

### UFUA’s Outline of Submissions in Reply

1. These submissions are filed in accordance with the Directions made by Ross P on 24 December 2016, as amended on 31 March 2016, and in opposition to application to vary the Modern Award.

#### A. The UFUA’s Position

2. The UFUA opposes both the first limb of the application, being the introduction of part-time employment in the Award; and the second limb of the application, being the a new shift arrangement for operational firefighters. The grounds of the UFUA’s opposition are as follows:
  - (i) The Full Bench in the Award Modernisation Decision did not previously consider that the introduction of a part-time term for the Public Sector was ‘necessary’ to achieve the modern award objectives.<sup>1</sup> Moreover, at least two of the major parties did not even consider it appropriate, far less necessary, to introduce part-time work into the public sector in 2009.<sup>2</sup> This approach was consistent with the position adopted in 2000 before Hingley C wherein the issue of part-time employment was agreed.<sup>3</sup> Nothing in the Applicants’ submissions identifies a significant factual change such as to now render ‘necessary’ the inclusion of the proposed terms for the purposes of s 157 of the FW Act.
  - (ii) The evidence going to the effect of the proposed variations on skills maintenance, teamwork, safety and optimal service delivery. Each of the moving parties have recognized in their respective enterprise agreements that, “*for reasons including the welfare and safety of employees*”, the standard rostering arrangement for operational firefighters is the 10/14 Roster<sup>4</sup>, and no part-time employment should be provided for<sup>5</sup> (see also Lucinda Nolan at [30(e)]; Joseph Anthony Buffone at [20]-[22]);

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<sup>1</sup> Section 157 of the *Fair Work Act 2009* (Cth) (**FW Act**); *Award Modernisation Decision* [2009] AIRCFB 945 (4 December 2009) at [51].

<sup>2</sup> *Cf* Applicants’ Submissions at [22]-[23] citing the *Award Modernisation Decision* [2009] AIRCFB 945 (4 December 2009) at [51].

<sup>3</sup> *Re Victorian Firefighting Industry Employees Interim Award 1993* [2000] AIRC 1361 (M Print S3127 (1 March 2000) per Hingley C; Note that the Respondent expands on the significance of the decision of Hingley C below in light of the comments by the Full Bench in the *Award Modernisation Decision* [2009] AIRCFB 945 (4 December 2009) at [51].

<sup>4</sup> Clauses 76, 77 of the MFB-UFU Enterprise Agreement 2010 ([2010] FWAA 7414); Clauses 75, 76 of the CFA-UFU Enterprise Agreement 2010 ([2010] FWAA 8164).

<sup>5</sup> Clause 37 of the MFB-UFU Enterprise Agreement 2010 ([2010] FWAA 7414); Clause 29 of the CFA-UFU Enterprise Agreement 2010 ([2010] FWAA 8164).

- (iii) The lack of clarity in the Applicants' evidence and submissions as to the parameters (if any) that are appropriate to erect around any variations in the nature of those sought. There is a serious disjunct between the Applicants' evidence and submissions in this respect: the evidence from many of the Applicants' own witnesses offers at best heavily qualified support for the introduction of part-time working arrangements which the submissions fail to grapple with (see Respondent's Submissions below at [4]-[5(e)).
  - (iv) The effect the variations would have on the 10/14 roster system. The 10/14 roster system has been the subject of much litigation. This application has the potential to result in a retrograde step in this respect. The proposed 'day worker' classification advanced in the Draft Determination has similarly been an issue heavily litigated in the past on the basis that the operational day worker classification (now re-proposed by the Applicants) created an undesirable stratification amongst firefighters. The current roster cycle, which includes a Special Duties Roster<sup>6</sup>, represents the culmination of that industrial history and provides the optimal balance between flexibility and the maintenance of the necessary skills and teamwork required in the firefighting service.
  - (v) Whether there is any actual intention to introduce part-time employment, either on a qualified basis or at all.
3. Notwithstanding the submissions in opposition to the proposed Award variations collocated above, the UFUA is mindful of the Full Bench's jurisdiction to promote both social inclusion and flexible modern work practices (s. 134). Accordingly, whilst the UFUA presses its opposition to part-time work for operational firefighters in this application, it wishes to identify a number of issues raised in the Applicant's evidence, and to test this evidence at the hearing whilst reserving its right to advance a position on the issue prior to the date set aside for final submissions.<sup>7</sup>
4. In this respect, the UFUA notes that the Applicants' heavily qualify their submissions by offering that "*there is no insurmountable operational impediment to part-time work in the emergency services*" (Applicants' Submissions at [36]; see also Kirsty Schroder at [27], [30]). These submissions and the evidence led by the Applicants' in support of their own case therefore implicitly accept that substantial impediments exist to the introduction of the variations now being sought. None of those impediments are, however, identified in the Applicants' submissions.
5. The UFUA therefore intends to identify and explore the impediments to the introduction of the variations sought (including those identifiable in the Applicants' own materials) so that the Full Bench can determine whether they represent good reason to reject the application or, if not, whether *inter alia* the

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<sup>6</sup> Award subclauses 22.4(b)-(c) and 22.7.

<sup>7</sup> The Directions provide for final written submissions to be filed after the initial hearing dates and prior to a final oral hearing on 17 June 2016: Order 7 of the Directions of 24 December 2015.

following issues should find expression in any Award as qualifications to the general terms of the Draft Determination:

- (i) Whether the form of the existing Award, including the provision for a Special Duties Roster (or its equivalent), obviates the need for the variations sought (Michael Anthony Werle at [17]-[20]).
- (ii) Whether the engagement of part-time employees should be in excess of, or form part of, minimum staffing measures (Michael Anthony Werle at [19]).
- (iii) Whether there should be a pilot program to test the suitability of any significant change to working arrangements in the form advanced in the Applicant's case (Lucinda Nolan at [12]-[14]<sup>8</sup>; Alex Tasominos at [13]).
- (iv) Whether the engagement of part-time employees should be subject to a request and subsequent approval by the employer or the parties to the Award (David Ali Youssef at [18]; Kirsty Schroder at [25]; Peter Douglas Rau at [12]-[13]) - and if so, what criteria would be considered reasonable grounds to reject any such application.
- (v) Whether factors such as operational needs (Gregory Leach at [23]-[25], [31]), or unreasonable increases in the workload and overtime to be performed by other employees (Bruce Raymond Byatt Annexure BB-2 at clause 57.2(d)) should be overriding considerations in the approval of any flexible work arrangements.
- (vi) Whether the 10/14 Roster is able to, or should, accommodate part-time employment (as suggested by [2] and [9] of the Draft Determination); and if not, what the new shift arrangements should entail (*cf* Applicant's submissions at [42(a)]<sup>9</sup>).
- (vii) Whether any part-time term should be limited to circumstances involving:
  - a. Transitioning to retirement (Kirsty Schroder at [20]-[22]);
  - b. Transitioning from sick leave or injury (Joseph Anthony Buffone at [17]);
  - c. Transitioning from parental leave (Kirsty Schroder at [23]; Gregory Leach at [28]; Lucinda Nolan at [20]);
  - d. Family or carer responsibilities (Kirsty Schroder at [23]; Gregory Leach at [28]; Lucinda Nolan at [20]; Joseph Anthony Buffone at [17]);
  - e. Study leave (Lucinda Nolan at [20]).

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<sup>8</sup> The evidence concerns a trial of part-time working arrangements in the Victoria Police Service in the early 1990s that lasted for five years before its was finally approved.

<sup>9</sup> Part-time work is available in the ACT Agreement 'within the 10/14 Roster'.

- (viii) Whether any part-time employment should be limited to job-sharing (Bruce Raymond Byatt at [12]<sup>10</sup>; Kirsty Schroder at [29]-[30]; Gregory Leach at [27]).
- (ix) Whether any term introducing part-time employment should be limited to certain ranks; and if so, which ranks (Kirsty Schroder [13], [31]).
- (x) Whether limits should be placed on secondary work for employees who undertake part-time work, and if so, what those limits should be (Bruce Raymond Byatt Annexure BB-2 at clause 57.6<sup>11</sup>).
- (xi) The basis upon which employees would qualify to work the proposed Day Work classification and shift arrangements (in [4] of the Draft Determination); and whether these arrangements should be available for part-time employees only.

## **B. Further Submissions in Opposition to Award Variation Application**

### *B(i) – The Relevance of the Industrial History*

6. This industrial history concerning the parties' efforts to standardise working-time arrangements in the firefighting industry is relevant to the present question of whether such hard fought conditions of employment previously consented to and approved by the Commission should be fundamentally varied.<sup>12</sup>
7. From 1845 to 1890 firefighting in Victoria relied upon volunteers and 'auxiliaries' who typically had other primary employment but who responded to emergencies and were partly paid in recompense.<sup>13</sup> Volunteers and auxiliaries were poorly trained and organised, often confined to private organisations run by insurance companies or by employers with large premises.
8. The 1890 Fire Brigades Act provided for the establishment of a permanent, salaried Fire Brigade, divided between the Metropolitan Fire Brigade, and the Country Fire Brigades Board. By 1891, the MFB had 59 permanent firefighters + 226 auxiliaries.<sup>14</sup>
9. Initially full-time firefighters were on 'continuous service' or 'continuous duty'. That is they lived on the job and were available up to 24 hours a day, 365 days a year. In Victoria in 1892, for example, employment was almost continuous,

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<sup>10</sup> The witness gives only a single example of where part-time employment was utilized in his experience.

<sup>11</sup> The Northern Territory Fire and Rescue Service Enterprise Agreement (to which the UFU was not a party) places conditions on any paid outside employment that an employee may take up as a result of accessing flexible work initiatives.

<sup>12</sup> Bowden, B. (2009) *Against All Odds: The History of the United Firefighters Union in Queensland 1917-2008*, Sydney, Federation Press; Wilde, S. (1991) *Life Under the Bells: A History of the Metropolitan Fire Brigade, Melbourne, 1891-1991*, Melbourne, Longman.

<sup>13</sup> Wilde, S. (1991) *Life Under the Bells: A History of the Metropolitan Fire Brigade, Melbourne, 1891-1991*, Melbourne, Longman pp 3-25.

<sup>14</sup> Wilde, S. (1991) *Life Under the Bells: A History of the Metropolitan Fire Brigade, Melbourne, 1891-1991*, Melbourne, Longman p 32.



though with one day off a week and three days annual leave. As late as the 1940s, firefighters worked up to 108 hours per week.

