Northern Territory Public Sector Fire and Rescue Service 2011-2013 Enterprise Agreement***	***Western Australian Fire Service Enterprise Bargaining Agreement 2014***	***Fire Brigade Employees' Award 1990***	***South Australian Metropolitan Fire Service Enterprise Agreement 2014***	***Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007***	***Tasmanian Fire Fighting Industry Employees' Industrial Agreement 2014***
EXPIRY DATE	30/09/2013	30/09/2013	31/12/2016	29/11/2015	30/06/2017	18/02/2016	1/10/2016		7/11/2013	9/06/2017		1/01/2017		30/06/2016
DURATION OF AGREEMENT	30/09/10 - 30/09/13	28/10/2010 - 30/09/2013	14/05/2015 - 31/12/2016	29/11/2011 - 29/11/2015	17/07/14 - 30/06/17	14/11/14 - 18/02/16	08/12/2013 - 01/10/2016	Commenced 14/06/2012	14/09/11 - 07/11/13	10/06/14 - 09/06/17		21/05/14 - 01/01/17	Commenced 1/04/2007	1/12/2014-30/06/2016
INVOLVEMENT OF UFU	UFU is a party.	UFU is a party.	N/A	N/A	**Clause 3:** covers the UFU.	FBEU is the union party.	**Cll 2(c),7:** covers UFU by virtue of **Clause 1.6** of the Award.		United Voice is the union party.	The UFU is a party.		The UFU is a party to both the Agreement and the Award.		**Clause 2:** the UFU is a party.
RELATIONSHIP OF AGREEMENT TO THE AWARD	Read in conjunction with VFIEI Award	Awards do not apply	Operates to the exclusion of the *Ambulance and Patient Transport Modern Award* .	N/A	No (only legislation)	N/A	Read and interpreted in conjunction with 6 identified Awards. Agreement prevails in the event of inconsistencies.		Read in conjunction with the PSEM By-laws and Determinations. Agreement prevails to the extent of any inconsistency.	Read in conjunction with the Fire Brigade Employees' Award 1990 No. A28 of 1989. The agreement prevails to the extent of any inconsistency.		Read and interpreted in conjunction with the *Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007* , or its successor. Agreement prevails to the extent of any inconsistency.		Read in conjunction with the *Tasmania Fire Fighting Industry Employees Award* and the *State Service Act 2000.* Agreement prevails to the extent of any inconsistency.
HOURS OF WORK	**Clause 72.2:** 10/14 roster.	**Clause 75.1.1:** 10/14 roster. **Cll 75.1.3, 77, 78, 80:** other.	**Clause 35:** 10/14 roster and ordinary 38 hour work.	**Clause 32:** rosters and shift work.	**Clause 31**: 10/14 roster. **Clause 32:** day shift.	**Clause 8.3:** 10/14 roster. **Clause 8.4:** day shift (back to back)	**Cll 19, 47:** 10/14 roster.		**Clause 34:** 10/14 roster. **Clause 33:** day work.	**Clause 14(2):** 10/14 roster. **Clause 14(3):** day shift	**Clause 8(1):** 10/14 roster. **Clause 8(2):** day shift.	**Clause 25:** 10/14 roster OTR 4 x 10 hour days rotating fortnight. Port Pirie 24 hours on 3 days off. Mount Gambier 5 day week 8 hours per day. Day Working Personnel - roster of 168 hours per 4 week cycle.	**Clause 16.1.1:** 10/14 roster. **Clause 16.1.2:** day roster - 168 hours per 4 week cycle.	10/14 roster in award. Major emergency incidents for rostered shfit workers, and interstate/international deployments, in agreement.
INDIVIDUAL FLEXIBILITY ARRANGEMENTS	**Clause 12:** An employer and employee may make arrangements to vary effect of terms of agreements as set out within the clause. (Sick leave only?)	**Clause 12:** An employer and employee may make arrangements to vary effect of terms of agreements as set out within the clause. (Study leave only?)	**Clause 13.2(a):** Individual flexibility arrangements permitted re when work is performed.	**Clause 14:** re extra annual leave and cashing out time off only. **Clause 15:** re care of a child.	**Clause 63:** employer and employee may enter into individual agreement to vary the application of certain provisions of this Agreement. **Cl 56.4** provides specifically for employees with caring responsibilities.	**Clause 8.2.3:** An employer and employee may make arrangements to vary effect of terms of agreements relating to rostering.			**Clause 66:** flexible work arrangements.	No	No	No	No	**Clause 61:** flexible work for parents/family-friendly provisions.
