

From: Luana Payne [mailto:Luana.Payne@corrs.com.au]
Sent: Monday, 16 May 2016 5:55 PM
To: Chambers - Ross J
Cc: John Tuck; Janine Young; Nicholas Papadimos; Tonia Sakkas
Subject: 4 yearly review of modern awards - Fire Fighting Industry Award 2010 - AM2014/202: MFB/CFA final submissions

Dear Associate,

We refer to the above matter and **attach**, for filing with the Commission, final submissions of the Country Fire Authority and the Metropolitan Fire and Emergency Services Board.

Please note that our submissions include reference, at paragraph 100, to Exhibit MFB/CFA 22 which is subject to a confidentiality order made by the Commission on 4 May 2016. We have identified the relevant portion of submissions with red text either side. Accordingly, could you please ensure that this section of the submissions is not be published.

Kind regards

Luana Payne
Senior Associate

luana.payne@corrs.com.au
Tel +61 3 9672 3117
Fax +61 3 9672 3010
www.corrs.com.au



Please consider the environment before printing this email.

IN THE FAIR WORK COMMISSION

Fair Work Act 2009

s.156 – Four Yearly Review of Modern Awards

AM2014/202

FINAL SUBMISSIONS ON BEHALF OF THE METROPOLITAN FIRE AND EMERGENCY SERVICES BOARD AND THE COUNTRY FIRE AUTHORITY

PART A: INTRODUCTION AND OVERVIEW OF THE APPLICATION

Introduction

1. Victorian public sector firefighters are prohibited from working part-time. The Metropolitan Fire and Emergency Service Board (**MFB**) and the Country Fire Authority (**CFA**) (together the **fire services**) have made a submission to the Full Bench of the Fair Work Commission to remove this prohibition from the *Fire Fighting Industry Award 2010* (**the modern award**). The fire services' submission is made on the basis that the capacity to engage employees on a part-time basis is essential to ensure that the minimum safety net of terms and conditions of employment set out in the modern award is fair and relevant; is free from discrimination; reflects contemporary community and industrial standards; and meets the needs of its employees throughout their lives.
2. The United Firefighters' Union of Australia (the **UFU**) opposes the variation to the modern award sought by the fire services. The UFU's opposition is inconsistent with its support for flexible working options for firefighters in other jurisdictions in Australia. It has not identified any particular feature of the Victorian fire services that justifies a narrow and restricted approach to employment terms and conditions. Instead, the evidence called by the UFU demonstrates that the opposition by the union to part-time work for its members is based on a series of false assumptions about part-time work, is largely speculative, and misunderstands the proper role of the modern award in the context of enterprise bargaining.
3. These submissions consolidate the submissions filed by the fire services dated 26 February 2016 and 18 April 2016, and, drawing on the evidence presented before the Full Bench during the hearing on 19–21 April 2016 and 28 April 2016, address the following matters:

Part A – Overview of the application

Part B – The statutory framework

Part C – Merit arguments and evidence in support of the application

Part D – The objections of the union to part-time work

Part E – The implied constitutional limitation in *Re AEU*

Part F – The modern awards objective

The nature of the submission

4. The fire services' submission is made in the context of the four yearly review of modern awards conducted by the Fair Work Commission under Division 4 of Part 2-3 of the *Fair Work Act 2009* (Cth) (**the FW Act**). The task of the Full Bench in the four yearly review is governed by s 156 of the FW Act. The Commission has broad discretion as to the conduct of the review, but must ensure that modern awards, together with the National Employment Standards (**NES**), provide a fair and relevant minimum safety net of terms and conditions, taking into account the modern awards objective set out in s 134(1) of the FW Act (**the safety net requirements**).¹ The statutory context of the Commission's task is set out in more detail in Section B below, but it is sufficient at this point to observe that the matter before the Full Bench of the Fair Work Commission is not an *inter partes* dispute, but a review. The Commission is required to be satisfied that the inclusion of part-time work in the modern award is necessary to meet the modern awards objective. The evidence called by the fire services has established that the removal of the prohibition against part-time work in the modern award is necessary to meet the modern awards objective.

Terms and conditions of employment for Victorian firefighters

5. The terms and conditions of employment for Victorian public sector firefighters are set out in enterprise agreements and underpinned by the modern award.
6. Clause 10 of the modern award states:

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

¹ See *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFCB 1788 at [10], [31], [33] (Ross P, Hatcher VP, Acton and Hamberger SDPS, Hampton C) (***Jurisdictional Issues Decision***).

7. The plain effect of clause 10 of the modern award is to confine employment by public sector employers to full time employment and to prevent employment on other bases, including part-time employment. By contrast, clause 11 of the modern award expressly provides for part-time employment in the private sector.
8. MFB operational employees who are covered by the modern award are covered by the *Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement 2010 (MFB Agreement)*. The terms and conditions of CFA operational employees who are covered by the modern award are covered by the *Country Fire Authority/United Firefighters Union of Australia Operational Staff Enterprise Agreement 2010 (CFA Agreement)*. Each of these agreements provides that employees cannot be employed on a part-time basis.² The agreements also provide for a process of extensive consultation between the MFB and the CFA, and the UFU, before any change to the employment relationship is implemented.³
9. The agreements are instruments containing terms which have been negotiated and agreed between the parties over and above the *minimum safety net* of terms and conditions in the modern award. That is, the conditions provided for in the agreements do not constitute the minimum standard by which the Full Bench should assess the terms of the modern award. By reason of s 57(1) of the FW Act, the agreements apply to the relevant employees to the exclusion of the modern award. However, by operation of the better off overall test,⁴ the modern award sets the floor, or minimum standard, against which proposed enterprise agreements are measured and able to be made.
10. The evidence from the heads of the fire services, namely MFB Chief Officer Peter Rau, CFA Chief Officer Joe Buffone, and CFA CEO Lucinda Nolan, and the express statements in the written submissions of the fire services, were explicit in stating that the inclusion of part-time work in the modern award will not displace bargaining in relation to that matter or arrangements governing the operation of part-time work.⁵ Yet, despite these clear statements, and the terms and operation of the agreement, the UFU conducted its case before the Full Bench on the basis that the introduction of part-time work in the modern

² MFB Agreement, cl 37.2; CFA Agreement, cll 29.2, 30.1.

³ MFB Agreement, cl 13; CFA Agreement, cl 13.

⁴ FW Act, s 186(2)(d).

⁵ Statement of Peter Rau, MFB/CFA 7, [12]–[13], and Reply Statement of Peter Rau, MFB/CFA 8, [7], and PN 612, 614, 616 and 660; Statement of Joe Buffone, MFB/CFA 5, [10] and PN 458; evidence of Lucinda Nolan, PN 371–74, 377, 388, 409.

award would have an immediate and practical impact on the day-to-day operation of the fire services. This was disingenuous. The UFU are active and experienced participants in industrial bargaining between the fire services and its employees, and in the consultation process established under the operational agreements.

11. The UFU asserts that the fire services are seeking the proposed variations “*for the purposes of improving their negotiating positions with the UFUA*”.⁶ To the extent this statement is intended to suggest that the fire services have sought the proposed variation for an ulterior purpose, it is an improper suggestion that was not put to any of the fire services witnesses and ought to be disregarded by the Commission. Otherwise, the statement simply misunderstands the interaction between the modern award and enterprise bargaining. The proposed variation is necessary to *enable* bargaining on the issue. The outcome of the bargaining process is, self-evidently, yet to be determined.
12. As stated in the fire services’ reply submissions at paragraph 27, in the context of a bargaining framework established by reference to modern awards, it is essential that the instrument regulating the minimum safety net of conditions provide for and contemplate the possibility of part-time work in line with established community and industry standards. The absence of that established category of employment in the modern award undermines and limits the capacity of parties to negotiate arrangements for part-time employment which are suitable and adapted to the needs of employees, employers and the emergency services sector. Given the operation and terms of the enterprise agreements, the actual implementation of part-time employment as a standard working arrangement would be a matter for the CFA and MFB to each determine following a period of consultation and planning with employees.

PART B: THE STATUTORY FRAMEWORK OF THE 4 YEARLY REVIEW

The legislative context

13. The task of the Full Bench in the four yearly review is governed by s 156 of the FW Act. In *Re Four Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* [2014] FWCFB 1788 (***Jurisdictional Issues Decision***), the Full Bench identified that, in addition to s 156, a range of other provisions in the FW Act are relevant to the review. Those provisions included terms of modern awards (Div 3 of Part 2-3), the objects of the Act (s 3), the interaction with the NES (s 55) and those provisions providing for the performance

⁶ *UFUA Findings of Fact Sought*, dated 20 April 2016, [1].

of functions and exercise of powers by the Commission (ss 577 and 578). As is presently relevant, the following essential features characterise the legislative regime established by the FW Act:

- (a) the starting point is that modern awards, together with the NES and national minimum wage orders, comprise the “*guaranteed safety net of fair, relevant and enforceable minimum terms and conditions*”;⁷
- (b) in the four yearly review of modern awards, the Commission “*must ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions*”;⁸
- (c) a modern award can include terms about part-time work;⁹
- (d) a term should be included in a modern award “*only to the extent necessary to achieve the modern awards objective*”;¹⁰
- (e) the requirement that a term be ‘necessary’ to achieve the modern awards objective requires the Full Bench to form “*a value judgment*” based on the considerations delineated in s 134(1) of the FW Act;¹¹
- (f) the Full Bench does not form a value judgment in a vacuum:
 - i. consistent with the Explanatory Memorandum to the Fair Work Bill 2008, it is expected that when considering whether and how to vary the content of a modern award in the four yearly review process, the Commission will be “*guided by criteria which take into account public, social interest and economic aspects*”;¹²
 - ii. a modern award must not include terms that discriminate against an employee for reasons including, relevantly, sex, age, or family or carer’s responsibilities;¹³

⁷ FW Act, s 3(b).

⁸ FW Act, s 134(1).

⁹ FW Act, s 139.

¹⁰ FW Act, s 138.

¹¹ *Jurisdictional Issues Decision*, [36].

¹² Explanatory Memorandum, Fair Work Bill 2008, r 105 (emphasis added).

¹³ FW Act, s 153(1).

- iii. in performing functions or exercising powers, the Commission must take into account the objects of the FW Act including, relevantly, assisting employees to balance their work and family responsibilities by, amongst other things, providing for flexible working arrangements;¹⁴
 - iv. in performing functions or exercising powers, the Commission must take into account the need to respect and value the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of sex, age, and family or carer's responsibilities;¹⁵
- (g) the terms of modern awards form the framework for the making of enterprise agreements under Part 2-4 of the FW Act. The relevance of the interaction between modern awards and enterprise agreements, which is particularly relevant to this application, has been addressed at paragraphs 9, 35, and 36.
14. The UFU has not addressed how the modern award in its current form meets the modern awards objective and the NES, nor the statutory requirements that govern the inclusion or exclusion of particular terms in modern awards, and the matters that the Commission must take into account when performing functions and exercising powers.¹⁶

The relevance of history

15. In the *Jurisdictional Issues Decision*, the Full Bench stated that in conducting the four yearly review, the Commission will proceed on the assumption that modern award being reviewed achieved the modern awards objective at the time that it was made.¹⁷ The Full Bench went on to note that it was “*appropriate for the Commission to take into account previous decisions relevant to any contested issue*”, considering the context of that previous decision, and following previous Full Bench decisions unless there were cogent reasons for not doing so.¹⁸
16. The Commission, including in any of its predecessor forms, has not considered the merits of including part-time employment in the modern award or its predecessors.
17. Before the commencement of the modern award, there was no fire fighting services industry award operating across Australia. The *Victorian Firefighting Industry Employees*

¹⁴ FW Act, s 578(a), and s 3(d).

¹⁵ FW Act s 578(c).

¹⁶ See MFB/CFA submissions dated 26 February 2016, [24]–[25].

¹⁷ *Jurisdictional Issues Decision* [24].

Interim Award 2000 (VFIE Award) covered most employees and employers in the fire fighting industry throughout Victoria, including the MFB and CFA and, from 1 January 2005, private sector employers.

18. The VFIE Award was considered by the Australian Industrial Relations Commission during the award simplification hearings following the introduction of the *Workplace Relations and Other Legislation Amendment Act 1996 (WROLA Act)*. Relevantly, the WROLA Act provided that the AIRC must ensure, where appropriate, that awards contained provisions enabling the employment of regular part-time employees.¹⁹
19. In December 1997, the Full Bench of the AIRC handed down its *Award Simplification Decision*²⁰ which examined the *Hospitality Award* in light of the amendments made by the WROLA Act. This decision was intended to provide guidance to other parties as to the way in which awards should be reviewed and simplified in accordance with the allowable award matters identified in the WROLA Act. This decision examined particular clauses in the *Hospitality Award*, and published a draft order setting out the new award, as well as setting out nine guiding principles. Relevantly, Principle 4 provided that when varying an award, the AIRC seek to ensure that at the end of the process the award has provisions enabling the employment of regular part-time employees.
20. It was in this context that Commissioner Hingley conducted the award simplification review of the predecessor to the VFIE Award, the *Victorian Firefighting Industry Employees Interim Award 1993*. The CFA sought to include part-time provisions in the VFIE Award, which was opposed by the UFU. Ultimately, the parties reached a consent position that part-time work would not be included in the VFIE Award, and that the day roster in the VFIE Award was obsolete and should be removed as it had not been used by the CFA since 1986. The consent position was reflected in Hingley C's determination, but not expressly referred to in his reasons.
21. The next significant development in the history of the award was the award modernisation process. The AIRC's exposure draft of the *Fire Fighting Industry Award* initially provided for part-time work, and submissions were made on behalf of a number of major fire fighting services throughout Australia (including the MFB and CFA) in support of the inclusion of such provisions. Ultimately, as in the award simplification process, the CFA

¹⁸ *Jurisdictional Issues Decision* [24], [27].

¹⁹ WROLA Act, Item 35.

²⁰ *Award Simplification Decision December 1997* (Print P5700).

(the moving party) elected not to pursue its application for the inclusion of part-time work in the award, and the hours of work provisions in the VFIE Award were included in the modern award.