10. The continuous duty system was not completely abolished in Victoria until 1950 with the introduction of the 40 hour, 5 day week.<sup>15</sup> Volunteer and partly paid firefighters were disbanded within the MFB in 1950, and only full-time firefighters were employed. Full-time work in teams provided the framework for building an *esprit de corps*, including the ongoing training and equipment checks that were necessary to ensure readiness.<sup>16</sup>
11. The present 10/14 Roster system was introduced in Victoria in 1972.<sup>17</sup> It remains the dominant arrangement in Victoria, and other states: Margareth Thomas at [15].<sup>18</sup>
12. Firefighting relies heavily on the ability of workers to work as a team in stressful situations. Much depends on the quality of the training, both basic and continuing training. The 10/14 roster system plays an important role in this. It allows teams to form and for team members to build confidence in each other's skills and capabilities. The continuity of team membership, whereby a group of workers in platoons work and train together, becomes critical when the same group is faced with a life-threatening situation.
13. It is on this basis that both the MFB and the CFA agreed, as recently as 2010 to:
  - (i) limit the types of employment to full-time engagement only<sup>19</sup>; and
  - (ii) restrict the available rosters to the 10/14 Roster for operational firefighters (together with emergency and special duties rosters for exceptional cases).<sup>20</sup>

*B(ii) – The 10/14 Roster System before the Commission*

14. The Full Bench of the Commission said of a 2000 decision of Hingley C that *“Commissioner Hingley’s decision makes no mention of part-time employment. In those circumstances, we do not see that decision as constraining us from considering for ourselves whether part-time employment is appropriate in this*

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<sup>15</sup>However officers continued to work longer – initially 96 hours, then decreasing to 84, and then to 56 hours (24 hours on and 48 hours off) by 1962; Wilde (1991) *supra*, pp 150-152, 160.

<sup>16</sup>This will be canvassed in the Respondent’s evidentiary materials.

<sup>17</sup>Wilde (1991) *supra*, pp 164-165.

<sup>18</sup>Note that the standard working hours are 38, so two of these hours are paid as overtime and two accrue as additional recreation leave. There are some day-work positions for tasks such as training and community safety, and in some country areas a few employees are on a day-work roster at fire stations where 24 hour coverage is not in place.

<sup>19</sup>Clause 37 of the MFB-UFU Enterprise Agreement 2010 ([2010] FWAA 7414); Clause 29 of the CFA-UFU Enterprise Agreement 2010 ([2010] FWAA 8164).

<sup>20</sup>Clauses 76, 77 of the MFB-UFU Enterprise Agreement 2010 ([2010] FWAA 7414); Clauses 75, 76 of the CFA-UFU Enterprise Agreement 2010 ([2010] FWAA 8164).

*industry and we are far from persuaded that part-time employment should not be available”.*<sup>21</sup>

15. Whilst it is accepted that the Full Bench is not constrained by a single instance decision made in an earlier statutory setting, the ‘circumstances’ in which Hingley C made the decision, including the evidence and the statutory setting, suggest that the issue of part-time employment was determined.
16. The matter before Hingley C was an award simplification hearing undertaken pursuant to Item 51 of Schedule 5 of the *Workplace Relations and other Legislation Amendment Act 1996* (Cth).<sup>22</sup> Item 51(7)(b) of the WROLA provided that “(7) *The Commission must also review the award to determine whether or not it meets the following criteria:.. (b) where appropriate, it contains provisions enabling the employment of regular part-time employees*”.
17. The CFA sought to initially modify the firefighting award to vary the roster provisions to allow for part-time work. The material filed by the parties dealt with the issues associated with the introduction of part-time work to the industry.
18. The parties then adopted a consent position in the form of a joint position, signed by the parties on 24 November 1999, and which is set out on the transcript of the hearing on 1 December 1999 from page 1010. Paragraph 2 of that joint submission notes as follows:

*“The Parties consider that it is not appropriate to employ part-time firefighters or officers in the CFA”.*

19. The transcript then notes that a further joint submission was signed off on between the parties on 1 December 1999 (Exhibit #UFU44; recorded from transcript page 1018), clause 8 of which provides:

## **B. PART-TIME EMPLOYMENT**

8. The parties submit that, having regard to the nature of the industry and of the firefighting occupation, it is not appropriate to employ part-time firefighters and officers in the CFA. Accordingly, the Commission need make no variation to the Award in this regard.
20. Hingley C accordingly decided that “*As varied the award will I believe satisfy the criteria set out in sub-items (6) and (7) of Item 51 of Part 2 of Schedule 5 of the WROLA Act.*” (at [39]). It is apparent from [5]-[7] of decision that Hingley C chose to give reasons on the matters that remained in contention between the parties. However, the Commissioner nevertheless reviewed the materials and satisfied himself that the statutory requirements were satisfied – as he was required to do.

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<sup>21</sup> *Award Modernisation Decision* [2009] AIRCFB 945 (4 December 2009) at [51], referring to *Re Victorian Firefighting Industry Employees Interim Award 1993*, Print S3127, 1 March 2000.

<sup>22</sup> “WROLA”

21. The second Joint Submission of the parties noted by Hingley C also deal with the issue of the 10/14 Roster. The parties agreed that the provisions relating to ‘day firefighters’ were obsolete and so should be removed from the Award (Transcript p 1018). The joint submission provided:

**A. DAY FIREFIGHTERS**

3. The draft Award makes it clear that firefighters and fire officers may be employed on the 10/14 roster, the ‘not subject to the 10/14 roster’ basis or on the special duties roster. Such employees are paid the same total weekly wage under the Award as firefighters or fire officers on a 10/14 shift roster.
  4. Since 1986 the CFA has not employed any firefighter or fire officer pursuant to the Award on other than the 10/14 roster, the special duties roster or the ‘not subject to the 10/14 roster’ basis.
  5. The parties accordingly submit that the Award provisions relating to day firefighters are obsolete.
  6. Consistent with the provisions of WROLA, the parties submit that the Award ought be varied by removing the obsolete provisions of the Award.
22. These submissions were accepted.

**C. Submissions in relation to the qualifications that might apply to any variation**

*C(i) Response to submissions flowing from the Applicants’ evidence*

23. The Applicants’ submissions at [36] state that the evidence led by them “*support[s] the notion that there is no insurmountable operational impediment to part-time work in the emergency services*”.
24. To the contrary, it remains far from clear that, based on the Applicants’ witness accounts, an unfettered part-time clause in the form advanced in the Draft Determination would present no insurmountable impediment. What is clear from this evidence is that there are many qualifications identified by the Applicant’s witnesses.
25. No witness who sought to delve into the issues at any length ventured so far as to give unqualified support the introduction of unfettered part time work. This leaves the evidence in a state where the distillation of a concise clause that has the approval of all of the Applicant’s witnesses appears unattainable.
26. The starting point is that none of the Applicants’ witnesses gives approval to the Draft Determination. There is no suggestion that any of the witnesses were even shown the proposed clause.

27. The second point is that there is a litany of qualifications to the approval of part-time work by the Applicants' witnesses, many of which appear inconsistent with the Draft Determination proffered.<sup>23</sup> As a result it cannot be said that the submission in favour of the introduction of unfettered part-time work is supported by the evidence.

*C(ii) Response to submissions in respect of the situation in other jurisdictions*

28. The Applicants' submissions at [42] in respect of part-time arrangements in other States must also be understood in light of the various qualifications that exist therein.
29. Part-time work is not generally available for operational employees undertaking shift work in South Australia, Tasmania, Western Australia, Northern Territory or Victoria:
- (i) The Firefighting Industry Employees (South Australian Metropolitan Fire Service) Award 2007 recognises part-time employment only in respect of parental leave (clause 22.12; "by agreement with the employer"; and where "it is necessary or desirable because of the pregnancy"). The South Australian Metropolitan Fire Service Agreement 2014 supersedes the Award (clause 6) and provides in clause 24.3 that "*an employee is entitled to return to work after maternity or adoption leave on a part-time basis, at the employee's substantive level, until the child's second birthday*". Clause 24 appears as an exception to the terms of Part B of the Agreement which expressly applies to full time fire fighters. The entitlement is restricted to employees returning from maternity leave and for a maximum period of two years.
  - (ii) The Tasmanian Fire Fighting Industry Employees' Industrial Agreement 2014 incorporates the terms of the Tasmanian Fire Fighting Industry Award 2000: Clause 8. Although clause 34 of the Agreement clause 1 – Hour of Work defines a 'part time employee', clause 1 of Part V of the Award provides that rostered shift employees work the hours in the 10/14 Roster – being 42 hours per week. The Agreement only deals with hours of work in a facilitative manner. The chapeau to the hours of work clause in the Agreement (clause 26) provides for 'alternatives' to the hours of work in the Award to be available by way of agreement in writing of the parties "*to meet a specific workplace need*". The Agreement refers in clause 61 to "Family-Friendly Working Arrangements" which "*could include non-standard and variable starting and/or finishing times, parental leave, lactation breaks, State Service Accumulated Leave, part-time work, and job sharing*". The Award in turn only refers to part-time work in this respect in Clause 5 – Parental Leave which provides that "*Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.*" The Applicants' submission that 'part-time work is permitted' in Tasmania cannot follow from the above analysis

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<sup>23</sup> Relevant paragraphs from the Applicants' witness statements in this respect are cited in [5] above.

without qualification. The availability appears limited to circumstances where it is agreed in writing between the parties as a result of a special need arising from family-related needs.

- (iii) As identified in the Applicants' submissions, the Western Australian Fire Service Enterprise Bargaining Agreement 2014 does not provide for part-time work for operational firefighters working the 10/14 Shift (clause 14).<sup>24</sup> The reference to the development of a "part-time/job share arrangement" by the parties in the future is conditioned by clause 19(6)(c) which provides that "*consideration shall be given to equal opportunity considerations, impact on training, impact on staffing numbers, health and safety, and the management of part time/job share arrangements in developing this arrangement*". That is, any scheme which is agreed will involve job sharing (as opposed to free standing part-time employment), and may be qualified by a number of other criteria which flow from the issues identified in the subclause.
- (iv) The Northern Territory Public Sector Fire and Rescue Service 2011 – 2013 Enterprise Agreement is made with the United Voice as the only union party. The Agreement provides that the roster system for an employee assigned to fire-fighting duties will be the 10/14 Roster System Shift (clause 35.1). The exceptions to this arrangement are limited to parental leave where the employee is "entitled to request" within a specified time that the CEO allow a return to work on a part-time basis "until the child reaches school age". Clause 57 of the Agreement deals with work-life balance initiatives, and expressly provides for part-time employment as a suite of options (which include part-year employment and job-sharing). Clause 57.2 makes it apparent that there is no right to access part-time work; but that it is at the discretion of the Director; and that the Director must consider *inter alia* whether "operational requirements are met and services to the public are not disrupted"; and that the "approval of the application will not result in unreasonable increases in the workload and overtime required to be performed by other employees": clauses 57.2(a) and (d). Moreover, an employee taking up part-time employment "may only engage in paid outside employment in accordance with the *PSEM Act* and clause 15 of Employment Instruction 13 (NTPS Code of Conduct)".<sup>25</sup>
- (v) The Queensland Fire and Emergency Services - Determination 2013 provides that the "10/14 roster will remain in place as the recognised shift roster for continuous shift workers": clause 19(a). Clause 19(c) in turn provides that "[T]his roster necessitates the working of an average of 42 hours per week". Part-time work is only contemplated as part of what is

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<sup>24</sup> Clause 19(1) provides that (only) "*Communication Systems Officers and non-rostered shift workers may be engaged on a part time basis*".