PART TIME EMPLOYEES	Prohibited by **Clause 37.2.**	Prohibited by **Clause 29.2.**	**Clause 16:** when operational needs permit; no unreasonable refusal.	**Clause 31:** expressly permitted.	**Section J:** yes, within 10/14 roster and allocated to relief roster. Eligibility - 3 years operational experience. Annual review. Can follow parental leave. Max 7 years.	**Clause 8.2.3:** An employer and employee may make arrangements to vary effect of terms of agreements relating to rostering. See also **cll 21.3.3.2 and 21.9.1.2.**	**Clause 24:** expressly permitted.	**Clause 4.2:** expressly permitted.	**Clause 57:** right to request part-time work, job sharing arrangements. **Clause 42.15(a):** can request part-time work after birth of child up to school age.	**Clause 19:** Communication Systems Officers and non-rostered shift workers only - not fire fighters on station. Facilitative clause in EBA to discuss part time/job sharing arrangements for all employees covered by the Agreement.	No	**Clause 24.3:** can return to work part-time after parental leave until child is aged 2.	**Clause 11:** part-time employees permitted. **Clause 22.12:** part-time work available if pregnant.	**Clause 34:** An employee may be employed on a part-time basis in accordance with s 37(3)(a) of *State Service Act* (ie, permanent employment). **Clause 61:** flexible work for parents/family-friendly provisions.
CASUAL EMPLOYEES	Prohibited by **Clause 37.2.**	Prohibited by **Clause 29.2.**	Expressly permitted by **clause 16.**		No.	No.	**Clause 25:** expressly permitted.	**Clause 4.3** refers to temporary employment (not casual employment).	? reference in agreement to casual employees.	**Clause 18:** only employed in Country Station to assist training academy or as aagreed between the parties	No	No	Reference in the Award to applicability of certain conditions to casual employees.	**Clause 35**: employed by the hour with 23% loading.
JOB SHARING	No	No	Expressly permitted by **clause 17.**		**Clause 61:** yes, in specified circumstances.	**Clause 8.2.2:** operational firefighters can elect to work alternative rosters including job sharing. See also FRNSW/FBEU FAQ on this issue.			Yes, see **Clause 57** above.	No (but see Cl 19 above).	No	No	No.	Yes
PARENTAL LEAVE	**Clause 67:** 14 weeks paid, 38 weeks unpaid.	**Clause 64.2:** 13 weeks paid, 39 weeks unpaid.	**Clause 57.1:** 10 weeks paid.	**Part 15:** 14 weeks paid.	**Cll 73, 76:** 18 weeks paid, up to 3 years unpaid.	**Clause 21:** 14 weeks paid, 61 weeks unpaid.		**Clause 7.4:** the provisions of the Family Leave Award apply.	**Clause 42.4:** between 14-18 weeks paid leave, up to 142 weeks unpaid.	**Clause 26:** paid and unpaid.	**Clause 28:** maternity leave (all unpaid).	**Clause 24.1:** between 16-20 weeks paid leave.	**Clause 22.3.2**: 52 weeks.	**Clause 53:** per the terms in the Award.
OTHER RELEVANT CLAUSES		**Cll 30, 31:** refer to the right to request flexible work, and to equal opportunity principles, but say that operational reasons prevent offering part-time work.	**Clause 8:** Anti-discrimination clause.	**Clause 7:** Anti-discrimination clause.	**Clause 124:** Diversity in the workplace clause.	**Clause 41:** Anti-discrimination clause.		**Clause 4.7:** Anti-discrimination clause.	**Clause 11:** Anti-discrimination clause.				**Clause 10:** Anti-discrimination clause.	**Clause 57:** Anti-discrimination clause.