22. In making the modern award, and including clause 10 in its terms prohibiting part-time work, the Full Bench of the AIRC expressly stated that:
- (a) Commissioner Hingley’s decision “*makes no mention of part-time employment*”.²¹
 - (b) Part-time work and rostering matters “*should be revisited at a time when it is practicable to canvass more extensive argument on these issues*”.²²
 - (c) The Full Bench was “*far from persuaded that part-time employment should not be available*”.²³
 - (d) Part-time work is provided for in “*several other States*”.²⁴
 - (e) The issue of “*whether part time employment should also be available in the public sector*” was reserved for further consideration.²⁵
23. The fire services contend that the time for further consideration of part time work is now. In making the modern award, the AIRC expressly reserved the issue of part-time work for further consideration at a later date; the issue was not ‘in the mix’ of matters taken into account by the Full Bench in its consideration of whether the modern award met the modern awards objective as at December 2010.
24. It is appropriate that the Commission considers the issues raised on the basis of the evidence and factual circumstances put forward by the parties. Included in those facts and circumstances is evidence of ‘the changing fire service’²⁶ and the belief from within the fire services (and from outside) that the services should continue to modernise, adapt and reflect the diversity in the community served.²⁷ The introduction of part-time employment to the underlying safety net terms and conditions will facilitate these goals.

²¹ [2009] AIRCFB 945, [51].

²² Ibid, [49].

²³ Ibid, [51].

²⁴ Ibid.

²⁵ Ibid.

²⁶ See, eg, Statement of David Youssef, MFB/CFA 19, [13]–[28]; Joe Buffone, MFB/CFA 5, [20]–[22]; and Bruce Byatt, MFB/CFA 17, [9].

²⁷ See, eg, Statement of David Youssef, MFB/CFA 19, [18]; Michael Werle, MFB/CFA 9, [11]–[12]; Lucinda Nolan, MFB/CFA 3, [19]; Joe Buffone, MFB/CFA 5 [19]; Margareth Thomas, MFB/CFA 2 [10]; and Craig Lapsley, MFB/CFA 1 [15]–[21].

Part-time work in awards and modern awards

25. Part-time work has been a standard feature of awards since before award modernisation. As outlined above at paragraphs 18 and 19, Item 35 of the WROLA Act provided that the AIRC must ensure, where appropriate, that awards contained provisions enabling the employment of regular part-time employees, and Principle 4 of the *Award Simplification Decision* provided that, when varying an award, the AIRC seek to ensure that the award enabled the employment of regular part-time employees.
26. The evolution of part-time work as a commonplace term of employment can be traced back to at least the late 1980s, with the introduction of the structural efficiency principle, and to the 1990 decision of the AIRC in the *Parental Leave* case. Prior to those decisions, part-time employment was included in federal and state awards on a largely *ad hoc* basis, with provisions often tailored to the specific industry, and with restrictions to protect the position of full-time employees.²⁸
27. The structural efficiency principle was introduced by the *National Wage Case* decision in 1988 in which the AIRC introduced the process of award restructuring. The structural efficiency principle was part of a package of wage fixation principles designed to increase efficiency of industry. It was perceived that greater competition and productivity was necessary, and that awards should be reviewed with a view to implementing measures designed to ‘improve the efficiency of industry and provide workers with access to more varied, fulfilling and better paid jobs’. The necessity of a more flexible labour force was part of the structural efficiency principle, and as a result, the issue of part-time (and casual) employment was regarded by the Full Bench as an issue to be considered by the parties for inclusion in awards.²⁹
28. The structural efficiency principle was applied by the Full Bench as a precondition for parties seeking the minimum wage increases in awards. In the *1991 National Wage Case* decision, the Full Bench stated that any party to an award seeking the increases allowable under the decision must satisfy the Commission that the parties had examined whether

²⁸ See, eg, the discussion of the history of part-time employment in the 1983 decision of the AIRC in *Application by the Motor Traders’ Association of New South Wales & Ors to vary the Vehicle Industry – Repairs Services and Retail – Award (1980)* 246 C.A.R. 21; and the 1983 decision of the ACA Commission in *Application by Cadbury Schweppes Pty Ltd to vary the Confectioners’ Award (1981)* 261 C.A.R. 99.

²⁹ *National Wage Case August 1988* (Print H400).

“*basic work patterns and arrangements are appropriate*”, including specific consideration of the employment of part-time employees.³⁰

29. According to a 2008 Working Paper published by the Productivity Commission, the structural efficiency principle encouraged more flexible work practices, including part-time employment, and resulted in an increased take-up of part-time employment provisions in awards.³¹
30. Shortly after the introduction of the structural efficiency principle, but during the period of its implementation, a Full Bench of the AIRC handed down its decision in the *Parental Leave Case*.³² Among the rights granted by the decision, the Full Bench gave employees taking parental leave the right to negotiate with their employer for part-time work as an alternative to an immediate return to full-time work. The *Parental Leave Case* created a model clause for parental leave, of which the right to negotiate part-time work was a sub-clause. In making its decision, the Full Bench observed that “*there are a number of reasons why part-time work should be more generally available for both men and women*”, which was raised by the Commission “for the consideration of the trade union movement and employers by the August 1989 National Wage decision”.³³ Aside from this general statement about the desirability of part-time work, the Full Bench declined to make a general unqualified right for an employer to employ people part-time, because the *Parental Leave Case* had its origins in the ACTU’s application to establish rights for the parents of young children.
31. Following the *Award Simplification Decision*, and in particular the introduction of Principle 4, and the decision of Hingley C with respect to the VFIE Award (all of which have been discussed above), the next major event in the incorporation of part-time work as a standard term of employment was the award modernisation process. We have already set out the relevant history of the creation of the *Fire Fighting Industry Award 2010*.
32. Further, the fire services’ primary submissions dated 26 February 2016 describe at paragraph 47 how part-time work provisions are included in all but six of the 122 modern awards, with the *Fire Fighting Industry Award 2010* making the seventh. None of the six other modern awards that do not include part-time work go so far as to *prohibit* part-time

³⁰ *National Wage Case April 1991* (Print J7400).

³¹ Productivity Commission, ‘Part Time Employment: the Australian experience’ (Productivity Commission Staff Working Paper, June 2008), 51.

³² *Parental Leave Case* (1990) AIRL 284.

work in similar terms to the *Fire Fighting Industry Award 2010*; and all of the six provide for employment on terms other than full-time employment, including casual, project, and relief employment. Attached to these submissions and marked Annexure A is a table setting out all of the 122 modern awards and identifying the clauses that relate to part-time work for each modern award.

Part-time work provisions in modern awards are in simple and unrestricted terms

33. The inclusion of part-time employment in modern awards is provided for in simple terms. Clause 10.3 of the draft determination defines part-time work by replicating the definition in clause 11.4 of the award, which applies to private sector firefighters. This definition contains four key elements that are largely present in all 117 modern awards that contain references to part-time employment. They are that a part-time employee is a person engaged to work less than 38 hours per week; has reasonably predictable hours of work; receives pro rata pay and conditions as the equivalent full-time employee; and has a written agreement as to the pattern of work.
34. The table at Annexure A to these submissions identifies the clauses providing for part-time work in all 122 modern awards, and whether or not those clauses contain detailed parameters around accessing part-time work entitlements. Of the 117 modern awards that permit part-time employment, only seven contain *some* additional qualification or industry-specific matter relating to part-time work,³⁴ and none contain anywhere near the level of detail that appears to be contended for, albeit indirectly, by the UFU.
35. The inclusion in modern awards of the right to part-time work in simple terms is consistent with the approach taken in the WROLA Act and the *Award Simplification Decision*. Item 47(a) of the WROLA Act required the AIRC to review the award to remove “*matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level.*” The Full Bench discussed this requirement in the *Award Simplification Decision*, stating that facilitative provisions and agreements under enterprise flexibility provisions were ways of achieving this end. Principle 5 in the decision provided that awards must be reviewed against Items 49(7) and 8) or Items 51(6) and (7) of the WROLA Act so that they do not prescribe matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level.

³³ *Parental Leave Case* (1990) AIRL 284, 8.

³⁴ See Annexure A.

36. The evidence of the fire services, and the industrial reality, is that matters including the design and implementation of part-time operational work in the fire services should be dealt with at the enterprise level. This is not just a matter of appropriateness – it is a requirement of the terms of the agreements that the MFB/CFA and the UFU engage in an extensive consultation process before any change to the employment relationship is implemented.³⁵
37. Further and in any event, given the requirement in s 138 of the FW Act that modern awards include terms “*only to the extent necessary to achieve the modern awards objective*” and the fact that the modern award has broader application beyond Victoria,³⁶ it is not appropriate to include in the modern award matters of detail relating to the design and implementation of part time work at the MFB and/or CFA.

The terms of the draft determination

38. The proposed variation is simple. Clause 10 is amended to mirror the provisions in clause 11 that apply to private sector employees, where part-time work is permitted.
39. The proposed variation also includes a new clause 22.4 to provide for a day work shift roster, consistent with clause 23.3 of the modern award, which applies to private sector employees.
40. Consequential amendments are proposed, where necessary, to clauses 22.2(a), 22.3, 22.5(b),³⁷ and 22.8(b) and (e),³⁸ and clauses 26.1, 27, and 28.3(a) of the modern award.

PART C: MERIT ARGUMENTS AND EVIDENCE IN FAVOUR OF THE APPLICATION

41. The capacity to employ people on a part-time basis is an essential element of contemporary minimum employment standards in the community at large, in the public service, in modern awards, in the emergency services sector generally, and in fire services across Australia.

³⁵ MFB Agreement, cl 13; CFA Agreement, cl 13.

³⁶ The modern award covers private fire services throughout Australia and public sector fire services in Victoria, the ACT and the Northern Territory. However, it is a federal instrument and it is possible that in the future other states will refer powers to the Commonwealth.

³⁷ Currently clause 22.4(b) in the modern award. The adjustment to the clause numbers arises because of the proposed insertion of the new clause 22.4 in the modern award, eg, the current clause 22.4 (10/14 Roster System) would become clause 22.5, and the sub-clauses 22.5 to 22.8 would each advance by one (eg, 22.5 becomes 22.6 et seq).

³⁸ Currently clause 22.7(b) and (e).

42. As set out above at paragraph 13(f), in varying a modern award, the Full Bench of the Fair Work Commission does not consider the modern award objectives in a vacuum, but rather, forms its ‘value judgment’ by reference to public and social interest criteria, the need to ensure modern awards do not contain discriminatory terms, and the requirement to exercise its powers in a way to ensure employees are able to balance work and family or caring responsibilities. These values are met by permitting part-time work in the modern award.

Part-time work and community standards outside the emergency services sector

43. Part-time work is commonplace in Australia. The latest labour statistics published by the Australian Bureau of Statistics on 25 February 2016 demonstrate that of the 11,909,000 employed persons in Australia, 31 per cent, or 3,699,000, are employed on a part-time basis.³⁹ Of the part-time population of Australia, 2,552,900, or nearly 70 per cent, are women.
44. Both the MFB and CFA are subject to the public sector values and employment principles in the *Public Administration Act 2004* (Vic).⁴⁰ The *Public Administration Act* reflects the overarching approach of government to public sector employment, articulated in the public sector values and employment principles in ss 7 and 8 of the Act. Providing equal employment opportunity, for example, is one of the public sector values associated with the employment of public servants in Victoria.

Part-time work and the industrial standard within the emergency services sector

45. Victoria stands alone in prohibiting part-time work among firefighters in Australia. Part-time work in some form is permitted in each applicable industrial instrument in every other state and territory in Australia. The UFU is a party to, or bound by, all but one of the interstate arrangements. Moreover, since at least the early 2000s, part-time work has been a feature of industrial instruments of emergency services agencies in Victoria including Ambulance Victoria, and Victoria Police.

³⁹ ABS, *Labour Force*, January 2016 (released 25 February 2016), Cat. 6291.0.55.001.

⁴⁰ The MFB and CFA are both ‘public entities’ within the meaning of s 5 of the *Public Administration Act* and therefore both part of the ‘public sector’ within the meaning of s 4 of the Act.

Support at the highest level

46. There is support at very high levels of the emergency services sector for the introduction of part-time work to the modern award safety net.⁴¹ Part-time work is consistent with the fire services' shared objectives to create, promote and support a diverse workforce, and provide a safe healthy and respectful workplace which is free of unlawful discrimination.
47. These objectives are reflected in the review of fire services commissioned by the Victorian government, contained in the *Report of the Victorian Fire Services Review* (the **Review**), along with the *Government Response*. The Review was commissioned in July 2015 by the Minister for Emergency Services, Jane Garrett MP. The Report makes 20 recommendations, including, relevantly, that the fire services “*introduce a broader scope of working arrangements, including job sharing and part-time options, for persons returning from parental leave*”, and “*take the lead in advancing the sector’s collective effort to increase diversity in the sector*”.⁴² These recommendations have been accepted by government.

Firefighting services in Australia

48. As set out in the fire services' primary submissions at paragraphs 41–42, each other state and territory in Australia permits engagement of firefighters on a part-time basis. The existence of part-time work as an employment option, even in limited or prescribed circumstances, is evidence that the industry across Australia accommodates part-time work. Moreover, the existence of a full range of flexible employment options including part-time, casual, temporary, and job-sharing arrangements in certain firefighting services in Australia suggests that there is no conflict between flexible working arrangements and the operational requirements of modern and effective firefighting agencies. The relevant industrial instruments were provided to the Full Bench on 20 April 2016, and the relevant provisions are set out in the fire services' primary submissions at paragraph 42.
49. In their reply submissions, the UFU noted, consistently with the observations of the fire services, that many of the interstate instruments contain qualifications around part-time work. Equally, the majority, if not all of those qualifications, are directed to the instrument that applies at the enterprise level. The differences between the states and territories shows

⁴¹ See the Statement of Craig Lapsley, MFB/CFA 1, [13]–[21]; Reply Statement of Peter Rau, MFB/CFA 7, [5]; Reply Statement of Lucinda Nolan, MFB/CFA 4, [5]–[7]; Statement of Joe Buffone, MFB/CFA 5, [14].

⁴² MFB/CFA 13: *Fire Services Review Report*, Recommendation 2(d), 7.

that there is no ‘one size fits all’ approach. What is clear, is that part-time employment is an established feature of the industrial standard of employment in the industry, and it is appropriate that this should be reflected in the underlying safety net terms and conditions.

50. The UFU has not ever addressed or explained the inconsistency between its support for part-time work in industrial instruments to which it is a party, or was involved in negotiating, in the ACT, Queensland, Tasmania, and South Australia, and support in Western Australia for the development of a part-time/job share arrangement for covered employees, and its refusal to support the potential for part-time work for firefighters in Victoria.