<sup>25</sup> Section 61 of the *Public Sector Employment and Management Act* (NT) relevantly provides that "An employee must not engage in paid employment outside his or her duties as an employee except with the approval of his or her Chief Executive Officer"; and that "A Chief Executive Officer must not give approval unless satisfied the paid employment will not interfere with the performance by the employee of his or her duties."

called the “Reserve Roster” in Clause 20. Clause 20 discloses that the reserve roster is used to supplement the existing roster “as required (cl. 20(a); “*may be deployed to the main roster to meet operational requirements*”: cl. 20(c)); may include full-time and ‘part-time’ employees (cl 20(d)); that staff will not be allocated to the reserve roster “*on a long term basis*”, or “*without their consent*” (cl. 20(f)); and that graduates from the recruit course “*can exit from completion of the recruit course and spend a period of up to 16 weeks on the reserve roster as part of their structured training and development, rotating or relieving at different stations prior to being appointed to an employment location*” (cl 20(g)). From these clauses, it is apparent that the part-time provisions are designed to establish a separate cadre of fire-fighters outside of the standard 10/14 Roster to relieve in order to meet operational requirements on an as needs basis. There is nothing equivalent to this arrangement contemplated by the Draft Determination.

- (vi) The ACT Public Sector ACT Fire & Rescue Enterprise Agreement 2013 – 2017 (*cf* the Applicants’ submissions at [42(a)]) provides for part-time employment in qualified circumstances, namely:
  - (i) as one of suite of measures available to employees with caring responsibilities (cl 56).
  - (ii) after leave following the birth or adoption of a child for “up to three years from the birth or adoption of the child”, and “in non-rostered shiftwork roles”: (cl. 62.1); and
  - (iii) otherwise:
    - i. any approval is “*contingent on sufficient operational staffing in full time equivalents*” and “*part time employees will be allocated to the relief roster*” (cl. 58.1(b));
    - ii. employees who seek to access part-time provisions “*must have a minimum of 3 years operational experience in the Fire Service and be at a classification of FB 4 or higher*” (cl. 58.1(c));
    - iii. if an employee on part time work arrangements “*is promoted to or within officer classifications (FB6-FB8) the employee must revert to full time employment for a period of not less than two years*” (cl. 58.1(g));
    - iv. to ensure maintenance of their core and specialist skills, part time employees “*will be required to attend mandatory and specialist training regardless of their normal pattern of work*” (cl. 58.2);
    - v. any attendance on 10/14 roster will be for a complete shift in accordance with job-sharing arrangements (cl 61.4).
- (vii) The NSW Crown Employees (Fire and Rescue NSW Permanent Firefighting Staff) Award 2016 provides for a standard 40 hour week for operational firefighters (cl. 8.1), and for alternatives to this default

position (the term “part-time” employment is not referred to<sup>26</sup>). The ability to take up an alternative roster is subject to the following qualifications:

- (i) must operate within the hours of the standard roster arrangements (cl. 8.2.2.3);
- (ii) any alternative roster “*must not allow a reduction in the minimum Operational Firefighter staffing required at the station/location in question*” (cl 8.2.2.5);
- (iii) A female employee who has returned to full-time duty after less than her full entitlement to maternity leave, shall be entitled to revert to maternity leave either on a full-time or part-time basis if she so elects (cl. 29.1.1.1). This is the only provision in the Award in which part-time employment is expressly referred to in the context of operational firefighting employees.

30. The Applicants’ Draft Determination which supports the introduction of part-time work and new shift arrangements completely fails to grapple with the fact that unfettered entitlements to part-time employment are not contemplated in either (i) their own evidence, or (ii) the relevant provisions in other jurisdictions.

#### **D. Submissions in reply to the balance of the Applicant’s Submissions**

*D(i) – In respect of the alleged discriminatory effects*

31. MFB witness Michael Anthony Werle states that the UFUA consents to each request to accommodate employees in need of special arrangements on a case by case basis (such as parents returning to work): at [17]-[20]. The evidence is that, as a matter of both fact and structure, the system always accommodates requests for flexible work arrangements: *cf* Applicants’ submissions at [57]-[60].
32. In this respect, the Applicants’ submissions fail to refer to the nature of the system currently in place. Even though the applications are dealt with in a case by case basis, there is a structure in place in the form of a Special Duties Roster: Modern Award Clause 22.7.
33. There is also a ‘special duties’ exception to the 10/14 Roster in the enterprise agreements currently on foot binding both the MFB and the CFA. Clause 78.1 of the MFB/UFU agreement provides that “*The [10/14] roster may be varied for employees on special duties ..*”: and see clause 76.3.1 of the CFA/UFU Agreement to the same effect.<sup>27</sup>
34. The provisions in the extant industrial instruments therefore allow for flexible arrangements to be “*made for firefighters to vary from one day shift to another,*

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<sup>26</sup> Indeed the alternative shift arrangements even contemplate some arrangements above the ordinary hours of full time employment: cl 8.2.2.7

<sup>27</sup> See also clauses 76, 78.1 and 84 of the MFB-UFU Enterprise Agreement 2010 ([2010] FWAA 7414); Clauses 75, 77 and 79 of the CFA-UFU Enterprise Agreement 2010 ([2010] FWAA 8164).

or from day work to shift work”, or “work hours as agreed” between the parties notwithstanding the standard 10/14 rostering arrangements.<sup>28</sup>

35. The very purpose of these provisions is to provide the flexibility to ameliorate any difficult situations that would ordinarily require such accommodation. The Applicant’s Submissions to not recognise the significance of the existing flexibility provisions within the Award.

*D(ii) – in respect of the limitations in Re AEU*

36. In *Re Australian Education Union, Ex parte Victoria* (1995) 184 CLR 188, the plurality held that the relevant burden concerned ‘number and identity’ of persons the State wishes to employ.<sup>29</sup>
37. Other than in respect of persons engaged at ‘higher levels of government’, the Court rejected the argument that a federal award dealing with general terms and conditions of employment could impermissibly burden the States in exercise of their constitutional functions for the purposes of the *Melbourne Corporation* doctrine.<sup>30</sup>
38. Clause 10 of the Modern Award does not prevent the States from employing any ‘number’ of people they so choose. The Award only has the effect of restricting the applicable conditions of employment to full-time employees. The Applicant’s submissions at [65] to the contrary are a *non sequitur*.
39. Clause 10 of the Modern Award clause is headed ‘types of employment – public sector’. The clause provides that a person may only be employed in a classification under the Award on a full time basis, and then further provides that a full-time employee is one who is engaged to work an average of 38 per week. The clause therefore in effect prescribes the minimum number of hours that can be worked per week.
40. Clause 10 of the Modern Award is inextricably linked to the 10/14 rostering arrangements, which presuppose full-time employment. The cognate provisions to clause 10 of the Award are found in the MFB and CFA Enterprise Agreements under the heading of “Rostering”.<sup>31</sup> The Applicants’ submissions also recognise that the restriction on part-time employment has a nexus with the

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<sup>28</sup> Clause 22.7(d) of the Modern Award; Clause 77.4 of the CFA/UFU agreement; Clause 84.1 of the MFB/UFU Agreement.

<sup>29</sup> After referring to the functions critical to the capacity to function as a government, the Plurality stated; “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.” at p. 232.

<sup>30</sup> It should be noted that the Court only upheld South Australia’s argument as to impairment in this respect, while rejecting the argument that a federal law which permitted an instrumentality of the Commonwealth to control the pay, hours of work and conditions of employment of State public servants was invalid. Relevantly, the submissions by Solicitor-General for South Australia were to the effect that the Commission “could not prescribe employment qualifications, eligibility and termination procedures.”: at p 198.5 and p. 231.3.

<sup>31</sup> The MFB-UFU Enterprise Agreement 2010 ([2010] FWAA 7414) at clause 37; CFA-UFU Enterprise Agreement 2010 ([2010] FWAA 8164) at clause 29.



10/14 rostering arrangements.<sup>32</sup> The consequence of this is that the subject matter of rostering, including the minimum hours of work clause (proscribing part-time employment), is properly characterized as a term or condition of employment. Award clauses that deal with rostering, and minimum (or maximum) hours of work, are unexceptionally characterized as terms and conditions of employment, and cannot be considered to fall with the ratio of *Re AEU*.<sup>33</sup>

41. The second limb of the Applicants' argument in respect of *Re AEU* contends that Clause 10 of the Award falls within the 'identity' exception. Clause 10 does not deal with matters that go to eligibility or employment qualifications (that is, 'identity', as paraphrased by the Court in *Re AEU* at p. 232.8.). The Respondents' submissions at [65] do not characterize 'identity' by reference to eligibility or qualifications, but rather on the speculative notion of 'availability to work'. Even if the clause had the effect of excluding some potential employees based on their availability to work full-time, it would only represent a burden on those individuals. It would not represent a significant curtailment on the States' exercise of their constitutional powers.<sup>34</sup>
42. There is no submission or supporting evidence to the effect that the State of Victoria has ever been impermissibly burdened by the current clause. To the contrary, it is apparent from the Applicants' submissions that the basis for seeking the variation is to reflect the Modern Award objectives in the Federal Act. It should be borne in mind in this respect that the clause dealing with full-time employment was introduced by consent of the Victorian government agency. A consent award of this nature "*has a very different quality to the imposition by the Commonwealth of an arbitrated outcome on a State or its agencies which have opposed that outcome*".<sup>35</sup>
43. The history of the consent position adopted in 2009 and the lack of any complaint about Clause 10 imposing any burden are important considerations when assessing whether there are in reality any 'practical effects' which can be qualitatively characterized as significant curtailments on governmental functions<sup>36</sup>, or whether the claim involves mere 'speculation and uncertainty'.<sup>37</sup>

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<sup>32</sup> The Applicants' submissions at [1] relevantly provide that the application to vary the Award seeks to "*remove the prohibition in the Award against part-time employment, and to make consequential changes to rostering provisions in the Award.*" (emphasis added)

<sup>33</sup> Consistently with the ratio in *Re AEU*, "*terms and conditions of employment contained in instruments*" are 'referred subject matters' for the purposes of the *Fair Work (Commonwealth Powers) Act 2009 (Vic)* (the Referral Act).

<sup>34</sup> *Austin v Commonwealth of Australia* [2003] HCA 3; (2003) 215 CLR 185 per Gaudron, Gummow and Hayne JJ at [168]; *Re AEU, Ex parte Victoria* (1996) 73 IR 250 at 263.

<sup>35</sup> *United Firefighters' Union of Australia v Country Fire Authority* [2015] FCAFC 1 (8 January 2015) at [208] per Perram, Robertson and Griffiths JJ.