New South Wales

51. In response to a request from the President, the fire services called evidence from Chief Superintendent Malcolm Connellan of the New South Wales Fire and Rescue Service (NSWFRS). Mr Connellan gave evidence about the working arrangements for firefighters in New South Wales, which are very different to the arrangements in Victoria. The NSWFRS is one of the largest urban fire and rescue services in the world, and the busiest in Australia,⁴³ attending nearly double the number of emergency incidents compared to Victoria in 2014–2015.⁴⁴
52. The employment relationship between firefighters and the NSWFRS is governed by a state award. The current award is the *Crown Employees (Fire and Rescue Permanent Firefighting Staff) Award 2016*.⁴⁵
53. Firefighters in New South Wales have been able to access part-time work entitlements since 2007. At that time, the state award provided for two part-time shifts of 20 hours each over Friday, Saturday and Sunday.⁴⁶ Job-sharing was introduced in 2010.⁴⁷
54. In 2014, flexible work arrangements were introduced into the *Crown Employees (Fire and Rescue Permanent Firefighting Staff) Award 2014*. Those arrangements included part-time work and job-sharing arrangements.⁴⁸

⁴³ Statement of Malcolm Connellan, MFB/CFA 25, [16].

⁴⁴ Common Exhibit 1: Productivity Commission, *Report on Government Services 2016*, Volume D: Emergency Management, Table D.2, page D.11.

⁴⁵ A copy was handed up to the Bench on 28 April 2016 by the UFU. A copy of the 2014 Award is in the folder of industrial instruments handed up by the fire services on 20 April 2016.

⁴⁶ Statement of Malcolm Connellan, MFB/CFA 25, [19]–[20].

⁴⁷ *Ibid.*, [21].

55. The part-time work provisions in the 2014 Award were absorbed into the alternative work arrangements provisions in the 2016 Award.⁴⁹ The 10/14 roster is set as the default roster in the award, but employees may apply to work on alternative rosters, with the focus on the employee or employees to request a particular form of work arrangements, whether tailored to their individual needs, or from the alternative options set out in the award, including a ‘back to back’ roster, and a 24 hour roster.⁵⁰ Uptake of the alternative work arrangements, particularly the 24 hour roster, has been swift, with the majority of 10/14 stations adopting the 24 hour roster.⁵¹
56. Although it may be too soon to observe a statistically significant or permanent effect, the NSWFRS has reported a 50 per cent decrease in sick leave since the introduction and uptake of flexible rostering options in 2014.⁵² The introduction of alternative rostering arrangements for firefighters in NSW was proposed and facilitated by the union (the Fire Brigade Employees’ Union),⁵³ and is part of a broader cultural change within the NSWFRS. Mr Connellan described this as follows: *“historically fire services are a command/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”*.⁵⁴
57. The alternative roster arrangements are not available to recruits who are completing the 12 week recruit course, but once that is complete, there is no restriction by rank to the availability of the alternative work arrangements.⁵⁵ The NSWFRS currently has 23 permanent part-time firefighters on shift, who make up minimum crewing numbers.⁵⁶ Part-time employees are paid on a pro rata basis and accrue annual leave.⁵⁷ Training and welfare for part-time employees are managed appropriately and without incident by the

⁴⁸ Ibid, [18], [21], [22], and see 2014 Award, cl 8.

⁴⁹ See 2016 Award, cl 8, and FAQ titled ‘Default Rosters, Alternative Rosters, and Changes of Shift’ at MC-1 to MFB/CFA 25.

⁵⁰ 2016 Award, cl 8; Statement of Malcolm Connellan, MFB/CFA 25, [24].

⁵¹ Ibid, [28].

⁵² Fire & Rescue New South Wales, *Annual Report*, MFB/CFA 21, 34. See also re-examination of Mr Connellan, PN 4213–14.

⁵³ PN 4203.

⁵⁴ PN 4203.

⁵⁵ Ibid, [30].

⁵⁶ Ibid, [41].

⁵⁷ Ibid, [23].

organisation and the employees.⁵⁸ In cross-examination, Mr Connellan was asked about skills maintenance programs in NSWFR and the ‘team environment’. In response, he said:

The concept that a group of people do the same thing with the same people every day of the week doesn’t hold true any more. That is why we have standardised training, we have standardised officer skills, we have standardised processes for welfare checks too – and standardised equipment and appliances to cover all of those off.

MR KENZIE: Yes, your organisation has consciously moved away from the position which is directed to the team environment, to a more flexible environment?

MR CONNELLAN: No, we’re moving to a bigger team.⁵⁹

58. In terms of gender diversity, women make up 5.2 per cent of the NSWFRS workforce.⁶⁰ In cross-examination, Mr Connellan stated that the NSWFRS is seeking to increase the numbers of women in the service by 60 per year. It was put to him in cross-examination that “*the availability of part-time hasn’t assisted*” in raising the number of operational female firefighters employed by the NSWFR. While Mr Connellan answered, appropriately, that he could not say with any certainty if that was the case, he noted that the employees working part-time “*are all happy being on it*”, and “*I wonder if we would have kept employing them if we didn’t have it*”.⁶¹
59. The introduction of the 24 hour roster in NSW was put to witnesses called by the UFU during cross-examination. In particular, Ken Brown confirmed that it was his opinion that full-time firefighters working on the 10/14 roster was the only safe way to work.⁶² He was asked specifically about the use of the 24 hour roster by the NSWFR, and if he believed that New South Wales was operating an unsafe system of firefighting. In response, Mr Brown stated that the MFB “*has got the highest performing fire service in the country.... We contain fires to room of the origin in 90 per cent of the times... We limit the number of fire fatalities to I think it’s three or four it’s been this year... We’re the best performing*”.⁶³

⁵⁸ Ibid, [31]–[36].

⁵⁹ PN 4101–02.

⁶⁰ Ibid, [43].

⁶¹ PN 4192–93.

⁶² PN 2730.

⁶³ PN 2738, and PN 2751.

Mr Brown was referring to the *Productivity Commission Report on Government Services*,⁶⁴ (PC Report) a copy of which was provided to the parties by the Full Bench.

60. It appears there is no uniform measure of safety or performance in fire services across Australia, but by reference to the figures cited by Mr Brown in the PC Report, we note that Victoria has had the second-highest (after New South Wales) number of fire fatalities in Australia in three out of the four years between 2010 and 2013, and the highest number of fatalities in 2007 and 2008 (leaving aside the Black Saturday fires in 2009).⁶⁵ Further, while Victoria has very good rates of confining fires to the room of origin, the rate in 2014–15 was 71.8 per cent, not 90 per cent, and this was a decrease from rates of between 73 and 75 per cent over the last decade, with only the Northern Territory reporting confinement rates above 80 and 90 per cent.⁶⁶ To the extent that Mr Brown relied on data in the PC Report as a justification for his evidence that full-time work on the 10/14 roster is the safest way to work, it does not appear that there is any correlation between that data and rostering arrangements in Victoria or in New South Wales.

Part-time work in other emergency services

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

⁶⁴ PN 2742.

⁶⁵ Productivity Commission, *Report on Government Services 2016*, Table 9A.7.

⁶⁶ *Ibid*, Table 9A.10.

The shift rostering employed by Victoria Police is far less predictable and arguably less employee-friendly than the 10/14 roster. Each 24 hour period contains three eight hour shifts, over a two week roster. Nevertheless, part-time employees are accommodated within that system. Part-time work is also available in other emergency service providers such as the SES and the Department of Transport, Planning, and Local Infrastructure.⁶⁷

64. During cross-examination of the fire services' witnesses, the UFU sought to emphasise the way in which part-time work was introduced into Victoria Police and Ambulance Victoria, by way of formal trials lasting over a period of years, and by industrial negotiation.⁶⁸ The same line of cross-examination was pursued with Mr Connellan. The method of introduction of these schemes is not the point. The point is that the Victorian emergency services providers were able to introduce part-time work at all. Under the terms of the modern award, the MFB and the CFA could not even run a trial of part-time work in the fire services.

Part-time work will allow operational firefighters to retain skills and abilities throughout their career

65. Both Lucinda Nolan on behalf of the CFA, and Michael Werle on behalf of the MFB, provided evidence from their experience that the fire services face challenges when accommodating operational employees' need to work part-time during periods in their lives, particularly around returning to work after the birth of a child.⁶⁹ This evidence was not challenged in cross-examination. Moreover, Ms Nolan noted that women returning to work in non-operational, part-time, roles after the birth of a child suffer a degradation of their skills by virtue of being required to undertake non-operational roles on their return to work.⁷⁰ Firefighters who are required to work off-shift also lose promotional opportunities as a result of not having access to skills maintenance and practical experience as firefighters, at least until they were able to return to work 42 hours per week.⁷¹
66. In addition to women returning to work after maternity leave, employees who in practice might benefit from part-time operational work include (male) employees returning to work

⁶⁷ See Statement of Joe Buffone, MFB/CFA 5, [15].

⁶⁸ See the cross-examination of Lucinda Nolan with respect to Victoria Police, and Greg Leach with respect to Ambulance Victoria.

⁶⁹ Statement of Lucinda Nolan, MFB/CFA 3, [25]–[26]; Statement of Michael Werle, MFB/CFA 9, [21]–[28], and see PN 393.

⁷⁰ PN 394.

⁷¹ PN 395, 397, 398.

after a period of parental leave, employees returning to work after an injury, and firefighters who wish to transition to retirement.⁷² That employees in these positions may need or wish to continue working in an operational role for less than 42 hours a week was not seriously challenged by the UFU.

Increased diversity

67. As stated at paragraph 27 of the fire services' submissions dated 26 February 2016, part-time work is associated with increased female participation and retention in the paid workforce; in light of the fact that nearly 70 per cent of part-time employees are women, this is a reasonable correlation to draw.⁷³ The existence of part-time work arrangements can reasonably be expected to assist with employing and retaining women who have (or are planning to have) young children. The connection between part-time work and increased female retention rates is also demonstrated by the evidence of Acting Workplace Relations Director at Victoria Police, Alex Tasominos, who stated that almost 6.2 per cent of the operational workforce in Victoria Police are currently on part-time arrangements, rising from 2.53 per cent in 2000 shortly after part-time arrangements were introduced. This is matched by an increase in the number of female operational employees from 14.69 per cent in 2000 to almost 25 per cent in 2015.⁷⁴
68. The introduction of part-time work to the modern award is part of the process to facilitate an increase in the number of women in the MFB and the CFA. The numbers are extraordinarily low by any measure – 70 women, or 3.46 per cent of the MFB workforce, and just 29 women or 3.30 per cent in the CFA.⁷⁵ In order to address this imbalance, both recruitment and retention strategies are necessary.
69. The lack of gender diversity in the fire services was roundly ignored by the UFU. The UFU did not call any evidence from any employee whom the fire services identified might benefit from part-time work (for example a women who had recently returned to full-time operational work from maternity leave), to give evidence in support of the union's position that part-time operational work was unnecessary in light of the existing flexibility

⁷² See Statement of Joe Buffone, MFB/CFA 5, [17]; Statement of Greg Leach, MFB/CFA 14, [31]; Statement of Michael Werle, MFB/CFA 9, [12]; and Statement of Kirsty Scroeder, MFB/CFA 10, [20]–[24].

⁷³ ABS, *Labour Force*, January 2016 (released 25 February 2016), Cat. 6291.0.55.001.

⁷⁴ See Statement of Alex Tasominos, MFB/CFA 12, [30].

⁷⁵ See Statement of Michael Werle, MFB/CFA 9, [15].

provisions in the operational agreements.⁷⁶ Some of the UFU's (all male) witnesses felt qualified to comment on the experiences of women firefighters in the CFA, including the apparent lack of impediments to women joining and remaining at the CFA, but (continuing with the same example), failed to address or even acknowledge that women returning from maternity leave may find it difficult to work 42 hours a week on a rotating roster while caring for young babies or children.⁷⁷ By contrast, Chief Superintendent Malcolm Connellan from the NSWFRS referred expressly to the difficulties faced by people (not just women) with carer's responsibilities working on the 10/14 roster:

... 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. How do you actually book those [child care] places? They won't let you book them.⁷⁸

70. As set out above, Mr Connellan acknowledged that the NSWFRS has some way to go in terms of increasing female participation in its workforce. This may be contrasted with the position of the other key emergency service providers in Victoria. Ambulance Victoria has had formal part-time work provisions since 2009, has 40.26 per cent of its workforce as female,⁷⁹ and Victoria Police, which has had operative part-time employment arrangements since the late 1990s, has close to 34 per cent women.⁸⁰

The current clause 10 is potentially discriminatory

71. The prohibition against part-time work in the modern award is potentially discriminatory and arguably inconsistent with the *Equal Opportunity Act 2010* (Vic) and provisions of the FW Act. For example, employers must not unreasonably refuse to accommodate the responsibilities that an employee may have as a carer or parent and must consider any request for flexible work arrangements.⁸¹ Further, s 153(1) of the FW Act provides that a modern award must not include terms that discriminate against an employee for reasons including the employee's race, sex, age and family or carer's responsibilities.

⁷⁶ See UFU submissions dated 6 April 2016 at [32]–[35].

⁷⁷ See Statement of Michael Lia, UFU 4, [20]; Statement of Cory Woodyatt, UFU 8, [17]; Statement of Gerald Conroy, UFU 10, [22].

⁷⁸ PN 4208–09.

⁷⁹ See Statement of Greg Leach, MFB/CFA 14, [17].

⁸⁰ See Statement of Alex Tasominos, MFB/CFA 12, [27], [30].

⁸¹ *Equal Opportunity Act* ss 17, 19; FW Act s 65.

72. While a term does not discriminate if the reason for the discrimination is the inherent requirements of the particular position,⁸² the UFU has not put forward any argument or evidence that employment of operational firefighters in the public sector on a full-time basis is an *inherent requirement of the role*. The availability of part-time work for operational firefighters in other fire services across Australia, including in Queensland, the ACT, Tasmania, South Australia and Western Australia where the UFU represents firefighters, is an insurmountable roadblock to this argument. The fact that some part-time work provisions in other states and territories are qualified does not answer the point.
73. The UFU contends that concerns regarding the potentially discriminatory effects of the modern award are mitigated by:
- (a) the fact that “*the system always accommodates requests for flexible work arrangements*”,⁸³ and
 - (b) the existing flexibility provisions within the modern award including the special duties roster.⁸⁴
74. The special duties roster is a 42-hour week roster, with hours set between 7.45am to 6.15pm over four days, and is therefore, neither flexible nor family-friendly.⁸⁵ The special administrative duties roster, contained in the MFB Agreement, is limited to non-operational duties only.⁸⁶
75. The UFU called no evidence from any firefighter who has utilised the ‘existing flexibility provisions’ in the modern award or agreements to meet a need to work part-time. Reliance on these clauses is of no assistance to the Commission or to any firefighter seeking part-time work.
76. The submissions of the UFU fail to grapple with the fact that there are no flexible work arrangements available for operational firefighters. If an operational firefighter needs or wishes to work part-time, she or he is required to undertake a non operational role.

⁸² FW Act s 153(2)(a).

⁸³ UFU submissions, [31]–[32].

⁸⁴ UFU submissions, [33]–[35].

⁸⁵ The special duties roster is at cl 22.7 of the modern award and cl 77 of the CFA Agreement.

⁸⁶ MFB Agreement, cl 84.

PART D: THE OBJECTIONS OF THE UNION TO PART-TIME WORK

77. The UFU opposes the inclusion of part-time work in the modern award. The union's objection appears to be that part-time work will undermine the entire system of safe and effective firefighting in Victoria, and put firefighters and the community at risk.
78. In response, the fire services make two points. First, the objections by the union are based around concerns relating to the implementation of part-time work. This is premature. As already outlined, the implementation of part-time work would be a matter for consultation between the fire services, its members, and their union. Second, while maintaining the position that the union's objections are misplaced, an examination of the substance of the objections reveals that they rest on a bed of false assumptions and uninformed speculation and for that reason should not be taken into account by the Full Bench in determining whether part-time work should be included in the modern award.

The UFU evidence should be given no weight

79. The UFU called evidence from 13 witnesses.⁸⁷ Each of the witnesses opposed the application to make part-time work available in the modern award.
80. For the reasons set out below, the MFB and CFA submit that the objections of the UFU witnesses to the inclusion of part-time work should be given no weight.

Part-time work is not casual work

81. Six out of the 13 UFU witnesses' objections to part-time work proceeded from a false assumption that part-time work was "casual, irregular work".⁸⁸ One witness, Patrick Geary, expressed his "greatest concern" as "*people just popping in every now and again to work a shift*".⁸⁹
82. The definition of a part-time employee in the draft determination is an employee who has "reasonably predictable hours of work",⁹⁰ and who has agreed in advance with their employer on a regular pattern of work.⁹¹ This is the opposite of casual and irregular work.

⁸⁷ The statement of Jeremy Murphy was tendered as submission, and Mr Murphy was not cross-examined on that basis.

⁸⁸ See evidence under cross-examination of Malcolm Hayes at PN 1547–51; Alan Quinton at PN 1725; Michael Lia at PN 1968; Corey Woodyatt at PN 3169; Patrick Geary at PN 3320; and John Radford at PN 3796.

⁸⁹ Patrick Geary, PN 3320.

⁹⁰ Draft Determination, cl 10.3(a)(ii);

⁹¹ Draft Determination, cl 10.3(b).

The fire services make no application for casual and/or irregular work in the modern award.

83. The UFU witnesses did not know, prior to preparing their witness statements, what ‘part-time employment’ meant. Collectively, the UFU witnesses lacked knowledge of part-time work, even within their own industry to a degree surprising in 21st century Australia. Further, none of those witnesses were provided with a copy of the draft determination prior to making their witness statements about the supposed impact of part-time work. In their submissions, the UFU criticised the fire services’ witnesses for not referring to the draft determination in their evidence.⁹² In light of their witnesses’ unfamiliarity with the actual submission before the Commission, this criticism appears to have been misdirected.
84. The objections to part-time work expressed by Mr Hayes, Mr Quinton, Mr Lia, Mr Woodyatt, Mr Geary, and Mr Radford, proceeded from an incorrect assumption. The Full Bench should read and understand their evidence in light of this false assumption, and attribute no weight to the opinions of those witnesses about the likely impact of part-time work in the fire services.

Other concepts of part-time work

85. The remaining seven witnesses called by the UFU described part-time work as “*anything less than full-time work on the 10/14 or special duties roster*”.⁹³ Work on those rosters is for 42 hours per week, which is four hours over the standard 38 hour full-time working week. Firefighters are paid overtime for two of the four additional hours per week above and beyond the 38 hour full-time standard, with the other two hours paid or recorded as accrued annual leave.⁹⁴
86. The witnesses who expressed concerns about part-time work in this way proceeded from the position that anything less than 42 hours per week would be inadequate to perform the job of a firefighter safely and in accordance with best practice. This appeared to be the case even if that person was still working over 38 hours per week, ie, was still working ‘full time’ in every sense of the term. One witness, Barry Thomas, expressly stated that

⁹² UFU submissions, [26].

⁹³ See evidence under cross-examination of Daniel Gatt at PN 2214–15; Ken Brown at PN 2491–94; Bradley Quinn at PN 3015–16; Patrick Geary at PN 3318–19 (but see also PN 3320); Gerald Conroy at PN 3502; Glenn Veal at PN 3620; Tony Martin at PN 4243–47; and Barry Thomas at PN 4469–76.

⁹⁴ See MFB Agreement cl 75.1, and CFA Agreement cl 74.1.1.

“anything less than 42 hours a week”, even “41 hours a week” is a “massive concern”.⁹⁵
This is, with respect, nonsense.

87. The opposition of these witnesses to work in any other form than 42 hours per week is inconsistent with the reality of how the fire services operate. One example illustrates the point. Employees on the 10/14 roster are permitted and encouraged to rest and recline during eight of the 14 hour night shifts in the 10/14 roster.⁹⁶ If the contention of the UFU witnesses was correct, and 42 hours of work per week was necessary to ensure that the skills and proficiencies of operational firefighters was adequate, then it would be expected that firefighters working night shift would be available to perform drills during that time. Instead, both agreements permit rest and recline between 11.00pm and 7.00am, and the MFB Agreement expressly limits training during the rest and recline period – which is 16 of the 42 hours, or over a third, of the working week.⁹⁷

The UFU witnesses have no experience of part-time work

88. None of the witnesses called by the UFU have ever worked part-time, or worked alongside a part-time employee.⁹⁸ The UFU witnesses had worked for the MFB or the CFA for an average of nearly 28 years. Of the 13 witnesses, only three – Malcolm Hayes at 12 years, Cory Woodyatt at 16 years, and John Radford at 20 years – had worked for the fire services for under 26 years. None have worked on secondment within the MFB or the CFA, or outside the MFB or CFA, for example on exchange to an interstate or international fire fighting service. The professional experience of the witnesses called by the UFU may have been extensive and comprehensive but it was also narrow.
89. By contrast, the operational witnesses called on behalf of the fire services, in addition to extensive experience working on the 10/14 roster within Victoria, had a broad range of employment experiences outside the MFB and the CFA. This included working with fire services in Canada (David Youssef), the Northern Territory (Bruce Byatt), Queensland (Bruce Byatt), New South Wales (Craig Lapsley), and with other emergency services including the SES (Joe Buffone and Craig Lapsley) and Melbourne Airport fire services (David Youssef).

⁹⁵ PN 4474-76.

⁹⁶ *Fire Fighting Industry Award 2010* cl 22.6(a); MFB Agreement cl 83; CFA Agreement cl 84.

⁹⁷ MFB Agreement cl 83.2.1.

⁹⁸ See the witness statements of each of the UFU witnesses, and the evidence under cross-examination of Malcolm Hayes at PN 1540-43; Alan Quinton at PN 1868; Ken Brown at PN 2495, PN 2732; Glenn Veal at PN 3666-71; Tony Martin at PN 4314-15, 4319; and Barry Thomas at PN 4519.

90. Many of the non-operational witnesses called by the fire services have worked alongside part-time employees in other emergency services, including Victoria Police (Lucinda Nolan), and Ambulance Victoria (Greg Leach). As outlined earlier in these submissions, the Chief Superintendent and Chief of Staff for the Commissioner of the NSWFRS, Malcolm Connellan, also gave evidence about the experience of the NSWFRS with part-time and flexible work arrangements in New South Wales.
91. While the differences of opinion about the viability of part-time work for operational firefighters between the witnesses called by the fire services, and the witnesses called by the union, were perhaps unsurprisingly, consistent with the position of each party, there was one vital point of distinction. That is, the witnesses called by the fire services had *experience* of working in firefighting and emergency services environments outside the full-time 10/14 or special administrative duties 42 hour rosters available to operational firefighters in Victoria. Several of those witnesses identified that they had worked the 10/14 roster for a number of years – Mr Connellan said he “*thought it was great*”⁹⁹ – but through experience and exposure to alternative models of work, had formed the view that the 10/14, 42-hour roster was only one of several functional, safe, effective, and employee-friendly methods of arranging work for firefighters.
92. By contrast, the witnesses called by the UFU had no such experience to draw on in forming their opinions about the viability of part-time work. Several of the witnesses, such as Ken Brown,¹⁰⁰ Glenn Veal,¹⁰¹ and Tony Martin,¹⁰² acknowledged the existence of part-time work in other fire services in Australia, but did not feel it necessary to inform themselves of these matters before giving evidence to the Commission, or to alter their views about the viability of part-time work in light of this information. Other witnesses, such as Alan Quinton¹⁰³ and Barry Thomas¹⁰⁴ were unaware of the existence of flexible work arrangements outside of Victoria. And several of the witnesses called by the UFU made it clear that the basis for their opinions about part-time work was anecdotal, irrelevant, unreliable, and in some cases, absurd.

⁹⁹ Eg, Malcolm Connellan, PN 4208. See also David Youssef, PN 1479.

¹⁰⁰ PN 2735–38.

¹⁰¹ PN 3659–60.

¹⁰² PN 4334–35.

¹⁰³ See PN 1881.

¹⁰⁴ PN 4546–47.

93. For example, Michael Lia gave evidence that he “*would have doubts about the lack of commitment of part time employees*”.¹⁰⁵ In response to a question from the President, Mr Lia explained the basis for his opinion as:

I have three daughters which, they've worked in another industry, they've worked in retail and they deal with, and have done over periods of their life, dealt with part-time employees in that environment and their main complaint was that they – the part-time did their minimal amount and left items that they had to fix or replace or look after when they come back to work. I'm just concerned that with part-time personnel, have they got the same commitment to the service as what the full-time employee does.¹⁰⁶

94. Tony Martin conceded that while he had not worked part-time himself, or alongside anyone who did, his opinions about part-time work were based on his “*whole life experiences*” and those of the firefighters he met throughout his career, including through “*sporting activities with other agencies around the country and internationally*”. From these activities, Mr Martin was able to get to know other firefighters “*whole life experiences*”, although whether that included the experience of part-time work was unclear.¹⁰⁷
95. Barry Thomas, who described himself “*having been involved in rostering since 1979 for both the UFU and the CFA*”,¹⁰⁸ did not know about the existence of part-time or flexible work options for firefighters outside Victoria. On being informed of the existence of part-time work for firefighters in NSW, Mr Thomas demonstrated a rigid lack of curiosity about those work arrangements, refusing to concede that it might be necessary to examine those arrangements in light of his opposition to part-time work *per se*.¹⁰⁹ In the case of Mr Thomas, his objections to part-time work are clearly immovable, if not ideological, and no weight should be attributed to his evidence.

The objections of the UFU witnesses are based on false assumptions

Teamwork and the 10/14 roster

96. The UFU witnesses gave evidence that teamwork was essential to firefighting, and that working in teams on the 10/14 roster was necessary to build trust and confidence among members of the team. Part-time work and work on the day roster was opposed on this basis. This objection does not withstand scrutiny for three reasons.

¹⁰⁵ Statement of Michael Lia, UFU 4, [11].

¹⁰⁶ PN 2135.

¹⁰⁷ PN 3894–40.

¹⁰⁸ PN 4509.

¹⁰⁹ See PN 4546–53.

97. First, there is no suggestion from the fire services that part-time employees would not work in teams, or would not be members of existing teams. There is nothing inherent to part-time work arrangements which would preclude part-time workers working as a member of a team.
98. Second, the evidence that the 10/14 roster as the best (and in some cases, only) method of ensuring trust and confidence among firefighters is undermined by the evidence of the UFU witnesses, many of whom do not work on the 10/14 roster but turn out when required.
99. Of the six UFU witnesses employed by the MFB, four do not work on the 10/14 roster,¹¹⁰ and Daniel Gatt, who currently works on the 10/14 roster, has spent considerable time working on the special administrative duties roster, otherwise referred to as ‘day shift’. Of the seven UFU witnesses employed by the CFA, four do not work on the 10/14 roster.¹¹¹
100. Despite their ‘day worker’ status, those eight witnesses agreed that when turning out as required, including in strike teams and in large-scale emergencies such as the Hazelwood mine fire, they were able to perform their role safely and effectively. None felt that their skills and abilities were compromised by working on the day shift, and none had ever received or heard of any complaints from their colleagues that working alongside non-10/14 firefighters was endangering the trust and confidence necessary to safely and effectively do their job.¹¹² For example, Ken Brown confirmed that in his role at the MFB, he is responsible for a unit of 35 day workers, who regularly turn out to respond to fires and other emergencies when required.¹¹³ [start of reference to confidential evidence]
 [REDACTED]
 [REDACTED]
 [REDACTED] [end of reference to confidential information]
101. Mr Brown’s current position is Director of Special Operations, and he reports through Mr Leach to the Emergency Management Commissioner, Craig Lapsley, who gave evidence on behalf of the fire services in this proceeding. Mr Brown is currently seconded to Emergency Management Victoria. In both roles, he is responsible for identifying and removing barriers to interoperability between the MFB and the CFA, whose 35,000+

¹¹⁰ Ken Brown, Bradley Quinn, Alan Quinton and Tony Martin.

¹¹¹ Gerald Conroy, Barry Thomas, Patrick Geary and John Radford.

¹¹² See, eg, evidence under cross-examination of Alan Quinton at PN 1862–66; Daniel Gatt at PN 2212; Bradley Quinn at PN 3111–15; Tony Martin at PN 4292–300; Barry Thomas at PN 4540–41.

¹¹³ PN 2834–2852.

¹¹⁴ Confidential Exhibit MFB/CFA 22, esp 27; and see PN 2853–2890.

member volunteer operational firefighters do not work on the 10/14 roster. Yet Mr Brown has never identified to Mr Lapsley or any other person his concerns that CFA volunteers are working unsafely because they do not, and have not ever, worked on the 10/14 roster.¹¹⁵ Mr Brown explained this failure by stating that he had “*never been asked*” about a “*change in rostering*”.¹¹⁶ With respect, it is more likely that the reason Mr Brown has not reported his concerns that CFA volunteers are working unsafely is because he does not believe they are, and his ‘belief’ in full-time work on the 10/14 roster is better expressed as his *position* that full-time work on the 10/14 roster is the only *desirable* roster of work for Victorian firefighters.