<sup>36</sup> *Clarke v Commissioner of Taxation* [2009] HCA 33 (2 September 2009) at [32]-[33] per French CJ.

<sup>37</sup> *Austin v The Commonwealth of Australia* [2003] HCA 3 (5 February 2003) at [150], [158], [172] per Gaudron, Gummow and Hayne JJ; *Melbourne Corporation v The Commonwealth* [1947] HCA 26; (1947) 74 CLR 31 at 74-75 per Starke J.

## **Conclusions**

44. The UFUA's position is that the introduction of the variations sought are not necessary or appropriate in the circumstances described in these submissions. This is *a fortiori* the case where both the MFB and CFA have agreed that the 10/14 Roster together with the limitation of part-time employment (outside of the Special Roster System already in place) is not appropriate for the industry having regard to the safety and welfare of employees.
45. To the extent that the Full Bench considers that the introduction of the part-time provisions or any amendments to the rostering provisions are necessary for the purposes of section 157 of the FW Act, then the decision must accommodate the concerns identified both in the Applicants' evidence and the Respondent's materials. In that event, the open-ended circumstances in which part-time employment will otherwise become available under clause 10.3(b) of the Draft Determination should accordingly be circumscribed.

**R.C Kenzie QC**

**T. J Dixon**

**State Chambers**

**Ph: (02) 9223 1522**

**Date: 6 April 2016**

## **IN THE FAIR WORK COMMISSION**

s.156 – Four Yearly Review of Modern Awards  
Fire Fighting Industry Award 2010

**Matter No. AM2014/202**

### **WITNESS STATEMENT OF KENNETH LESLIE BROWN**

I, Kenneth Leslie Brown, Assistant Chief Fire Officer (**ACFO**), with the Metropolitan Fire and Emergency Services Board (**MFB**), of 456 Albert Street, East Melbourne in the State of Victoria, say as follows:

1. I have been employed by the MFB for 32 years. I currently hold the rank of ACFO and I have held that rank for two years. I hold the current specialist qualifications:
  - Graduate Certificate in Applied Management
  - Diploma in Project Management
  - Advanced Diploma in Firefighting Management
  - Fire Commissioner endorsed Regional Controller.
2. On Australia Day 2016 I was awarded the Australian Fire Service Medal for outstanding service and leadership.
3. I am currently working seconded to Emergency Management Victoria as the Director of the Fire Enhancement Program where I have the responsibilities for interoperability projects for the MFB and CFA.
4. Prior to my current role I was the ACFO and Director of Special Operations and Marine Project Leader where I have responsibility for 35 operational and corporate staff.
5. I am also currently a member of the United Firefighters Union (**UFU**) Branch Committee of Management (**BCOM**). I am currently the Junior Vice President on BCOM.
6. I am authorised by the UFU to make this statement on its behalf.

7. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.

**A. The 10/14 Roster**

8. Firefighting is an inherently dangerous occupation that requires instantaneous decision-making and problem-solving in volatile conditions. In order to be able to make those decisions and respond appropriately and safely to the incident, whatever the nature or complexity, firefighters must be able to rely without question on the training, skills and competencies of one another. Knowledge of one another's skills and attributes is vital to making safe decisions and allocating the tasks on the fireground.
9. The 10/14 roster is at the core of that system that provides that trust and confidence in one another's training and abilities as the roster system is based around a platoon structure that enables firefighters to know one another and how they perform in certain situations. Firefighters are on shift together spending a lot of time together working in close proximity. They undertake drills and training together on station. They become very aware of each other's strengths and attributes. At the incident and fireground they rely on that knowledge in placing their lives and health in one another's hands.

**B. Opposition to Part-time employment**

10. I understand that the CFA/MFB seek to vary the Award by introducing (i) part-time employment; and (ii) a new 'day worker' roster.
11. I oppose these variations as the current application of the roster system is a cornerstone of safe firefighting systems and structures.
12. I oppose as I believe the introduction of part time firefighters will undermine the proven system for providing a safe and effective fire service. I think the record of safety of MFB's firefighters is evidence of the necessity of that robust system.
13. I agree with clause 37 of the MFB UFU Operational Staff Agreement 2010 (**the MFB Agreement**) where it says "*for reasons including the welfare and safety of employees*" *the MFB will not employ any employee on any basis other than a roster of hours provided for in this Agreement, and will not employ an employee on a part-time or casual basis.*

14. Firefighting is complex with more specialist skills and equipment. There has been a corresponding greater need for training and maintenance of skills. There are specialist roles and equipment and the roster system is managed in order to ensure the firefighters of the appropriate ranks, skills and competencies are available on every shift in the relevant locations. Specialist skills include high-angle rescue, heavy rescue, trench rescue, urban search and rescue, Emergency Medical Response (EMR), water-way emergency responders, ship board firefighters, ship to ship transfer firefighters, confined space rescue, impact assessment, hazardous materials response plus other specialist vehicles such as ladder platform, teleboom, water tanker and transporters operators.
15. Part time work would impact on skills maintenance generally and in particular specialist skills. It would also impact on the ability to roster the appropriate firefighter of the appropriate rank and specialist skill where required.
16. The MFB has been audited around skills maintenance of specialist skills and found to be deficient in the maintenance of specialist skills. Adding part time firefighters would only compound this problem which impacts on safety on the fireground.
17. With new emerging risks, for example counter-terrorism, there is a heavy reliance on team safety and any part time training would compromise training and safety as would not ensure that the limited access to the skills maintenance programme for specialist skills and new emerging risks could be met in the part time context.
18. The recruits course is full time for 18.8 weeks and it is not practicable to do it part time. This is because of the significant amount of content covered in the recruit course, a substantive portion that inherently requires the training to be conducted as a team.
19. A day work roster would create different strata of operational firefighters. There would be implications for rates of pay as no shift penalties or the same overtime rates etc would not apply. It is likely to would create an “us and them” culture which would be damaging to the team culture necessary to provide safe and effective emergency response.
20. There are variations of the nature of the incidents attended at various hours of the day. While emergency response is unpredictable, there are often an increase in the number and complexity of medical response incidents on the night shift. This would amplify the development of an “us and them” culture. It would also affect the firefighters’ exposure and experience to various

scenarios. This could be detrimental to skills and competencies. It would also affect the confidence firefighters have in one another at particular incidents.

**C. The In-Built Flexibility of the Existing Arrangements**

21. The MFB Agreement permits flexibility including in the form of part-time work by agreement with the UFU. Clause 76 of the MFB Agreement provides for three rosters for hours of work – the 10/14 roster, a Special Administrative Duties Roster and for any other configurations as agreed between the UFU and the MFESB. Clause 77 sets out the framework of rostered hours.
22. These three systems of hours of work provide for the safe effective emergency response on the 10/14, other various day-work roles undertaken by operational firefighters and for individual issues such as return to work from injury or illness or parental leave. Therefore that agreement provides flexibility in accordance with a firefighter's personal situation without undermining the integrity of the safe system of emergency response.
23. I am not aware of any instance of the UFU withholding agreement where alternative working hours have been requested. All such requests have been for work on other than 10/14 shifts. The provision has been used to cater for employees with family or carer responsibilities

**D. Other Issues with Part-Time Work**

24. I oppose the introduction of part-time work and any change to the existing 10/14 Roster.
25. If, despite my evidence in opposing part time firefighting, and variations are being considered, then I am of the view that any such considerations should include restrictions to take in account the reasons for the opposition to any part time, and to limit the damaging implications. If part-time is introduced, it should only be in excess of minimum staffing levels on the 10/14. This is consistent with the current rostering and flexible arrangements provided for in the MFB Agreement.
26. If there was consideration of any job-sharing, any such arrangement would have to be above minimum crewing on the 10/14 roster. This would require both employees having the same skills and qualifications including specialist skills and rank. There would be administrative difficulties such as business plans, rosters, leave rotations, which would add to the expense of

implementing part-time employment. Those employees would have to do additional skills maintenance outside their part time hours of work. The infrastructure at the station would have to accommodate the extra staff which would add further costs. All these matters would need to be carefully considered.

27. Minimum Crewing is dealt with in Schedule 2 of the MFB/UFU Operational Staff Agreement 2010. The schedule also prescribes the number of firefighters and ranks which are required for deployment on appliances including specialist appliances.
28. The safe minimum staffing levels which must be maintained by the MFB are prescribed in the EA. This means that there will never be less than that many firefighters on shift at any time. If it appears that the number would fall below that level (for example if a firefighter was absent through illness) the MFB must recall a firefighter to maintain the level. In practice the MFB rosters approximately 29 above the safe minimum staffing level.
29. All firefighters are allocated to one of four platoons (A,B,C,D) who rotate between day shifts, night shifts, and days off. This enables the MFB to predict how many firefighters will be available at a given time in each region and ensure a safe number of firefighters are rostered at all times and to be able to predict how many firefighters with specialist skills such as road accident rescue, high-angle rescue and USAR (urban search and rescue) will be available at particular times.
30. Rostering is not a simple task. It would be much more complex and difficult if part-time employees were permitted to be part of the safe minimum staffing numbers. It would make it more difficult to ensure firefighters with required specialist skills are available to meet safe staffing requirements.
31. The current 10/14 roster system is integral to the safe system of work. Unlike other industries where it may be feasible to have part time workers on a similar roster system, it is not the case for firefighting. Any undermining of the current roster/platoon/minimum staffing structure will directly impact on safe and effective emergency response.

**KENNETH BROWN**  
**6 April 2016**

**IN THE FAIR WORK COMMISSION**

**s. 156 Four Year Review of Modern Award**

**Fire Fighting Industry Award 201**

**Matter No. AM2014/202**

**WITNESS STATEMENT OF DANIEL BRETT GATT**

I, Daniel Brett Gatt, of [REDACTED], in the State of Victoria

say as follows:

1. I am employed by the Metropolitan Fire and Emergency Services Board (**MFB**) as an Operational Firefighter. I have been employed by the MFB for thirty-two years.
2. I currently hold the rank of Commander and the position of Commander and I have held that rank for approximately 4 years. I currently hold the position of Commander, Operations Southern District B Platoon.
3. In this position I am responsible for the day to day management of all operational firefighters on shift in southern district b platoon and overall co-ordination of response to emergencies within the district. Currently this is seven stations in Southern District and approximately 42 firefighters on any given shift.
4. I have been awarded an Chief Officer's Commendation
5. I am a member of the United Firefighters' Union of Australia – Victoria Branch and (**UFU**) have been for my entire career as a firefighter.
6. I am authorised by the UFU to make this statement on its behalf.
7. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.



## **OPPOSITION TO PART-TIME WORK**

8. I understand that the MFB seeks to vary the award to introduce part-time employment and also a new operational day worker roster. I oppose the introduction of these proposals.
9. I oppose the introduction part-time work into the MFB generally, and especially as part of the 10/14 roster and/or minimum crewing.
10. I believe that the introduction of part-time work as part of the 10/14 roster and/or minimum crewing will diminish the benefits gained from the 10/14 roster to firefighter safety and well-being as well as service delivery to the community.