102. Despite the fact that the majority of the UFU witnesses do not work on the 10/14 roster, those witnesses seemed unable to recognise the contradiction inherent in their evidence that the 10/14 roster was the best and safest method for firefighters to work– unless *they* were required to turn out, in which case, the day roster was an acceptable system of work. In their circumstances, there was no threat to the safety of their colleagues or the community, nor any lowering of standards to accommodate any skills deficit – for the simple reason that there is no deficiency in the skills of day shift firefighters.
103. Third, in light of the evidence of these witnesses, the proposition that the full-time work on the 10/14 roster is *necessary* to ensure trust and confidence cannot stand. Instead, the UFU witnesses appear to be saying that ‘trust and confidence’ are generated, not by the 10/14 roster *per se*, but by familiarity with colleagues.
104. However, it has always been the case that firefighters work – successfully and safely – along side other firefighters, and other emergency services personnel, that they do not know. Further, it is not clear why those firefighters who objected to part-time work on the basis of the ‘unfamiliarity’ of part-time firefighters assumed that their part-time colleague would in fact be unfamiliar to them. As with the assertion that part-time work would undermine teamwork, it appears that this assumption is based on a model of part-time work where the part-time employee is a lone operator imposed on the organisation from outside, and appearing at a station on an *ad hoc* and irregular basis, rather than, for example, an existing colleague who reduces their working hours from 42 hours to 20 hours per week. This assumption is not sound, and risks unfairness to existing members of the fire services who may wish to work part-time, or have sought permission to work part-time and been

¹¹⁵ PN 2893–2720.

¹¹⁶ PN 2809, 2818.

refused. As Mr Warrington noted in cross-examination, those employees currently in the fire services are *“properly trained, are credible, are respected...and to suggest otherwise, I think is not fair to those people... They’re already at a standard, already well respected, don’t want to do night shifts any more, but the current arrangements don’t allow for that”*.¹¹⁷

105. Each of the UFU witnesses accepted that they have worked along side other firefighters and other emergency services personnel that they do not know, or may not know well, and that this is a common occurrence.¹¹⁸ The examples are:
- (a) Working with new recruits.¹¹⁹
 - (b) Officers recalled to stations that are not their own,¹²⁰ which occurs on a regular basis (see further paragraph 121 below).
 - (c) Officers transferring between stations.¹²¹
 - (d) Officers on secondment.¹²²
 - (e) Officers who have been promoted and moved away from their ‘home’ station.¹²³
 - (f) Working with CFA volunteers.¹²⁴
 - (g) When acting as an incident controller, by necessity making judgments and decisions and controlling the response to an incident with people he or she may not necessarily know.¹²⁵

¹¹⁷ PN 1313.

¹¹⁸ Note that while Ken Brown accepted under cross-examination that firefighters can work alongside people from other stations or sectors, he refused to accept that it was a regular occurrence and that they would not know those people: at PN 2578–80. However, other witnesses accepted the proposition. See evidence under cross-examination of Malcolm Hayes, PN 1611; Bradley Quinn at PN 3056–58.

¹¹⁹ See evidence under cross-examination of Ken Brown at PN 2582; Glenn Veal at PN 3675.

¹²⁰ See evidence under cross-examination of Malcolm Hayes at PN 1620; Michael Lia at PN 2112–15; Ken Brown at PN 2637–54; Cory Woodyatt at PN 3217–35, 3241–46; Patrick Geary at PN 3292–98; Glenn Veal at PN 3676–87; John Radford at PN 3817; Barry Thomas at PN 4564.

¹²¹ See evidence under cross-examination of Malcolm Hayes at PN 1625–27; Michael Lia at PN 2116–17; Daniel Gatt at PN 2291–98; Cory Woodyatt at PN 3239–40; Patrick Geary at PN 3378–79; Glenn Veal at PN 3688–91; Barry Thomas at PN 4565.

¹²² See evidence under cross-examination of Daniel Gatt at PN 2299–2305; Ken Brown at PN 2655–62, PN 2663–84; Glenn Veal at PN 3692–94.

¹²³ See evidence under cross-examination of Daniel Gatt at PN 2328–37; Glenn Veal at PN 3694–96.

¹²⁴ See evidence under cross-examination of Malcolm Hayes, PN 1644–52; Cory Woodyatt at PN 3215–16; Patrick Geary at PN 3383; John Radford at PN 3835–52; Barry Thomas at PN 4568.

- (h) Working with strike teams.¹²⁶
 - (i) Working on large-scale emergencies that require interoperability between emergency services agencies in accordance with the *Emergency Management Act 2013* (Vic),¹²⁷ most recently the Hazelwood mine fire, which Ken Brown described as “*a great example of how different cultures came together and worked cooperatively and the trust that has been built over that incident amongst the agencies*”.¹²⁸
 - (j) Working with interstate fire agencies.¹²⁹
 - (k) Working with officers from Victoria Police and Ambulance Victoria, some of whom may be part-time.¹³⁰
106. Many of the UFU witnesses confirmed that they place great trust and confidence in the abilities of their emergency services colleagues. None have ever enquired as to the terms of employment of a member of Victoria Police or Ambulance Victoria while attending an emergency or otherwise. As acknowledged by the UFU witnesses, the terms of employment are simply irrelevant to the person’s ability to do their job safely and effectively.¹³¹
107. The above list of circumstances in which firefighters can find themselves working alongside people they do not know, or do not know well, is not exhaustive, but it is illustrative. Firefighters, particularly officers in charge, routinely assess the capabilities of their crews in an emergency situation and do so without knowing the crew personally or even professionally. As stated by Mr Byatt in cross-examination, “*any officer in charge when he goes to any emergency...will have people under his control that extend beyond his*

¹²⁵ See evidence under cross-examination of Malcolm Hayes, PN 1666.

¹²⁶ See evidence under cross-examination Patrick Geary at PN 3373; Glenn Veal at PN 3703–06; John Radford at PN 3826–27; Barry Thomas at PN 4567.

¹²⁷ See evidence under cross-examination of Malcolm Hayes at PN 1636–38; Michael Lia at PN 2118–20; Daniel Gatt at PN 2311–17; Ken Brown at PN 2693, 2713, 2911–18; Cory Woodyatt at PN 3247–49; Patrick Geary at PN 3371–72; Glenn Veal at PN 3701–02; Barry Thomas at PN 4567.

¹²⁸ PN 2916–18; and see John Radford at PN 3823–25.

¹²⁹ See evidence under cross-examination of Malcolm Hayes, PN 1630–31, 1634–35

¹³⁰ See evidence under cross-examination of Malcolm Hayes at PN 1640–43; Alan Quinton at PN 1819–33; Michael Lia at PN 1982–96; Daniel Gatt at PN 2320–22; Ken Brown at PN 2724, 2729; Bradley Quinn at PN 3074–80; Cory Woodyatt at PN 3256–63; Patrick Geary at PN 3383, 3387–90; Glenn Veal at PN 3709–12; John Radford at PN 3854–68; Barry Thomas at PN 4590–98.

¹³¹ See, eg, evidence under cross-examination of John Radford at PN 3867–68; Barry Thomas at PN 4597–98.

*crew. So this exists today and it is a part of the thought process and risk management that the officer in charge has to put into play”.*¹³²

Skills acquisition and maintenance

108. A principal basis of the UFU’s objection to the introduction of part-time work in the modern award was that part-time work would undermine the acquisition and maintenance of skills by operational firefighters.
109. Before proceeding to an examination of the evidence on this subject, it is necessary to provide a short outline of how skills are formally acquired and maintained at the MFB and the CFA.
110. Recruit firefighters to both the MFB and the CFA undertake a training course of 18.8 weeks. After successful completion of the recruit course, the firefighter is ranked as a Level 1 Firefighter. Over the next three years, all things being equal, they progress through the ranks to Levels 2 and 3, ultimately becoming a Qualified Firefighter after three years of training. Once qualified, firefighters can obtain specialist skills qualifications which are obtained by attending a specialist course.¹³³
111. Formal skills maintenance at the fire services are delivered through the conduct of drills by operational firefighters at a station level. These drills are administered and managed by the on-shift officers for each shift. At the MFB there is a requirement for four drills to be conducted for crews at each station in a 28 day period. It is up to individual officers to determine how and when skills maintenance is delivered.¹³⁴ The terms of the modern award and the operational agreements effectively prevent running drills at night between 11.00pm and 7.00pm, although skills maintenance drills can be run for the first five hours of the night shift, between 6.00pm and 11.00pm.¹³⁵
112. In addition to ongoing skills maintenance drills, once accredited, all MFB officers must complete a minimum of four Emergency Medical Response continuing education sessions per year, although up to ten sessions are available each year and participation rates are high. The EMR training is necessary to retain certification to attend EMR incidents with

¹³² PN 1403.

¹³³ See Statement of Kirstie Schroeder, MFB/CFA 10, [1]–[18]; Statement of Kate Harrup MFB/CFA 11, [15].

¹³⁴ See Reply Statement of Greg Leach, MFB/CFA 15, [8]–[9]; Reply Statement of Steve Warrington, MFB/CFA 16, [29]–[32].

¹³⁵ See *Fire Fighting Industry Award 2010* cl 22.6(a); MFB Operational Agreement cl 83; CFA Operational Agreement cl 84.

Ambulance Victoria. This is a core function of the MFB.¹³⁶ The EMR program is being rolled out across the CFA but is not yet complete.

113. The concerns by UFU members that part-time work would undermine skills maintenance was at the heart of the union's opposition to part-time work. So much is evident from the findings of fact that the union has asked the Full Bench to make – six of the proposed findings relate to skills maintenance.¹³⁷
114. It is important to note from the outset that there is no suggestion from the fire services that standards for part-time workers would be lowered. The fire services witnesses were explicit about this.¹³⁸ When asked in cross-examination about the concerns of the UFU witnesses about skills maintenance and safety issues, Lucinda Nolan, the CEO of the CFA, stated:

I think the fear of lowering standards is a conspiracy theory. *There is actually no evidence to suggest that that has ever been a real concern*, but as soon as we start talking about attracting women or increasing gender diversity, we always have that thrown up on our face, that we are suddenly going to lower standards and *there has certainly never been any input or statement from me or my team to suggest that that has even been on the cards.*¹³⁹

115. Ms Nolan's evidence was prescient. In response to a question about the number of women in the fire services, Mr Brown for the UFU stated:

Diversity is more than females.... You can't make people join and you can't lower the standard because as soon as you lower the standard you actually impact the safety. If we get it wrong, people die.¹⁴⁰

and

It's a job, it's a career and we need to market that more amongst our females. No doubt we can do it better and we need to do it better. But we don't need to lower the standards.¹⁴¹

116. The questions to Mr Brown about the numbers of women in the MFB made no reference to safety or standards. The correlation was Mr Brown's alone. It is a false correlation without fairness or substance.

¹³⁶ Per MFB Operational Agreement cl 87.1.

¹³⁷ See *UFUA Findings of Fact Sought*, dated 20 April 2016, [4], [6], [7], [9], [10] and [11].

¹³⁸ See Lucinda Nolan at PN 396; Joe Buffone at PN 504–07; Kirsty Schroeder at PN 830–31 (with regard to qualified firefighters); Greg Leach at PN 1192 and 1215; Steve Warrington at PN 1319, 1323; Bruce Byatt at PN 1377 and 1383.

¹³⁹ PN 406.

¹⁴⁰ PN 2941.

¹⁴¹ PN 2942.

117. Despite the clear and unambiguous statements from the fire services that there is no intention to lower standards for part-time employees, the UFU witnesses proceeded to assert that skills acquisition and maintenance would be diminished by the introduction of part-time firefighters, not just for those workers, but for their colleagues. The assumptions underlying the UFU witnesses' concerns related primarily to availability and exposure. It was assumed that because part-time employees would not be at work 42 hours a week, they would not be able to participate in skills training sessions.
118. These assumptions ignore the fact that the fire services *already* deal with absent employees on a daily basis. It is a feature of all workplaces, not just the fire services, that employees are sometimes absent. The feature is compounded in the MFB and the CFA by the generous leave provisions in the operational agreements. By way of examples this includes:
- (a) Recreation leave of 65.06 days per year.¹⁴² The scheduling of recreation leave is arranged in advance, and the net effect is that 20 per cent of the workforce is absent on any given day of the year.¹⁴³
 - (b) Parental leave of 52 weeks.¹⁴⁴
 - (c) Industrial training leave of up to five days per year.¹⁴⁵
 - (d) Defence force leave of 14 days per year.¹⁴⁶
 - (e) Sick and carer's leave of between 10 and 19 days per year.¹⁴⁷
 - (f) Accrued and long service leave. The MFB encourages firefighters to take accrued leave or 'single day long service leave' and allocate time so that 22 people in each 24 hour period will be absent.¹⁴⁸
119. The absence of firefighters from the workplace is further compounded by high rates of unplanned absenteeism. The evidence of this problem in the fire services is myriad. According to the Victorian Auditor-General's Report into unplanned leave in the emergency services, the MFB lost 139.5 hours per person per year in unplanned leave in

¹⁴² MFB Agreement cl 58; CFA Agreement cl 54.

¹⁴³ See Greg Leach, PN 1261.

¹⁴⁴ MFB Agreement cl 67; CFA Agreement cl 64.

¹⁴⁵ MFB Operational Agreement cl 61; CFA Operational Agreement cl 68.

¹⁴⁶ MFB Operational Agreement cl 63; CFA Operational Agreement cl 60.

¹⁴⁷ MFB Agreement cll 53, 66; CFA Agreement cll 47.2, 51.1.

¹⁴⁸ Ken Brown, PN 2528.

2011–2012, with significantly higher levels of unplanned leave on weekends,¹⁴⁹ and overall the highest level of unplanned leave among emergency services in Victoria.¹⁵⁰

120. The problem is acknowledged in the MFB Agreement at clause 86 which refers to the need to form an Absenteeism Working Party.
121. The problem of high rates of unplanned absenteeism is ongoing. By way of example, the unchallenged evidence of Greg Leach and Bruce Byatt was that in the month between 20 March 2016 and 20 April 2016, it was necessary to recall 746 MFB officers and 921 CFA officers.¹⁵¹ Officers are recalled when another officer is unable to attend their rostered shift and staff members fall below the minimum crewing levels mandated in the agreements.
122. None of these matters are raised in a pejorative sense, but rather to emphasise that the fire services already have particular expertise at managing a large population of employees whose attendance at work is constantly fluctuating. On top of this, the nature of the work in the fire services means that predictable attendance at the station is impossible – emergencies by their definition arise without notice and regularly disrupt scheduled skills training.
123. As a result of all of the above aspects of the fire services operations and the work of firefighters, skills acquisition and maintenance in the fire services is already inherently flexible, and necessarily accommodates employees who may be absent from work on a given day.