## **BENEFITS OF 10/14 ROSTER**

11. Firefighting relies heavily on the ability of workers to work as a team in stressful situations. Much depends on the quality of the training, both basic and continuation training. The 10/14 roster system also plays an important role in that it allows teams to form and for team members to build confidence in each other's skills and capabilities and to learn to know and trust each other.
12. There is a very strong commitment amongst firefighters to the 10/14 roster. I have never worked in an environment without the 10/14 roster and my experience of it is that it provides for constant protection around the clock to the Victorian public, as well as offering a roster for employees which manages firefighter fatigue and overall well being. In terms of individual needs, the roster provides predictability, and it is rarely changed at the behest of the employer or supervisor. However, where individual needs arise, the system is flexible enough to accommodate issues like sick leave, return to work or parental leave including through the existing arrangements such as the Special Duties Roster. The special duties roster is a roster designed to be filled by operational personnel - however they are not "on shift" or "on

station", and so they do not respond to operational incidents as part of their day to day role.

13. The 10/14 roster enables 24 hour coverage at a given station. On the 10/14 roster, a firefighter has consecutive 4 days on - working 2 x 10 hour day shifts and 2 x 14 hour night shifts - and then 4 consecutive days off. For example, a firefighter might work Monday and Tuesday day shifts and then Wednesday and Thursday night shifts, then have Friday, Saturday, Sunday and (next) Monday off, returning to work on the (next) Tuesday day shift to begin the cycle again.
14. The 10/14 roster provides for optimal service and delivery and maintain the vital links between crews who tend to regularly work together on the same "platoon" or shift and in the same district.
15. A lot of training takes place on a station by station basis and may include a significant amount of informal training. The crucial feature here is the continuity of membership, whereby a group of workers in platoons work and train together – which becomes critical when the same group is faced with a life-threatening situation.
16. As a Commander and previously as an Officer in Charge on station I regularly perform informal training on station with the crews as a group. For example, currently I have been implementing a system whereby when I am aware that a particular crew has turned out to an unusual event or incident and lesson can be learned from that, I will visit the other stations I am responsible for and provided them with a similar scenario to have them undertake an informal training session to consider that situation.
17. If I had part-time firefighters on shift and on station I would have concerns about them accessing ongoing skills maintenance and training. Much on the ongoing skills maintenance is done on shift. All firefighters are required to complete a minimum of four skills maintenance tasks per 28 days roster.

These are done on station and recorded on the MFB skills maintenance database. Once a month there is a EMR skills maintenance session provided through Ambulance Victoria which is also done on station and on shift and is compulsory for all firefighter to maintains their Emergency Medical response qualification. On top of this Officer in Charge (**OIC**) of a station which occur on station on an ad hoc basis and once a month.

18. I would have concerns about the level of their competency if a firefighter was missing some of this vital ongoing training and skills maintenance. As an Operations Commander in my district, knowing the Officers on station are constantly drilling and exercising their skills gives us all confidence that each employee can perform these tasks without thinking and under pressure in an emergency situation. These skills need to be practised regularly to ensure this. For example, even basic skills like pump operation and hose drill are regularly practiced so that it is drilled into each and every firefighter. Additionally the role of a firefighter has become increasingly complex over recent times with the introduction of new equipment and technology and subsequent systems of work. therefore this ongoing practice is a heavier burden for each firefighter.
19. I am also concerned about how other firefighters might perceive them as part of the team if this were to occur. I would be concerned that other firefighters on shift would have the same concerns as myself and this would potentially break down that absolute necessary trust and confidence firefighters must have between each other.

#### **MANAGEMENT OF OPERATIONAL RESPONSE**

20. I would also be concerned about how I manage operational response if part-time work were introduced within the 10/14 roster and/or minimum crewing.
21. As a Commander I would be more reserved about how I might use a part-time firefighter in responding to an operational incident.

22. For example, most OIC's as a station, if not all, will ensure their crews undertake ongoing drills on station as part of an overall skills maintenance regime. These can be done at unpredictable times depending on the workload of a station but do get done. As a Commander I know what general drills have been done and I can be sure of each of my firefighters who I have available to respond are competent and their skills are up to date. If I had part-time firefighters I would not have this certainty and therefore I would be very concerned from a health and safety perspective about what roles they perform on the fireground.
23. It is therefore likely that I would limit their role on the fireground which limits my resources to respond to an incident and leads to a higher risk situation to the other firefighters on scene who may need to compensate for that. For example, it would limit my ability to rotate crews and manage fatigue.
24. I therefore I see a higher risk to both their and other firefighter health, safety and welfare.

#### **MANAGEMENT OF FIREFIGHTER WELFARE**

25. I also object to the introduction of part-time firefighters on the 10/14 roster and/or minimum crewing as it would impede my ability to provide adequate support and tend to the welfare needs of my crews if they were part-time as I would have less time to maintain regular contact with them.
26. As a manager of firefighters, I and other officers and commanders within the MFB tend to closely monitor the events our firefighters respond to and if they attend particularly job such as a suicide, for example, we will follow up with those who attended and ensure that their welfare is tended to the best of our ability. This ongoing support and communication with the crews is crucial in my opinion to the mental health and welfare of the crews and their families and therefore, their ability to continue to do their job.

27. As a commander responsible for dozens of employees across numerous stations who attend numerous incidents this is already a heavy workload. Accessing people who are part-time to provide this ongoing support is not workable.
28. Also, as a Commander who works regularly with the same crews across the same shift on a full-time basis I know my crews well and I get to know the individual nuances of each crew member. This helps me to more easily pick up on when one crew member might be struggling and provide that extra support. I feel the same can be said for each member of the team as to how they feel about each other. This close relationship and understanding of each other I do not believe can come if part-time becomes a regular part of the 10/14 roster. Team work and team building and an understanding of each other on a relatively intimate level for co-workers is a critical part of the job of a firefighter and must be maintained for firefighter safety and welfare. Teamwork is critical and I believe it is crucial to safety and welfare of firefighters.
29. As an example, I recently had two crews who attended an incident where there had been a gas explosion of an air conditioning unit and a 21 year old boy had been badly burnt. The injured person in this instance is currently in a coma and it seems unlikely that he will recover.
30. This incident was particularly traumatic for the crews who attended and immediately afterwards I ensured that they debriefed as a team, taking them off station and I am aware that some of them are still struggling so I have been providing ongoing support to those firefighters on shift and ensured they are kept up to date as to the prognosis of the boy.
31. I could not provide this level of support to a part-time employee.

#### **SPECIAL ADMINISTRATIVE DUTIES ROSTER**

32. I am aware that the MFB currently has the special administrative duties roster, known as day work. I have previously worked in these roles myself. I am aware that firefighters can currently work flexible or part-time rosters within these roles.
33. I believe that this adequately caters for the needs of employees who wish to work different hours to the 10/14 roster. These roles are situated across many locations in and Departments.

### **CONCLUSION**

34. In conclusion, as stated above, and for the reasons outlined, I oppose the introduction of part-time work as part of minimum crewing and any changes to the 10/14 roster.
35. If part-time work was introduced as a result of this matter, the only manner I believe it could be safely introduced for firefighters on shift would be as above minimum crewing and changes would need to be made to how we operate to ensure that skills maintenance and other problems identified above are somehow overcome.
36. Minimum crewing is vital to ensure there are the correct minimum numbers to safely respond to an emergency event and should not be compromised.

Daniel Gatt

6 April 2016

**IN THE FAIR WORK COMMISSION**

**s. 156 - Four Year Review of Modern Awards**

**Fire Fighting Industry Award 2010**

**Matter No. AM2014/202**

**WITNESS STATEMENT OF ALAN MAURICE QUINTON**

I, Alan Maurice Quinton, of [REDACTED] in the State of Victoria say as follows:

1. I am employed by the Metropolitan Fire and Emergency Services Board (**MFB**) as an Operational Firefighter. I have been employed by the MFB for thirty-eight years.
2. I currently hold the rank of Assistant Chief Fire Officer (**ACFO**) and the position of ACFO Fire Safety. I have held that rank for approximately sixteen years.
3. As an ACFO I am responsible for the management of response to large scale emergency events as well as being part of the MFB's Senior Leadership Team. In my current role I am responsible for the regulatory responsibility for built environment (as opposed to the natural environment) which includes the departments of dangerous goods, structural fire safety, alarm assessment and fire investigation and analysis. I am responsible for approximately 60 employees with approximately 40 operational employees.
4. I have previously performed the role of ACFO and Commander (equivalent) on shift and been responsible for employees on shift. I have been awarded a National Medal, Emergency Management Medal and Brigade Medal.

5. I am a member of the United Firefighters' Union of Australia – Victoria Branch and (**UFU**).
6. I am authorised by the UFU to make this statement on its behalf.
7. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.

#### **OPPOSITION TO PART-TIME WORK**

8. I understand that the CFA and MFB are seeking, in this matter, to vary the Award by introducing part-time employment, and as well a new 'day worker' roster. I oppose the introduction of part-time work into the MFB operational workforce generally, and more so as part of the 10/14 Roster and/or minimum crewing.
9. I believe that if part-time work was introduced as part of the 10/14 roster and or minimum crewing, the key pivotal team building and trust building component of being a fire-fighter, i.e. the 10./14 roster, will be fractured to an extent which impacts on firefighter safety, well-being and emergency response.

#### **SPECIAL ADMINISTRATIVE DUTIES ROSTER**

10. Currently the MFB has a roster which is not the 10/14 roster, namely the special administrative duties roster. This is provided for in the current enterprise agreement: see clauses 76 and 84 of the MFB/UFU Operational Staff Agreement 2010.
11. Operational firefighters on this roster work in various day work roles, that is roles performed mainly between Monday-Friday across a 10 hour day within normal business hours. These roles are utilised by the MFB in many different departments and can be performed in many different work locations.



12. I am aware that firefighters can perform roles on this roster outside of full-time hours. I know of firefighters who have worked flexible or part-time hours within one of these roles and these positions provide for the needs of firefighters who require flexible and/or part-time work. The special administrative duties roster is a roster designed to be filled by operational personnel - however they are not "on shift" or "on station", i.e. they don't respond to operational incidents as part of their day to day role.
13. I currently have an employee working in one of my Departments who utilises such a flexible roster.