Skills acquisition

124. Skills acquisition within the fire services often refers to two areas – initial skills acquisition for recruits and firefighters at levels 1 to 3, and specialist skills acquisition for qualified firefighters.
125. The specialist skills acquisition training courses are scheduled up to a year in advance and run, on average, about once or twice a year depending on the skill to be acquired. For example, Bradley Quinn gave evidence that training for the High Angle Rescue Operators

¹⁴⁹ Report of the Victorian Auditor-General, *Management of Unplanned Leave in Emergency Services*, March 2013, 21, 24.

¹⁵⁰ *Ibid*, 24 (Figure 3C).

¹⁵¹ Further Statement of Greg Leach, MFB/CFA 23; Further Statement of Bruce Byatt, MFB/CFA 24.

on the Melbourne Wheel occurred once a year.¹⁵² Skills acquisition training necessarily is delivered in a more structured way than the skills maintenance drills on the station.

126. It goes without saying that the benefit of setting a timetable in advance is that people can plan to attend the training. This was accepted by several of the UFU witnesses.¹⁵³ There is no reason that part-time employees could not equally plan to attend specialist skills training.

Skills maintenance

127. The UFU witnesses agreed that skills maintenance training was necessarily flexible, and had to be adjusted to take into account the events at the station on any given day.¹⁵⁴ Equally, it was accepted that it is necessary to structure skills maintenance training to accommodate absent employees.¹⁵⁵ This was acknowledged by several witnesses from both parties. In response to a question from Senior Deputy President O’Callaghan, Mr Buffone explained that a person who was away from work due to illness would make up any missed training either at the station or by scheduled training.¹⁵⁶ Glenn Veal and Tony Martin gave evidence that where possible, drills are repeated for the benefit of firefighters who were absent when the drill initially took place.¹⁵⁷ Ken Brown gave evidence that station officers plan to accommodate absences when arranging skills maintenance training, stating by way of example:

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

¹⁵² Statement of Bradley Quinn, UFU 7, 7; and see PN 3049.

¹⁵³ See the evidence under cross-examination of Malcolm Hayes at PN 1572; Alan Quinton at PN 1808; Michael Lia at PN 2095; Daniel Gatt at PN 2285; Ken Brown at 2551–54; Bradley Quinn at PN 3049; and Glenn Veal at PN 3647.

¹⁵⁴ See the evidence under cross-examination of Malcolm Hayes at PN 1560, 1569, 1570, 1605–1608; Alan Quinton at PN 1792; Michael Lia at PN 2032; Daniel Gatt at PN 2254, 2262; Ken Brown at PN 2517–18; Bradley Quinn at PN 3030; Patrick Geary at PN 3354–56; Cory Woodyatt at PN 3185; Glenn Veal at PN 3627–28; John Radford at PN 3811; Tony Martin at PN 4364–65; and Barry Thomas at PN 4614.

¹⁵⁵ See the evidence under cross-examination of Malcolm Hayes at PN 1603–04; Alan Quinton at PN 1775; Michael Lia at PN 2052; Daniel Gatt at PN 2281; Ken Brown at PN 2534, 2539, 2558; Bradley Quinn at PN 3031–33; Glenn Veal at PN 3633–39; Tony Martin at PN 4372–75; and Barry Thomas at PN 4615.

¹⁵⁶ PN 574.

¹⁵⁷ Glenn Veal at PN 3637–39; Tony Martin at PN 4373–74.

understanding. So that's why the flexibility is put into the skills maintenance database so you can capture those drills in that process.¹⁵⁸

128. Despite the universal acceptance by UFU witnesses that skills maintenance training was inherently flexible, some witnesses refused to accept that the flexibility of those arrangements could accommodate part-time workers.¹⁵⁹ It is not clear why this is the case. If skills maintenance is flexible enough to accommodate a workforce that already has high levels of permissible absences, then as a matter of common sense, it must be flexible enough to accommodate part-time work, which is simply a different form of permissible absence from the workplace.
129. During cross-examination, the UFU witnesses were asked if their concerns about part-time firefighters could be assuaged if they could assume that the part-time employee had been appropriately trained and could maintain their skill set in line with full-time firefighters. Four witnesses either refused to accept the proposition, or were unable to accept the premise of the question.¹⁶⁰ However, seven UFU witnesses accepted that their concerns about part-time firefighters and skills maintenance would be reduced or removed if they could be assured that skills would be maintained at the appropriate level.¹⁶¹
130. There is no question that skills maintenance can accommodate employees who work less than 42 hours a week – because this occurs already. The fire services' training regime is built to accommodate a workforce entitled to 65 days of annual leave, as well as the additional leave entitlements set out in paragraph 118 above.
131. Other emergency services providers are able to manage skills maintenance training with a part-time workforce. Drawing on his experience at Ambulance Victoria, where part-time work was available in a suite of working arrangements outside the full-time 10/14 roster, as well his role as Executive Director of Organisational Learning and Development of the MFB, Greg Leach gave evidence of his view that “*there is no impediment to delivering*

¹⁵⁸ PN 2534; see also PN 2538.

¹⁵⁹ Eg, see Alan Quinton, PN 1912.

¹⁶⁰ See the evidence under cross-examination of Alan Quinton at PN 1814, 1871–72; Michael Lia at PN 2003–06; John Radford at PN 3790–94; and Tony Martin at PN 4301.

¹⁶¹ See the evidence under cross-examination of Malcolm Hayes at PN 1668–71; Daniel Gatt at PN 224–25; Ken Brown at PN 2943; Bradley Quinn at PN 3083; Cory Woodyatt at PN 3238; Patrick Geary at PN 3395; and Glenn Veal at PN 3717. In fairness, it must be noted that some of those witnesses offered their conditional acceptance of the proposition, such as Ken Brown, who stated his opinion that part-time work would not be compatible with the recruit course or with the first three years of employment, but “it's not impossible to look at... you'd want to look at the right rank where to go”. PN 2943, See also Patrick Geary at PN 3395.

skills maintenance and training to employees engaged on a part time basis".¹⁶² He gave some practical examples of how this could work that were entirely consistent with what some of the union witnesses acknowledged was the existing practice to meet the skills maintenance needs of employees who have been absent:

This flexibility in scheduling skills maintenance drills means that the current delivery of skills maintenance could accommodate part time employees without issue. For example, skills maintenance drills could be run on days when part time employees are on shift. Alternatively, additional skills maintenance sessions could be run during the month.¹⁶³

132. The evidence from the fire services witness reinforces much of what the UFU witnesses conceded in cross-examination about the inherent flexibility of the skills maintenance program, and the capacity of the skills acquisition program to accommodate part-time employees.

The objections of the UFU are misplaced

133. There is no sound operational reason to prohibit part-time employment by public sector employees. The fact that operational firefighters are employed in the public sector on a part-time basis in other states and the provision made by industrial instruments for this to occur in all other jurisdictions (as well as in relation to other emergency services in Victoria), suggests that part-time work is an ordinary and uncontroversial employment option in the sector, and that there is no rational operational impediment to including part-time work in the modern award. The anxiety expressed by several of the UFU witnesses about the impact of part-time work is acknowledged. However, matters such as the management of skills maintenance requirements, the availability of part-time work to recruit firefighters, the participation of part-time firefighters in minimum crewing numbers, whether part-time work should only be available on particular rosters or under particular arrangements such as job-sharing, whether part-time work should only be available to certain employees such as parents returning from parental leave, and whether the fire services should conduct a trial of part-time work before considering full implementation, are all important issues in respect of which proper consultation between the union and the fire services would be undertaken where appropriate and required.
134. The objections of the UFU witnesses to the introduction of part-time work for operational firefighters can only be relevant if the UFU is claiming that the inclusion of part-time work

¹⁶² Reply Statement of Greg Leach, MFB/CFA 15, [7].

¹⁶³ Reply Statement of Greg Leach, MFB/CFA 15, [11].

in the modern award is so unworkable that it could never meet the modern awards objective. This is an extraordinarily high threshold, and would require the UFU to address not just the modern awards objective itself, but each of the relevant statutory parameters around the exercise of the Commission’s modern award powers under the FW Act.¹⁶⁴ It has not done so.

135. The focus by the UFU on the minutiae of implementation is a red herring designed to distract from the nature of the application and the role of the Full Bench in conducting the four yearly review of modern awards. The UFU has not ever addressed the statutory framework or the modern awards objective in this case. At this late stage, there can be no reason for not doing so, other than that the UFU have no cogent case in opposition to the application.

PART E: INFRINGEMENT OF THE IMPLIED LIMITATION ON COMMONWEALTH POWER

136. Clause 10 of the modern award relevantly provides that “*An employer in the public sector may only employ a person ... on a full-time basis*”. The clause is invalid and unenforceable because it is inconsistent with the implied constitutional limitation on legislative power described in *Melbourne Corporation v Commonwealth*.¹⁶⁵ And as elaborated upon in *Re Australian Education Union and Australian nursing Federation; Ex parte Victoria (Re AEU)*.¹⁶⁶
137. As elaborated below, invalidity arises because clause 10 impairs the capacity of the State of Victoria to function by virtue of the fact that it significantly curtails or interferes with the right of the State, through its agencies, the fire services, to determine the number and identity of the persons whom it wishes to employ.

The Melbourne Corporation limitation

138. In *Melbourne Corporation*, the High Court held that the Commonwealth could not validly legislate to prevent banks from conducting banking business for a State or its authorities. According to Starke J, the relevant question in determining the Constitutional validity of such provision “*must be whether the legislation or the executive action curtails or*

¹⁶⁴ See MFB/CFA primary submissions, [24]–[29].

¹⁶⁵ (1947) 74 CLR 31 at 78-9.

¹⁶⁶ (1995) 184 CLR 188.

interferes in a substantial manner with the exercise of constitutional power¹⁶⁷ As to the legislation in question in that case, his Honour stated:¹⁶⁸

The management and control by the States and by local governing authorities of their revenues and funds is a constitutional power of vital importance to them. Their operations depend upon the control of those revenues and funds. And to curtail or interfere with the management of them interferes with their constitutional power.

139. Dixon J in the same case referred to the framers of the Constitution as conceiving of the States “*as bodies politic whose existence and nature are independent of the powers allocated to them*”.¹⁶⁹ His Honour noted that where the Constitution invests the Commonwealth with power to legislate with respect to a given subject-matter that grant of power includes the power to make laws which ‘affect the operations of the States and their agencies’.¹⁷⁰ This proposition is, however, subject to a number of ‘reservations’, including that the legislative power does not extend to:

... a law which discriminates against States or a law which places a particular disability or burden upon an operation or activity of a State, and more especially upon the execution of its constitutional powers.¹⁷¹

140. Conventionally, the limitation described by Dixon J was regarded as comprising two elements
- (a) a prohibition against discrimination which involves the placing on the States of special burdens or disabilities; and
 - (b) a prohibition against laws of general application which operate to destroy or curtail the continued existence of the States or their capacity to function as governments.¹⁷²
141. More recently, the High Court has inclined to the view that there is “*but one limitation, though the apparent expression of it varies with the form of legislation under consideration*”..¹⁷³ In *Austin*, Gaudron, Gummow and Hayne JJ put the matter thus:

¹⁶⁷ (1947) 74 CLR 31 at 75.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid* at 82.

¹⁷⁰ *Ibid* at 78.

¹⁷¹ *Ibid* at 79.

¹⁷² See *Queensland Electricity Commission v Commonwealth* (1985) 159 CLR 192 at 217 (Mason J); *Re Australian Education Union Ex parte Victoria* (1995) 184 CLR 188 at 231 (Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ).

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.¹⁷⁴

142. The plurality went on to suggest that the question of whether a Commonwealth law discriminated against a State or imposed a particular disability or burden upon the operations and activities of the State so as to be beyond power could be “*narrowed by asking whether that result comes about by a sufficiently significant impairment of the exercise by the State of its freedom to select the manner and method for discharge of its constitutional functions ...*” (emphasis added).¹⁷⁵

143. The High Court adopted essentially the same approach in *Clarke v Commissioner of Taxation* where the plurality observed that:

Too intense a concern with identification of discrimination as a necessity to attract the *Melbourne Corporation* doctrine involves a search for the appropriate comparator, which can be a difficult inquiry and is apt to confuse, rather than to focus upon the answering of the essential question of interference with or impairment of State functions.¹⁷⁶

144. Most recently in *Fortescue Metals Group Limited v Commonwealth*¹⁷⁷ Hayne, Bell and Keane JJ, in referring to *Austin* and *Clarke*, re-stated the *Melbourne Corporation* principle as:

... requir[ing] consideration of whether impugned legislation is directed at States, imposing some special disability or burden on the exercise of powers and fulfilment of functions of the States which curtails their capacity to function as governments.¹⁷⁸

145. Their Honours also specifically approved statements by the High Court in *Re AEU* considered below and rejected a challenge to the mining tax by referring to the following

¹⁷³ *Austin v Commonwealth* (2003) 215 CLR 185, at 249.

¹⁷⁴ *Ibid* (footnote omitted).

¹⁷⁵ (2003) 215 CLR 185, at 264.

¹⁷⁶ (2009) 240 CLR 272, at 306.

¹⁷⁷ (2013) 250 CLR 548.

¹⁷⁸ *Ibid* at [130].

statement by six members of the High Court in *Western Australia v Commonwealth*¹⁷⁹ (the *Native Title Act case*) (emphasis added):

The [Native Title Act] does not purport to affect the machinery of the government of the State. The continuation of the three branches of government is unimpaired; the capacity of the State to engage the servants it needs is unaffected; the acquisition of goods and services is not impeded¹⁸⁰

The plurality in the *Native Title Act case* described the implied limitation as relating to (emphasis added):

... the machinery of government and to the capacity of its respective organs to exercise such powers as are conferred upon them by the general law which includes the Constitution and the laws of the Commonwealth. A Commonwealth law cannot deprive the State of the personnel, property, goods and services which the State requires to exercise its powers and cannot impede or burden the State in the acquisition of what it so requires.¹⁸¹

Re Australian Education Union; ex parte Victoria (Re AEU)

146. In *Re AEU*, the High Court had to consider the application of the *Melbourne Corporation* principle to a number of Commonwealth statutory provisions concerning the engagement and terms and conditions of employment of State employees. As concerns those functions of a State which are critical to its capacity to function as a government, Mason CJ, Brennan, Deane, Toohey, Gaudron and McHugh JJ observed(emphasis added):

It seems to us that critical to that capacity of a State is the government's right to determine the number and identity of the persons whom it wishes to employ, the term of appointment of such persons and, as well the number and identity of the persons whom it wishes to dismiss with or without notice from its employment on redundancy grounds. An impairment of a State's rights in these respects would, in our view, constitute an infringement of the implied limitation. On this view, the prescription by a Federal award of minimum wages and working conditions would not infringe the implied limitation, at least if it takes appropriate account of any special functions or responsibilities which attach to the employees in question.¹⁸²

147. Later in their opinion, the plurality put the matter slightly differently (emphasis added):

On the other hand, as we have indicated, the operation of the implied limitation would preclude the Commission from making an award binding the States in relation to qualifications and eligibility for employment, term of

¹⁷⁹ (1995) 183 CLR 373.