#### **IMPORTANCE OF THE 10/14 ROSTER AND TEAM BUILDING AND TRUST**

14. I am aware that previously Officers in the MFB were not working consistent 10/14 shifts alongside the firefighters for whom they were responsible. Although I was not working at this time I have spoken to other firefighters who were and they have advised me that it was extremely difficult as the firefighters had no continuity in their leadership and management and also for the Officers. It was difficult as they could not have that regular contact with their firefighters which leads to intimate knowledge of each firefighter's skills and abilities. I would be concerned that introducing part-time work within the on-shift operational workforce could lead to similar difficulties.
15. In my experience as an Officer and Senior leader within the MFB, the 10/14 roster is a vital tool necessary to build the absolute trust and confidence that each crew must have in each other when working together. Working a regular shift pattern with regular employees on a full-time basis builds team work and trust between each firefighter and ensures that firefighters can trust that someone has your back when you need it.
16. This necessary trust and team work ensures that firefighters can respond safely to an incident as part of that team and can respond with the knowledge

that the person next to them can be relied on for their own safety. This knowledge goes to each firefighter's welfare as well as their safety.

17. The introduction of part-time firefighters, and working different hours to the 10/14 Roster would break down this necessary trust and team ethic. Firefighters are like a family and each crew works together in this way knowing they can rely on the person next to them. Any fracture in this close can lead to higher risk on the fireground.
18. I think other firefighters would have concerns about the level of training and skills maintenance a part-time firefighter might have had and their ability to fit into the team which would further break down the team bonds. This would further be exacerbated in the part-time firefighter was to perform a standby or work at a location not their own where they would be doubly question by those crews.
19. Further, the consistency of the 10/14 roster and its regular pattern is well regarded by firefighters as it provides a good work life balance allowing them to plan their family and other responsibilities around these times while still providing around the clock coverage to protect the Victorian Community.
20. As manager of employees I can still provide for their individual needs and accommodate issues such sick leave, return to work or parental leave h the existing arrangements such as the Special Administrative Duties Roster.
21. I would not want to see the 10/14 roster compromised to provide for this type of work given that we already can provide for it with this other roster.

#### **SERVICE DELIVERY AND THE PROTECTION OF VICTORIA**

22. If part-time firefighters were to be introduced, particularly as part of the minimum crewing arrangements, I would be concerned that I would not have the necessary resources I need in managing operational response. Minimum

Crewing is dealt with in Schedule 2 of the MFB/UFU Operational Staff Agreement 2010.

23. I feel I would not have the level of information I need about their ongoing skills maintenance and training regime to feel comfortable in safely deploying them in each and every role on the fireground which I may need a firefighter deployed in.
24. Ongoing skills maintenance is done at the station on a formal and informal basis. Officers in Charge will regularly hold station drills and make sure their crews are up to date in their skills and abilities as well as capable of perform the tasks required on the fireground as a team. These drills are performed on-shift and on station while the firefighters are at work.
25. I could not have the same level of confidence in part-time firefighters as I do in full-time firefighters in terms of their access to this and therefore I would be concerned that my resources available to me on the fireground would be diminished.
26. This could lead to increased health and safety risk on the fireground as other firefighters would have an increased workload. Further, I need to be confident that each and every firefighter on the fireground can perform a rescue should another firefighter be in distress and I would be concerned that this absolute confidence I now have may not be at the same level anymore.
27. Should my ability to adequately respond resources in an emergency situation be compromised in any way, firefighters and the public will have their safety compromised.
28. We currently respond to incidents in a highly regimented manner which is heavily based on the 10/14 roster, the minimum crewing chart and the greater alarm response system all of which has been painstakingly put together over years of work to provide a safe and suitable response to the growing complexity of emergencies firefighters face.

29. These systems are highly regimented for a reason, and it is to provide senior command on the fireground with a clear knowledge of what resources they have available, in comparison to what resources are needed so that decision made under the pressurised environment of an emergency response can be evidence based and reasonable.
30. I am not certain how part-time firefighter will fit into this highly regimented response system based so inherently on the 10/14 roster and minimum crewing.

### **CONCLUSION**

31. In conclusion, I oppose the introduction of part-time work as part of the minimum crewing and 10/14 roster.
32. I also oppose any change to the 10/14 Roster.
33. If part-time employees were introduced as part of an award change, then it is my strong view that a new roster should not be created. I believe that, if part-time employees had to be introduced as operational firefighters on the 10/14, then it should only be done on the condition that they are above minimum crewing. Having part-time firefighters as part of minimum crewing carries too many risk for the organisation to safely manage.

**IN THE FAIR WORK COMMISSION**  
**s. 156 - Four Year Review of Modern Awards**  
**Fire Fighting Industry Award 2010**

**Matter No. AM2014/202**

**STATEMENT OF BRADLEY IVAN QUINN**

I, Bradley Ivan Quinn, of [REDACTED], in the State of Victoria, make the following statement in this matter before the Fair Work Commission:

1. I currently hold the rank of Commander and the position of Commander Operational Communications. I have previously held the position of Commander Operations. I have held the rank of Commander for approximately five years.
2. I hold the following qualifications:
  - Graduate Diploma in Executive Leadership
  - Graduate Certificate in Applied Management
  - Diploma Occupational Health and Safety
  - Diploma of Project Management
  - Qualification in Myers Briggs Type Indicators and Team Building
3. I am a member of the United Firefighters' Union of Australia – Victoria Branch and (UFU).
4. I am authorised by the UFU to make this statement on its behalf.
5. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.

**OPPOSITION TO PART-TIME WORK**

6. I understand that the CFA/MFB are seeking to vary the Award by introducing part-time employment, and well as a new 'day worker' roster. I oppose the introduction of part-time work into the MFB operational workforce generally, and particularly part of the 10/14 Roster and/or minimum crewing.

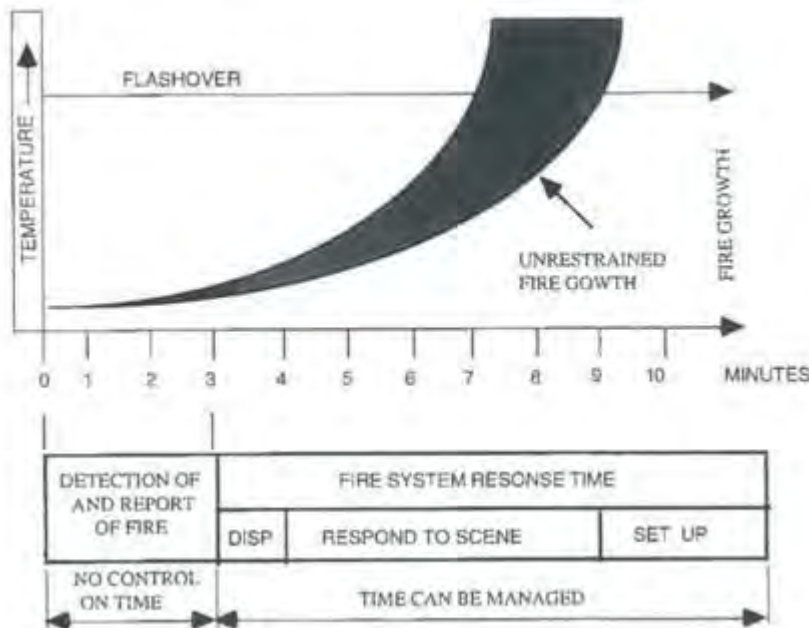
## **SYSTEMS OF FIREFIGHTING**

7. The MFB is responsible for providing a range of emergency management activities including prevention/mitigation, preparedness, response and recovery. The role of the MFB has expanded in recent decades with MFB Operational employees now performing an range of activities including:

- developing building fire safety codes and inspecting fire safety equipment and practices
- training and educating the community to achieve community awareness and behavioral change in relation to fire
- assisting individuals and communities to prepare for emergency events
- responding to structure, bush, vehicle and other fires as well as performing Emergency Medical Response (**EMR**)
- providing road crash rescue and other rescue services
- providing marine response services
- managing hazardous material incidents
- chemical, biological and radiological incidents
- investigating fire cause and origin
- wide ranging industry research activities
- a number of specialist rescue capabilities, including Urban Search and Rescue, swift water rescue, high angle, confined space and trench rescue

8. MFB firefighters undergo extensive training via an initial recruit course which is approximately 18.8 weeks followed by a probationary period of 12 months in order to become qualified firefighters.
9. After approximately four years, and upon satisfactory completion of the required training, a MFB firefighter obtains the rank of qualified firefighter. This qualification is referred to as Certificate III in Public Safety (Firefighting in Emergency Operations). The four year requirement to become qualified as a firefighter is similar to that of an apprenticeship for a trade.
10. Following the initial recruit course, firefighters are rostered to fire stations for to continue their training on shift. In this role they perform emergency response duties under supervision. This includes, but is not limited to, responding to emergencies such as chemical spills, structure fires, car fires, building collapse and non-structure fires.
11. During their first 12 months, firefighters also must complete further continuation training which includes practical exercises and theory based modules.
12. Following the completion of this. Each firefighter returns to the MFB's training facility to complete a retention course it is only at this point that they receive their final EMR training and are signed off on basic skills such as pump operation.
13. Firefighters also perform a wide range of fire safety and public awareness initiatives including structured programs delivered to primary school children. These programs are commonly referred to as "Fire Ed".
14. To maximize the prevention of loss of life and minimize damage to property, fire services mandate a quick response by applying standards for their firefighters to respond to emergencies. The response time standard is crucial to maximize the potential for saving life by performing a successful rescue whilst also minimizing damage to a structure and interruption to business.
15. Underpinning fire service response time standards is scientific research that dictates that a fire must be suppressed within five to 10 minutes of ignition. The physical characteristics of fire cause the temperature in a building to rise extremely rapidly, and a sudden and dramatic simultaneous ignition of most

combustible materials and gases is called flash-over. The time required for flash-over to occur varies according to building construction and furnishing materials and usage. The fire spreads quickly once flash-over has occurred. In order to maximize the potential of saving life and minimizing damage to property, firefighters must enter the building to commence suppression activities to avoid flash-over. In short, firefighters must enter the toxic environment.



16. As can be seen by the above graph, it is not an option for a firefighter to delay entering a structure to commence rescue operations and suppression activities.
17. In the MFB, there is a mandated standard of a 7.7 minutes response to an emergency event based on this scientific standard above. Firefighters have 90 seconds from when the first alert sounds in the station to exit the station and fire station across the MFB are situated strategically to ensure that two appliances (fire trucks) carrying at least 7 firefighters across the two, can respond to the event within the required timeframe. This is mandated standard however there are some exception to this where initial response may only have six firefighters. The MFB are however currently increasing firefighter numbers to ensure the standard response of seven firefighters right across the MFD.



18. Seven firefighters are necessary on the fireground to safely perform firefighting operations for a basic structure fire. This is our minimum number. This is because we require one Office in Charge (**OIC**), one pump operator, 2 firefighters in Breathing Apparatus (**BA**) entering the structure to perform any necessary rescues (two are needed so if one is in duress another can assist) and 2 firefighters in BA outside able to enter should the two inside need assistance, and one other person on the hose to provide cover for entry and exit and begin the attack on the fire. This mandated system is designed for firefighters to respond in a safe manner in the hazardous environment we work in.