¹⁸⁰ Ibid at 481.

¹⁸¹ Ibid at 480.

¹⁸² Ibid at 232.

appointment and termination of employment, at least on the ground of redundancy.¹⁸³

148. It is apparent from the above statement that, when initially referring to the right of a State “to determine the number and identity of the persons whom it wishes to employ”, the plurality intended to identify, at least, Commonwealth laws in relation to “qualifications and eligibility for employment”.
149. The words “whom it wishes to employ” in the first extract from *Re AEU* set out above and the words “for employment” in the second extract, signify that the application of the implied limitation concerned Commonwealth laws that relate to the commencement of employment of an employee. That view was adopted by the majority of the High Court in *Victoria v Commonwealth*¹⁸⁴ who rejected an argument that certain provisions of the *Industrial Relations Act 1988* (Cth) prevented the States from determining the number and identity of the persons whom they wish to employ. The argument was rejected on the basis that the provisions in question “apply only to employees already in employment” (emphasis added).¹⁸⁵
150. This was the approach adopted by the Full Court of the Industrial Relations Court of Australia in *Public Transport Corporation v Eames*.¹⁸⁶ This case concerned a challenge to a provision of an award which required a public corporation to reclassify employees into a higher classification when they had been acting in that position for six months or more. It was contended that the implied limitation relating to qualifications and eligibility of candidates for employment applied both to the initial appointment of an employee, and to successive appointments by promotion and transfer. The Full Court rejected this argument and stated (emphasis added):

While any award provision which determined the number and identity of persons whom the State is to employ is beyond constitutional competence, a provision regulating promotional transfer may or may not be beyond constitutional competence, depending on matters of degree, including the character and responsibilities of the employee ... Consequently the prohibition against award regulation goes only to initial appointment of State employees, and not to the regulation of their progress once employed. There is a qualitative difference between the regulation of the appointment of State employees and the regulation of such persons once employed. While the regulation of appointment of State employees, insofar as qualification and

¹⁸³ Ibid at 233.

¹⁸⁴ (1996) 187 CLR 416.

¹⁸⁵ Ibid at 519.

¹⁸⁶ (1996) 69 IR 221.

eligibility for employment are concerned, impairs the capacity of the State to function as a government the regulation of the promotion and transfer may or may not affect that capacity. The award variations under consideration do not regulate the number and identity of persons the State wishes to engage. They do not affect the initial employment of State workers. Consequently they are not necessarily beyond legislative competence.¹⁸⁷

Clause 10 of the Firefighting Industry Award 2010

151. Clause 10 of the modern award states:

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

152. The modern award applies to both the MFB and the CFA by virtue of the fact that both entities are constitutional corporations,¹⁸⁸ which in turn means that the FW Act applies to them by force of the corporations power in s51(xx) of the Constitution – subject to the constraints on Commonwealth power imposed by the implied limitation.

153. As public entities under the *Public Administration Act 2004* the MFB and CFA form part of the public sector of Victoria. Therefore, notwithstanding each entities status as a constitutional corporation, the public sector provisions contained in the modern award apply specifically to the MFB and the CFA as public sector employers.

Construction and impermissible effect of clause 10

154. Beyond the fact that it applies to the MFB and the CFA, clause 10 has two other essential features:

(a) First, the ordinary meaning and effect of the words “*may only employ*” indicates that the clause purports to operate upon the initial employment of employees. However, even if the clause is arguably capable of applying in some circumstances to employees already in employment, unlike the provisions considered in *Victoria v Commonwealth* which were found not to infringe the implied limitation,¹⁸⁹ it is plainly not limited in its application to existing employees.

(b) Secondly, the words “*may only employ*,” read together with the definition of “*a full-time employee*,” mean that the purported operation and effect of the clause is to

¹⁸⁷ Ibid at 234.

¹⁸⁸ See *United Firefighters’ Union of Australia v Metropolitan Fire and Emergency Services Board* [1998] FCA 551; *United Firefighters’ Union of Australia v Country Fire Authority* [2015] FCAFC 1.

¹⁸⁹ See discussion at paragraph 148 above.

prohibit public sector employers from engaging employees on any basis other than for an average of 38 hours per week. The clause therefore prohibits public sector employers, including the fire services, from engaging employees on any other basis. This would clearly preclude part-time employment which involved work of less than an average of 38 hours work per week.

155. This construction of clause 10 means that, to paraphrase the articulation of the implied limitation in *Fortescue* set out above, the clause imposes a “special disability or burden on the exercise of powers and fulfilment of functions of the States which curtails their capacity to function as governments”. The special disability or burden imposed on the States is that, unlike employers in the private sector,¹⁹⁰ State public sector employers are prohibited from engaging employees in classifications in the modern award on anything other than a full-time basis.
156. This special disability or burden is one which significantly curtails the capacity of the States to function as governments because it impairs “*the government’s right to determine the number and identity of the persons whom it wishes to employ*”.¹⁹¹ *Re AEU* establishes that that right is one which is critical to the States’ capacity to function as a government: see paragraph 146 above.
157. As outlined in paragraph 148 above, *Re AEU* makes clear that a Commonwealth law which impairs a State’s right to determine the number and identity of the persons whom it wishes to employ includes a law in relation to “*qualifications and eligibility for employment*”. Clause 10 is a provision of exactly this type. It disqualifies and renders ineligible “*for employment*” by the State’s agencies persons who do not have the availability, capacity or preference to work full-time hours.
158. By disqualifying and rendering ineligible this class of persons for employment, clause 10 impairs the right of the State to determine the number and identity of the persons whom it wishes to employ. That is because the clause would defeat the right of the State to employ a particular person if that person sought or was available for employment on anything other than a full-time basis.

¹⁹⁰ See clause 11.1 of the modern award which permits private sector employers to employ employees on a part time or full time basis.

¹⁹¹ *Re AEU* (1995) 184 CLR 188 at 232 extracted in paragraph 146 above.

159. This clearly shows the language of the *Native Title case*, clause 10 of the modern award impairs “*the capacity of the State to engage the servants it needs*”¹⁹², both in identity and number. It is a provision which, by its terms, “*impedes or burdens the State in the acquisition of the personnel it requires*”,¹⁹³ being a matter critical to the capacity of the State to function as a government.
160. Clause 10 is analogous to the provision of the workplace determination considered by a Full Bench of the Fair Work Commission in *Parks Victoria v Australian Workers’ Union*¹⁹⁴ which stipulated that seasonal employees (including project firefighters) “*shall not be used to diminish full time employment opportunities, conditions or roster opportunities for non seasonal staff*”. The Full Bench found that this provision operated to restrict the number of seasonal employees the employer could appoint and to place a qualification upon the appointment of such employees. As such it was inconsistent with the legislative expression of the *Re AEU* limitation in s 5(1)(a) of the *Fair Work (Commonwealth Powers) Act 2009* (Vic). That decision clearly constitutes a correct application of the s 5(1)(a) limitation. The *Melbourne Corporation* principle, as applied in *Re AEU*, clearly impels the same conclusion in relation to clause 10 of the Firefighting Industry Award 2010.

PART F: CONCLUSION – THE MODERN AWARDS OBJECTIVE

161. For the reasons set out in Part E of these Final Submissions, the Fair Work Commission lacks the capacity validly to include provision such as clause 10 in a modern award made under the FW Act.
162. Furthermore, even if it is assumed that the Commission does have the capacity to include such provision in a modern award, based on the evidence and submissions made on behalf of the fire services, the Full Bench should find that the modern award in its current form does not achieve the modern awards objective defined in s 134(1) of the FW Act. This is because the inclusion of clause 10 has the consequences and effects outlined below.
163. *First*, the safety net established by the modern award is not “fair” as mandated by s 134(1). It is not fair because clause 10:
- (a) prevents employees of public sector employers being employed on terms that may be suitable to them;

¹⁹² *The Native Title Act case* (1995) 183 CLR 373: extracted in paragraph 145 above.

¹⁹³ *Ibid.*

¹⁹⁴ [2013] FWCFB 950 at [334]-[335].

- (b) prevents public sector employers from employing employees on certain well established bases;
 - (c) prevents employees and employers from reaching agreement about certain types of mutually acceptable and well established types of employment;
 - (d) has a potentially discriminatory effect on employees and prospective employees as outlined in these submissions;
 - (e) has the effect that, unlike their colleagues in all other states and territories, Victorian firefighters cannot be employed on a part-time basis.
164. Part-time work is consistent with the fire services' shared objectives to create, promote and support a diverse workforce, and provide a safe healthy and respectful workplace which is free of unlawful discrimination.
165. *Secondly*, the safety net established by the modern award cannot be described as "relevant" pursuant to s 134(1). Clause 10 of the award is an anachronism. It is inconsistent with the contemporary acceptance and availability of part-time employment in the community generally, in all other firefighting forces across Australia and in other emergency services in Victoria.
166. *Thirdly*, clause 10 of the modern award hinders and cannot be said to promote "*social inclusion through increased workforce participation*" (s 134(1)(c)).
167. *Fourthly*, by prohibiting part-time employment in the public sector, clause 10 of the Award manifestly does not promote "*flexible modern work practices*" (s 134(1)(d)).
168. The capacity of an employer to employ and an employee to seek employment on a part-time basis reflect contemporary workplace and employment standards. Part-time employment is accordingly a necessary feature of a fair and relevant minimum safety net of terms and conditions of employment. As part of the award safety net, a public sector fire service should be able to cater for persons who might not seek 42 hours of work per week. The ability to employ employees on a part-time basis would afford the agencies greater opportunity to offer employment to, and retain, a greater spectrum of the community, including workers with carers' responsibilities, women with young children, and workers who are seeking flexible work practices at particular stages of their careers, including firefighters returning to work after an injury, or wishing to transition to retirement. This will in turn promote social inclusion, result in a more diverse workforce, and allow the

MFB and CFA to meet the needs of its workforce throughout the course of their working lives.¹⁹⁵

169. Further, clause 10 of the modern award does not promote flexible modern work practices or the efficient and productive performance of work, because the existing prohibition, as reflected in the Agreements, only allows for part-time work to be negotiated on an individual basis. This is inefficient and can lead to inequitable results.
170. *Fifthly*, as demonstrated by the fact that this application is brought by the MFB and the CFA, the Commission may be satisfied that the exercise of modern award powers by the making of the variations proposed will not have any undue or deleterious effects on business including productivity, employment costs and the regulatory burden (s 134(1)(f)).
171. The variation of the modern award to permit part-time employment is a necessary first step toward bringing the terms and conditions of employment of firefighters in the MFB and the CFA in line with their colleagues across Australia, ensuring the modern award meets the modern awards objective, improving diversity in the fire services, providing flexible work options, reflecting the community they service, and meeting public and social expectations.

S Moore

K Burke

16 May 2016

¹⁹⁵ See paragraph 65 and following above.

Annexure A

**TABLE OF PROVISIONS FOR PART-TIME AND/OR CASUAL EMPLOYMENT
IN MODERN AWARDS**

Award	Provision for part-time and/ or casual employment	Additional comments
Aboriginal Community Controlled Health Services Award 2010 [MA000115]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Aged Care Award 2010 [MA000018]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Air Pilots Award 2010 [MA000046]	Yes. Full-time, part-time & casual basis (11).	No detailed parameters around accessing part-time entitlements.
Aircraft Cabin Crew Award 2010 [MA000047]	Yes. Full-time, part-time & casual basis (11, 13).	No detailed parameters around accessing part-time entitlements.
Airline Operations—Ground Staff Award 2010 [MA000048]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements.
Airport Employees Award 2010 [MA000049]	Yes. Full-time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements.
Alpine Resorts Award 2010 [MA000092]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Aluminium Industry Award 2010 [MA000060]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Ambulance and Patient Transport Industry Award 2010 [MA000098]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Amusement, Events and Recreation Award 2010 [MA000080]	Yes. Full-time, part-time & casual (10.1).	No detailed parameters around accessing part-time entitlements.
Animal Care and Veterinary Services Award 2010 [MA000118]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Aquaculture Industry Award 2010 [MA000114]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.

Award	Provision for part-time and/ or casual employment	Additional comments
Architects Award 2010 [MA000079]	Yes. Full time & part time (11.1). Casual (11.2).	No detailed parameters around accessing part-time entitlements.
Asphalt Industry Award 2010 [MA000054]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.
Australia Post Enterprise Award 2015 [MA000137]	Yes. Permanent, fixed term & casual basis (14.1). Permanent or fixed term may be employed on a casual or part-time basis.	No detailed parameters around accessing part-time entitlements.
Australian Public Service Enterprise Award 2015 [MA000124]	Yes. Full-time, part-time & irregular intermittent basis (6.2).	No detailed parameters around accessing part-time entitlements. Additional allowances for part-time employment: <ul style="list-style-type: none"> • Proposals for part-time work may be initiated by the Agency Head for operational reasons or by an employee for personal reasons (clause 6.4 (c)) • An employee returning to duty from maternity leave will, on application by the employee, be given access to part-time employment (clause 6.4 (h))
Banking, Finance and Insurance Award 2010 [MA000019]	Yes. Full-time (10.1), -part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements.
Black Coal Mining Industry Award 2010 [MA000001]	Yes. Full-time, part-time & casual basis (10.1).	10.1: Casual – only for staff employee classifications in schedule B. No detailed parameters around accessing part-time entitlements.
Book Industry Award 2010 [MA000078]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements.