19. The 2011 Australian Senate Committee report into the Fair Protection for Firefighters Bill recognised the uncontrolled environment that firefighters work in:

*“The committee holds a deep respect and gratitude for those who serve to protect and assist. If we are honest, however, along with this respect and gratitude comes a generous dose of expectations. We expect firefighters to come to our assistance when our homes, schools, hospitals and businesses are ablaze. We expect that firefighters will enter a building when every human instinct tells us to leave.*

*We expect they will search for those trapped inside and bring them out alive. We expect them to do what they can to minimize loss of life and damage to property. While everyone else is fleeing danger, it is the firefighter’s duty to tackle it head-on, to enter an extreme and dangerous environment, armed with the best protective gear available.”*

Annexed to this Statement and marked **BIQ-1** is a true copy of that report

20. It is globally accepted that firefighting is a dangerous occupation and that not all risks and hazards can be eliminated due to the primary objective of saving lives and property. There are obvious dangers to firefighting but the biggest risk is the exposure to gases and toxins.

21. It is increasingly known amongst firefighters that the fireground, particularly structure fires, exposes firefighters to many toxins which are contained in everyday household material which, when burnt, are released into the

atmosphere band firefighters are necessarily exposed to these toxins when doing their job.

## **OPPOSITION TO PART-TIME WORK**

22. I provide the above picture of the dangerous firefighting environment, and the high standards we must meet to do our job in order to indicate why it is so important that those who work together on shift as part of the 10/14 roster and minimum crewing must all be fully qualified and fully available to perform their role.
23. They must also work as an extremely close team in responding to an emergency as firefighters work only in teams and must be able to rely on each other and trust each member of that team without questions when in an emergency event.
24. I believe that if part-time work was introduced as part of the 10/14 roster and or minimum crewing, the bonding of the team would be impacted due to the availability/unavailability of team members during a roster period. Consistency of team members as much as possible is vital. Currency of competency is also vital in a team where members are relying on skills sets of other team members in an emergency response capacity.
25. In a more specific sense I have the following objections to part-time work within the operational workforce of the MFB on the 10/14 roster and or as part of minimum crewing:
  - Firstly, skills maintenance. Firefighters need to make themselves available to participate in skills maintenance which consists of completing the skills maintenance program, station drills and EMR continuation education sessions. These are programmed on a set date and other station activities, other than emergency response, are organised around these dates. If a part-time employee was unavailable on these dates, I believe it would create a risk to that firefighter and the team to the degradation of skills. A component is vital for successful operation in emergency response. To continually interrupt the working group could create issues between the team members simply due to lack of consistency in the team. By this I mean, consistency in firefighters responding as a team to an

emergency event provides for efficient emergency response as each team member knows each other team member intimately.

- Thirdly, part of a station crew responsibility is to familiarise themselves with local risks in the area, this is generally done through inspections of buildings or infrastructure or the like. These are planned generally when the entire crew is available to maximise the value of the inspection by continual changing of the crew members on a part-time work basis would impact this. This also is relevant to specialist skills acquired by firefighters. An example of this is High Angle Rescue Operators have access to the Melbourne Wheel once a year to perform practice drills and maintain their skills on that particular high risk structure. If a part-time worker was not on at that time, they would be disadvantaged and the team would not be able to trust the currency of their skills in this area.
- lastly, in relation to the role of Commander operations you would continually meet with crews as part of the ongoing management of the firefighters who report to you. In some of the larger districts, you may only have the opportunity to visit each the station once a roster (every 28 days) due to the size of the district and number of stations and other responsibilities this role carries. Having a part-time employee would be therefore be problematic in scheduling station visits. Also, after significant incidents the Commander offers a level of support which may include contacting the MFB's peer support program and organising a station visit by a peer/ professional counselling service. If someone was to hold up this process due to their part-time work conditions it may have a devastating effect of on other team members.

26. I would like to add that I am surprised that the MFB is in favour on part-time firefighters on shift. Firefighters work a set roster with set annual leave and therefore, from time to time firefighters will swap shifts through the agreed change of shift system in order to be able to attend important events such as family weddings and so on. It is widely accepted however that this should not be a regular occurrence. Commanders must authorise each change of shift to ensure the system is not abused and firefighters are able to duty to ensure skills and abilities are maintained. Firefighting is a dangerous occupation and

constant and regular exposure and practice are needed throughout a firefighters career.

## **DAY WORK ROSTER**

27. I am aware that the current MFB UFU Operational Staff Agreement and the award contain clauses which provide for a special administrative duties roster, known as day work.
28. I am not opposed to firefighters, for legitimate reasons such as family responsibilities, or return to work or sickness needing to access part-time and/or flexible rostering. I have in fact have supported people in accessing these positions.
29. The special administrative duties roster however provides for this and allows firefighters who need access to do so a part of the day work component of operational firefighters. These roles are in many different departments and across many locations and can offer firefighters rewarding and valuable work.
30. I would not want to compromise the 10/14 and minimum crewing to provide for something that I believe we can already provide for in this way.

## **Conclusion**

31. In summary, I am opposed to the introduction of (i) part-time employees, and (ii) any change to the 10/14 Roster for the reasons I set out above.
32. If, despite the reasons I have listed, the Award is altered to include part-time firefighting, these positions must be above strength, or above minimum crewing.
33. The minimum number of firefighters that are needed to be on duty at any given time is strictly mandated within the Agreement and ensures that there are safe numbers of firefighters on duty to respond to events.
34. Therefore, while I believe strongly that part-time and/or other arrangements such as job sharing will not work in the MFB, if as an organisation we were forced to assume the risk we would need to assume that risk above

and beyond the minimum capacity, i.e. it needs to be above minimum crewing as this would be the only way to safely manage that risk.

Bradley Quinn

6 April 2016

**IN THE FAIR WORK COMMISSION**

s.156 – Four Yearly Review of Modern Awards  
Fire Fighting Industry Award 2010

**Matter No. AM2014/202**

**“ANNEXURE BIQ -1”**

**This is the annexure as referred to in the Witness Statement of Bradley Ivan  
Quinn.**

The Senate

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Education, Employment  
and Workplace Relations  
Legislation Committee

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Safety, Rehabilitation and Compensation  
Amendment (Fair Protection for Firefighters)  
Bill 2011 [Provisions]

September 2011

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# MEMBERSHIP OF THE COMMITTEE

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Senator Chris Back, **Deputy Chair**, LP, WA

Senator Catryna Bilyk, ALP, Tas.

Senator Bridget McKenzie, Nat., Vic.

Senator Lee Rhiannon, AG, NSW

Senator Matt Thistlethwaite, ALP, NSW

## Substitute Member

Senator Penny Wright, AG, SA replaced Senator Lee Rhiannon, AG, NSW for the committee's inquiry into the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011.

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# **RECOMMENDATIONS**

## **Recommendation 1**

**2.19** The committee recommends that the types of cancer listed by the proposed Bill be expanded to include multiple myeloma, primary site lung cancer in non-smokers, primary site prostate, ureter, colorectal and oesophageal cancers.

## **Recommendation 2**

**3.58** The committee recommends that proposed subsection 7(8) of the Bill be amended to replace the term 'dominant' cause with 'significant' cause.

## **Recommendation 3**

**3.59** The committee recommends that proposed subsection 7(9)(b) of the Bill be amended to replace the term 'several periods' with 'more than one period'.

## **Recommendation 4**

**4.43** The committee recommends that this Bill be passed subject to the foregoing recommendations.



# CHAPTER 1

## Background

### Reference

1.1 On 5 July 2011, the Senate referred the provisions of the Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 to the Senate Standing Legislation Committee on Education, Employment and Workplace Relations for inquiry and report by 15 September 2011.

1.2 The Bill was introduced into Parliament by Mr Adam Bandt MP on 4 July 2011 and co-sponsored by Ms Maria Vamvakinou MP and Mr Russell Broadbent MP.

### Conduct of the inquiry and submissions

1.3 The committee advertised the inquiry in *The Australian* on 20 July 2011, calling for submissions by 29 July 2011. Details of the inquiry were placed on the committee website.

1.4 The committee contacted a number of organisations inviting submissions to the inquiry. Submissions were received from 27 individuals and organisations, as listed in Appendix 1.

1.5 Public hearings were held in Melbourne on 9 August, Canberra on 23 August and Perth on 2 September 2011. Witness lists for the hearing are at Appendix 2.

1.6 The committee also conducted a number of site visits in Melbourne, Geelong and Brisbane.

### Acknowledgement

1.7 The committee thanks those individuals and organisations who made written submissions and gave evidence at the committee's hearings.

1.8 The committee particularly wishes to extend its appreciation to the firefighters, and families of firefighters, who made submissions and those who travelled to relate their personal experiences to the committee at its hearings. These individuals invested valuable time and effort knowing that they personally did not stand to benefit from the provisions of this Bill. Their evidence was both important and extremely moving. The committee thanks them and recognises their efforts to help current and future generations of firefighters.

1.9 The committee is grateful to the United Firefighters Union of Australia for facilitating a series of site visits over the course of this inquiry, which have given the committee valuable exposure to the functions, duties and responsibilities of firefighters. The committee greatly appreciates the time and cooperation it has

received staff at from Aviation Rescue and Fire Fighting (ARFF), a division of Air Services Australia (Tullamarine Station), the Country Fire Authority (CFA) in Geelong, the Queensland Fire and Rescue Service (QFRS) and the Queensland Combined Emergency Services Academy (QCESA) at Whyte Island.

1.10 The committee also extends a particular note of gratitude to Mr Alex Forrest and Fire Chief Ken Block, who travelled from Canada to share with the committee their valuable and extensive experience with presumptive legislation overseas.

## **Background**

1.11 For several decades scientific studies have shown that firefighters are at increased risk of developing certain types of cancer. This is due to ongoing exposure to carcinogenic particles released by combusting materials of varying toxicity, which firefighters routinely encounter during the normal course of their employment:

Firefighters are by the nature of their work exposed to a large range of chemical carcinogens. Although most chemicals have not been tested for their toxic effects there are a number of chemicals that arise as the products of combustion that have been shown to be carcinogenic.<sup>1</sup>

1.12 Studies have been conducted across a number of countries, and have in recent years been bolstered by comprehensive meta-analyses which provide strong evidence that firefighters are at increased risk of certain types of cancer through accumulated exposure to carcinogens.

1.13 These studies are discussed further in Chapter 2 of this report, which explores the science that underpins the proposed legislation.

## **Purpose of the Bill**

1.14 The Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 (the Bill) seeks to amend provisions in the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act) relating to injuries sustained by firefighters.

1.15 The Bill would provide for a rebuttable presumption that the following cancers developed by qualifying firefighters will be presumed to be work related under Commonwealth law. Subject to qualifying periods set out in the Bill as outlined below, the burden of proof would be removed from the cancer sufferer.

1.16 The seven primary site cancer types covered by the Bill and the respective qualifying periods are:

1. Brain cancer (5 years);

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1 Michael Smith, Deputy Chief Officer, South Australian Metropolitan Fire Service, *Attachment, Submission 13*, p. 35.