Award	Provision for part-time and/ or casual employment	Additional comments
Broadcasting and Recorded Entertainment Award 2010 [MA000091]	Yes. Full-time, part-time & casual basis (10.1).	<p>10.6: Special provisions for employees in cinemas</p> <ul style="list-style-type: none"> • Clauses 10.2 – 10.5 (definitions and requirements for full-time, part-time and casual employment) will not apply to employees in cinemas. <p>54 – Types of Employment</p> <ul style="list-style-type: none"> • 54.2-52.4 sets out the terms of the categories of employment • <i>So cinema employees can still be employed on a part-time or casual basis but the requirements for each category are different to other employees under the award</i> • No detailed parameters around accessing part-time entitlements (parameters around hours worked).
Building and Construction General On-site Award 2010 [MA000020]	Yes Daily hire, full-time weekly hire, part-time weekly hire & casual basis (10.1).	<p>Under (13) definition of part-time weekly hire employee is part-time employee.</p> <ul style="list-style-type: none"> • Difference is between a weekly and daily hire employee • 11: Daily hire employee is a tradesperson or labourer subject to different notice/termination rules (ie one day's notice of termination) . <p>No detailed parameters around accessing part-time weekly hire entitlements</p>
Business Equipment Award 2010 [MA000021]	Yes. Full-time (11), part-time (12) & casual (13).	No detailed parameters around accessing part-time entitlements
Car Parking Award 2010 [MA000095]	Yes. Full-time, part-time & casual (10.1).	No detailed parameters around accessing part-time entitlements
Cement and Lime Award 2010 [MA000055]	Yes. Full-time, part-time & casual (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Cemetery Industry Award 2010 [MA000070]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Children’s Services Award 2010 [MA000120]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Chullora Printing Award 2015 [MA000127]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Cleaning Services Award 2010 [MA000022]	Yes. Full-time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements
Clerks—Private Sector Award 2010 [MA000002]	Yes. Full-time (11), part-time (12) & casual (13).	No detailed parameters around accessing part-time entitlements
Coal Export Terminals Award 2010 [MA000045]	Yes. Full-time (10.1), -part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Commercial Sales Award 2010 [MA000083]	Yes. Full-time (10.2), part-time (10.3), casual (10.4).	No detailed parameters around accessing part-time entitlements
Concrete Products Award 2010 [MA000056]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Contract Call Centres Award 2010 [MA000023]	Yes. Full-time (11), part-time (12) & casual (13).	No detailed parameters around accessing part-time entitlements
Corrections and Detention (Private Sector) Award 2010 [MA000110]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Cotton Ginning Award 2010 [MA000024]	Yes. Full-time, part-time & casual basis (10.1)..	No detailed parameters around accessing part-time entitlements
Dredging Industry Award 2010 [MA000085]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Dry Cleaning and Laundry Industry Award 2010 [MA000096]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Educational Services (Post-Secondary Education) Award 2010 [MA000075]	Yes. Full-time, part-time, casual & seasonal basis (10.1).	No detailed parameters around accessing part-time entitlements
Educational Services (Schools) General Staff Award 2010 [MA000076]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Educational Services (Teachers) Award 2010 [MA000077]	Yes. Full-time, part-time, casual & fixed term basis (10.1).	No detailed parameters around accessing part-time entitlements
Electrical, Electronic and Communications Contracting Award 2010 [MA000025]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Electrical Power Industry Award 2010 [MA000088]	Yes. Full-time (10), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements
Fast Food Industry Award 2010 [MA000003]	Yes. 10.1 – full-time, part-time & casual.	No detailed parameters around accessing part-time entitlements
Fire Fighting Industry Award 2010 [MA000111]	Yes (private sector only) Full-time or part-time (11.1).	Part-time not available in the public sector (10).
Fitness Industry Award 2010 [MA000094]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Food, Beverage and Tobacco Manufacturing Award 2010 [MA000073]	Yes. Full-time (11), part-time (12.) & casual (13).	No detailed parameters around accessing part-time entitlements
Funeral Industry Award 2010 [MA000105]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Gardening and Landscaping Services Award 2010 [MA000101]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Gas Industry Award 2010 [MA000061]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
General Retail Industry Award 2010 [MA000004]	Yes. Full-time (11), part-time (12) & casual basis (13).	No detailed parameters around accessing part-time entitlements
GrainCorp Country Operations Award 2015 [MA000138]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Graphic Arts, Printing and Publishing Award 2010 [MA000026]	Yes. Full-time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements
Hair and Beauty Industry Award 2010 [MA000005]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Health Professionals and Support Services Award 2010 [MA000027]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Higher Education Industry— Academic Staff—Award 2010 [MA000006]	Yes. Full-time (11.1), part-time (11.2) & fixed term (11.3)	11.3 - fixed term employment limited to certain work. NB: all under a contract of employment. No detailed parameters around accessing part-time entitlements save for clause 11.2 which provides: <i>“Part-time employment may contain a reasonable probationary period that is directly related to the nature of the work to be carried out under the contract.”</i>
Higher Education Industry— General Staff—Award 2010 [MA000007]	Yes. Full-time (10.1), part-time (10.2), fixed term (10.3) & casual (12).	11.3 - fixed term employment limited to certain work. NB: full-time, part & fixed term under a contract of employment (10). No detailed parameters around accessing part-time entitlements save for clause 10.2 which provides: <i>“Part-time employment may contain a reasonable probationary period that is directly related to the nature of the work to be carried out under the contract.”</i>
Horse and Greyhound Training Award 2010 [MA000008]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Horticulture Award 2010 [MA000028]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Hospitality Industry (General) Award 2010 [MA000009]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Hydrocarbons Field Geologists Award 2010 [MA000064]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Hydrocarbons Industry (Upstream) Award 2010 [MA000062]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Joinery and Building Trades Award 2010 [MA000029]	Yes. Full-time (10), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements
Journalists Published Media Award 2010 [MA000067]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Labour Market Assistance Industry Award 2010 [MA000099]	Yes. Full-time, part-time, casual & sessional basis (10.1).	No detailed parameters around accessing part-time entitlements
Legal Services Award 2010 [MA000116]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Live Performance Award 2010 [MA000081]	Yes. Full-time, part-time, weekly & casual (10.1).	No detailed parameters around accessing part-time entitlements
Local Government Industry Award 2010 [MA000112]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Mannequins and Models Award 2010 [MA000117]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Manufacturing and Associated Industries and Occupations Award 2010 [MA000010]	Yes. Full-time (12), part-time (13) & casual (14).	No detailed parameters around accessing part-time entitlements
Marine Tourism and Charter Vessels Award 2010 [MA000093]	Yes. Full-time (10.1), part-time (10.2) & casual (10.3).	No detailed parameters around accessing part-time entitlements
Marine Towage Award 2010 [MA000050]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Maritime Offshore Oil and Gas Award 2010 [MA000086]	No. Full-time & relief basis (10.1).	10.3 – relief employment. A relief employee is: (a) engaged to cover one-off periods of relief; or (b) engaged to work on a project of finite life; and (c) receives, on a pro rata basis, equivalent pay and conditions to full-time employees. Part-time entitlements do not apply.
Market and Social Research Award 2010 [MA000030]	Yes. Full-time, part-time & casual basis (11).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Meat Industry Award 2010 [MA000059]	Yes. Full-time, part-time, casual & daily hire (including part-time daily hire) basis (11.1).	11.1 – daily hire (including part-time daily hire) is only for meat processing. No detailed parameters around accessing part-time entitlements except that pattern of work pertaining to part-time daily hire does not apply to a meat processing establishment (clause 13.4).
Medical Practitioners Award 2010 [MA000031]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015 [MA000130]	Yes. Part-time (12) & casual (13).	No detailed parameters around accessing part-time entitlements
Mining Industry Award 2010 [MA000011]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Miscellaneous Award 2010 [MA000104]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Mobile Crane Hiring Award 2010 [MA000032]	Full-time weekly hire & casual basis (10.1). Part time available only for casual employees.	No provision for part-time if not a casual employee. Part-time entitlements do not apply.
Northern Territory News Award 2015 [MA000129]	Yes. Weekly-full-time, weekly part-time & casual (11.1)	No detailed parameters around accessing part-time entitlements
Nursery Award 2010 [MA000033]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Nurses (ANMF—Victorian Local Government) Award 2015 [MA000131]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Nurses and Midwives (Victoria) State Reference Public Sector Award 2015 [MA000125]	Yes. Full-time, part-time & casual basis (10.1)..	No detailed parameters around accessing part-time entitlements
Nurses Award 2010 [MA000034]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Oil Refining and Manufacturing Award 2010 [MA000072]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Optus Award 2015 [MA000133]	Yes. Full-time, part-time, casual, fixed term & project basis (8.1).	No detailed parameters around accessing part-time entitlements
Passenger Vehicle Transportation Award 2010 [MA000063]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Pastoral Award 2010 [MA000035]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Pest Control Industry Award 2010 [MA000097]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Pharmaceutical Industry Award 2010 [MA000069]	Yes. Full-time (1), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements
Pharmacy Industry Award 2010 [MA000012]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Plumbing and Fire Sprinklers Award 2010 [MA000036]	Yes Part-time (13) & casual (14).	<p>Type of employment is specified as daily hire, weekly hire or casual.</p> <ul style="list-style-type: none"> • 10.1 – daily hire only applies to public & mechanical services. <p>Presumably daily hire or weekly hire can be employed as part-time:</p> <ul style="list-style-type: none"> • 12.2 specifies that a “full-time weekly hire” works an average of 38 ordinary hours/week • Daily hire does not specify hours. • As a matter of construction would seem by implication either can be part-time (less than 38 hours/week). <p>No detailed parameters around accessing part-time entitlements</p>
Port Authorities Award 2010 [MA000051]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Ports, Harbours and Enclosed Water Vessels Award 2010 [MA000052]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Poultry Processing Award 2010 [MA000074]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Premixed Concrete Award 2010 [MA000057]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Printing Industry—Herald & Weekly Times—Production Award 2015 [MA000126]	Yes. Casual (10) & Part-time (11).	No detailed parameters around accessing part-time entitlements
Professional Diving Industry (Industrial) Award 2010 [MA000108]	Yes (casual but no part-time). Full-time & casual basis (10.1).	10.2 – full-time employee restrictions: (a) inshore drivers must be employed by the week (b) For offshore divers, employment for the first four weeks will be on a weekly basis and thereafter will be on a calendar month basis. Part-time entitlements do not apply.
Professional Diving Industry (Recreational) Award 2010 [MA000109]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Professional Employees Award 2010 [MA000065]	Yes. (Contract of employment) – full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Quarrying Award 2010 [MA000037]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Queensland Newspapers Pty Ltd Printing (Murarrie) Award 2015 [MA000128]	Yes. Part-time (10) & casual (11).	No detailed parameters around accessing part-time entitlements
Racing Clubs Events Award 2010 [MA000013]	Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Racing Industry Ground Maintenance Award 2010 [MA000014]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Rail Industry Award 2010 [MA000015]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Real Estate Industry Award 2010 [MA000106]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Registered and Licensed Clubs Award 2010 [MA000058]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Restaurant Industry Award 2010 [MA000119]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Road Transport and Distribution Award 2010 [MA000038]	Yes. Full--time, part-time & casual basis (12.1).	No detailed parameters around accessing part-time entitlements
Road Transport (Long Distance Operations) Award 2010 [MA000039]	Yes (casual but no part-time). Full-time & casual (10.1).	CI 4.2 which provides that the award does not cover an employee who is temporarily required to perform driving duties which are not on a long distance operation. In this case, the employee is covered by the Road Transport and Distribution Award 2010, which does provide for part-time employment. Part-time entitlements do not apply.
Salt Industry Award 2010 [MA000107]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Seafood Processing Award 2010 [MA000068]	Yes. Full-time(10), part-time (11) & casual (12).	No detailed parameters around accessing part-time entitlements
Seagoing Industry Award 2010 [MA000122]	No. Full-time & relief (10.1).	10.3 – relief employment: <ul style="list-style-type: none"> An employee who is engaged as such. Part-time entitlements do not apply.
Security Services Industry Award 2010 [MA000016]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Silviculture Award 2010 [MA000040]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Sporting Organisations Award 2010 [MA000082]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
State Government Agencies Award 2010 [MA000121]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Stevedoring Industry Award 2010 [MA000053]	Yes (casual but no part-time). Full-time, guaranteed wage & casual basis(10.1).	10.2 – guaranteed wage employees: <ul style="list-style-type: none"> an employee who is guaranteed a minimum number or an average number of full shifts each week, or instead of that engagement, is provided the equivalent payment. <i>NB: somewhat similar to part-time employment.</i> No detailed parameters around accessing “guaranteed wage” entitlements
Storage Services and Wholesale Award 2010 [MA000084]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Sugar Industry Award 2010 [MA000087]	Yes. Full-time (11.1), part-time (11.2) & casual (11.3).	No detailed parameters around accessing part-time entitlements
Supported Employment Services Award 2010 [MA000103]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Surveying Award 2010 [MA000066]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Telecommunications Services Award 2010 [MA000041]	Yes. Full-time, part-time & casual (11).	No detailed parameters around accessing part-time entitlements
Telstra Award 2015 [MA000123]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Textile, Clothing, Footwear and Associated Industries Award 2010 [MA000017]	Yes. Full-time (12), part-time (13), casual (14).	No detailed parameters around accessing part-time entitlements but note the following: <ul style="list-style-type: none"> An employer must not require a part-time employee to attend for duty more than once on any one day (clause 13.8) – this does not appear in other awards
Timber Industry Award 2010 [MA000071]	Yes. Full-time (12.1), casual (12,2), part-time (12.4), pieceworker (general timber stream) (12.5).	No detailed parameters around accessing part-time entitlements

Award	Provision for part-time and/ or casual employment	Additional comments
Transport (Cash in Transit) Award 2010 [MA000042]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Travelling Shows Award 2010 [MA000102]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Vehicle Manufacturing, Repair, Services and Retail Award 2010 [MA000089]	Yes. Full-time, part-time & casual basis (10.1).	Caveat in 12.1 – part-time employment: <ul style="list-style-type: none"> • does <u>not</u> apply to a person employed principally as a vehicle salesman. However (44) – special provisions for persons employed principally to sell vehicles <ul style="list-style-type: none"> • 44.2 – allows part-time employment but subject to different hours to general requirements in 12.1 No detailed parameters around accessing part-time entitlements aside from what is noted above.
Victorian Local Government Award 2015 [MA000132]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Victorian State Government Agencies Award 2015 [MA000134]	Yes. Full-time, part-time & casual basis (8.1).	No detailed parameters around accessing part-time entitlements
Viterra Bulk Handling and Storage of Grains, Pulses and Minerals Award 2015 [MA000136]	Yes. Full-time, part-time & casual basis (10).	No detailed parameters around accessing part-time entitlements
Waste Management Award 2010 [MA000043]	Yes. Full-time, part-time & casual basis (11.1).	No detailed parameters around accessing part-time entitlements
Water Industry Award 2010 [MA000113]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Wine Industry Award 2010 [MA000090]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements
Wool Storage, Sampling and Testing Award 2010 [MA000044]	Yes. Full-time, part-time & casual basis (10.1).	No detailed parameters around accessing part-time entitlements