2. Bladder cancer (15 Years);
3. Kidney cancer (15 years);
4. Non-Hodgkin's lymphoma (15 years);
5. Leukaemia (5 years);
6. Breast cancer (10 years); and
7. Testicular cancer (10 years).

1.17 The committee received the following definition of a presumption in law:

A presumption in law is a rule of law which permits a court to assume a fact is true until such time as there is a preponderance (greater weight) of evidence which disproves or outweighs (rebutts) the presumption. Each presumption is based upon a particular set of apparent facts paired with established laws, logic, reasoning or individual rights. A presumption is rebuttable in that it can be refuted by factual evidence. One can present facts to persuade the judge that the presumption is not true.<sup>2</sup>

1.18 To qualify, firefighters would need to meet the following threshold tests:

- They must suffer from a prescribed illness;
- They must have been employed as a firefighter for the applicable qualifying period; and
- They must have been exposed to the 'hazards of fire' during the qualifying period.<sup>3</sup>

1.19 In effect, the establishment of this legal presumption would facilitate access to workers' compensation for firefighters who fit the qualifying criteria by shifting the burden of proof from the firefighter to the employer or insurance company seeking to dispute the occupational linkage between a firefighter's cancer and his or her employment duties.

1.20 However, even when the above threshold criteria are met, the presumption that the cancer in question is related to employment would remain rebuttable. The nature of the rebuttable presumption would mean that a firefighter's claim for compensation would remain '...subject to any legal defences otherwise available.'<sup>4</sup>

1.21 This means that acceptance of occupational causation is not automatic:

[I]t does not mean that the employee's claim will automatically be accepted. The employer may provide evidence to show that the disease is due to some other factor that is not employment related and, if that evidence is sufficiently strong, it may rebut the presumption that the disease is

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2 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 7.

3 See Schedule 1, Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011.

4 Slater & Gordon Lawyers, *Submission 14*, p. 3.



employment related. As in all claims, the decision maker has to be satisfied, on the balance of probabilities, that the disease is due to the person's employment. Nevertheless, in the case of the proposed subclause 7(8), the decision maker will be starting with the presumption that, if the condition is a listed disease, and all the other factors are met, then the disease is compensable.<sup>5</sup>

1.22 This would protect employers and insurance bodies, and ensure the policy response is appropriately based on scientifically demonstrable evidence.

1.23 This differs from non-rebuttable presumptive legislation insofar as the latter is based on consistent epidemiological evidence that an illness is linked to a particular cause associated with the workplace or work process in almost every case, as in the case of mesothelioma resulting from asbestos exposure.<sup>6</sup>

### *Coverage*

1.24 The SRC Act has limited coverage:

Each state and territory has its own workers compensation legislation. Coverage of the SRC Act is limited to Commonwealth employees, ACT Government employees and the employees of licensed entities. As a result, coverage of the SRC Act is limited to only a relatively small proportion of the Australian workforce.<sup>7</sup>

1.25 The proposed Bill would therefore cover only employees classified as firefighters under the SRC Act.

1.26 There are currently approximately 2800 firefighters covered by the Act. Of these, around 2000 are employed by the Australian Capital Territory (ACT) Government. Some 1500 of these are volunteer firefighters who would not qualify for coverage by the Bill. Most of the others are firefighters employed by the aviation industry nationwide:<sup>8</sup>

Based on ABS Labour Force Statistics (November 2010), it is estimated that employed firefighters covered by the SRC Act represent approximately eight per cent of the Australian firefighting labour force. The remainder

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5 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 7.

6 See Mario Racco, Parliamentary Assistant to the Minister of Labour, Canada, 'Report to Minister Peters on the treatment of Firefighter Cancer Claims by the Workplace Safety and Insurance Board,' Ontario Ministry of Labour. Available at <http://www.labour.gov.on.ca/english/hs/pubs/firefighters/review.php> (accessed 15 August 2011).

7 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 4.

8 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 6.

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would be covered under state and territory legislation for workers' compensation.<sup>9</sup>

1.27 Ultimately, the Bill would cover:

- Professional firefighters in the ACT (approximately 332); and
- Firefighters employed by Aviation Services throughout Australia (approximately 663).<sup>10</sup>

1.28 Similar presumptive legislation is already in place in much of Canada and the United States, countries which are in many ways analogous to Australia, and is being considered in parts of Europe.

### *Presumptive legislation overseas*

1.29 The majority of jurisdictions in Canada and the United States have enacted comparable presumptive legislation.

1.30 The Canadian province of Manitoba was the first to introduce presumptive legislation of this kind in 2002, following a report on the scientific links between cancer and firefighting commissioned by the province.<sup>11</sup> Being the first jurisdiction to take this step, Manitoba's initial legislation was cautious in nature, covering only five cancers: brain, bladder, kidney, non-Hodgkin's lymphoma and leukaemia.

1.31 Since then, nine of the thirteen Canadian jurisdictions have passed presumptive legislation recognising the link between certain types of cancer and firefighting.<sup>12</sup>

1.32 Manitoba itself today covers fourteen cancers, with the scope of the legislation expanded following further research linking a greater number of cancers with firefighting as an occupation.<sup>13</sup> The committee was advised that the few remaining Canadian provinces which do not currently have similar presumptive legislation in place are either in the process of implementing it or considering doing so:

We have 10 provinces and three territories. Right now seven provinces have it, two provinces are in the process of putting legislation or regulations forward and in one province two days after I get back to Canada I will be

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9 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 6.

10 United Firefighters Union of Australia, *Submission 19*, p. 11.

11 The report by Dr Tee Guidotti is discussed by Mr Alex Forrest, *Submission 1*, p. 14.

12 For discussion see Mr Alex Forrest, *Submission 1*, p. 6 and *Proof Committee Hansard*, 2 September, pp 4–6.

13 Canadian jurisdictions today list 14 cancers in their presumptive legislation. For discussion see *Proof Committee Hansard*, 2 September 2011, pp 5–6.

meeting with the premier of that province and I believe that province will enact the legislation before the end of the year. Even within our territories two of the three have just passed legislation. The template right now is the 14 cancers that were initially put forward in Manitoba and have now been replicated in Alberta. So now there are 14 cancers and I can tell you that every single province is now looking at moving to the 14 cancers, largely because of the Le Masters study of 2007.<sup>14</sup>

1.33 In the United States presumptive legislation is in place in roughly half of the state jurisdictions, with more pending. The legislation is far from uniform, varying between states in the cancers covered, qualifying periods and other requirements necessary for firefighters to fulfil the criteria for compensation.<sup>15</sup>

1.34 Canada and the United States have responded to science and moved away from the system currently in place in Australia. Here, the onus is on firefighters with cancer to pinpoint a single event, or fire, which caused their illness if they seek to obtain compensation for their illness. For reasons to be discussed later in this report this requirement is very difficult to satisfy and has to date served as an almost insurmountable obstacle to firefighters seeking compensation. In many cases this has left sick firefighters and their families struggling not only physically and emotionally, but also financially, at their time of greatest need. It has meant that firefighters who put their health and lives at risk to help the community are let down when they themselves are in need of assistance.

### **Provisions of the Bill**

1.35 Schedule 1 of the Bill inserts provisions into the SRC Act relating to cancers developed by firefighters.

#### ***Subsection 7(8)***

1.36 A new subsection 7(8) would be added to Part 1 of the SRC Act, providing that firefighters diagnosed with one of seven primary site cancers after a set number of years of employment will have their employment taken to have been the dominant cause of the cancer, unless the contrary is established. Cancers listed in the Bill will not be covered if they are found to be secondary, that is, if they originated in and spread from other parts of the body.

1.37 Subsection 7(8)(a) confines the presumption of occupational illness to cancers identified in the paragraph 1.16. This ensures that 'only the clearest examples of occupational disease can seek to access the presumptive gateway.'<sup>16</sup>

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14 Mr Alex Forrest, *Proof Committee Hansard*, 2 September 2011, p. 6.

15 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 8.

16 Slater & Gordon Lawyers, *Submission 14*, p. 4.

1.38 The inclusion of the qualifying period in provisional subsection 7(8)(b) reflects that:

...broadly considered, the evidence of work relatedness of disease strengthens as the duration of potential occupational exposure increases...

As an alternative, the medical evidence as to the latency periods for the prescribed diseases from occupational exposure could equally have operated as part of the rebuttal process. That is, claims could have been contested on the basis of insufficient latency to support a work contribution. The approach adopted ought properly be viewed as a concession to finding an approach to the operation of presumptive legislation that takes into account the natural fears that scheme administrators might hold from time to time.<sup>17</sup>

1.39 Subsection 7(8)(c) makes reference to the 'hazards of fire'. Slater and Gordon Lawyers informed the committee that this was '...an important statement of principle going to the heart of the subject matter of the Bill – that the hazards of a fire scene are both pervasive and insidious.'<sup>18</sup> This recognises that the hazards of fire may be transported away from the fire scene by firefighters and the equipment they carry:

The one complicating factor is that when we talk about the hazards of a fire scene that immediately invokes images of attending the fire itself or the immediate aftermath, but the thing with the cancers and the chemicals that firefighters are exposed to in this context is that quite often the hazard can migrate. It might not be the primary exposure at the site; it might be that the hazard is also experienced when cleaning fire equipment or cleaning out the truck back at the station if those chemicals have imposed themselves upon the clothing or the apparatus of a firefighter or on the truck itself. I understand that there is clearly a distinction between a clerical officer working for the department and the firefighter in confronting the hazards of the scene, but I think that we ought not to limit the concept of 'exposure to the hazards of a fire scene' to the immediate emergency because these things have a tendency to migrate away from the scene.<sup>19</sup>

1.40 The committee heard that the proposed legislation draws a line around firefighters and those engaged in firefighting activities. Coverage would not extend to other officers—such as mechanics or clerical officers—employed by the fire services:

The duties of the clerical officer who is running the accounts back at the station do not involve firefighting as a substantial portion of their role; therefore, I do not believe they would fall within the confines of the proposed amendment. I guess the point that I was making was more that a recognised firefighter may have had exposure beyond just at the primary scene, but I think those who are not employed to undertake firefighting

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17 Slater & Gordon Lawyers, *Submission 14*, p. 4.

18 Slater & Gordon Lawyers, *Submission 14*, p. 5.

19 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 16.

duties will not benefit, so I do not believe it is going to open the floodgates, as it were, to a vast array of claims from perhaps unintended beneficiaries.<sup>20</sup>

***Subsection 7(9)***

1.41 A new subsection 7(9) would also be added to Part 1 of the SRC Act. This subsection would stipulate that workers must have been involved in firefighting duties as a substantial portion of their employment in order for subsection 7(8) to apply. Subsection 7(9) also allows firefighters who were employed over several separate periods which add up to the qualifying period to be taken to have been employed for the qualifying period.

1.42 The committee also notes that item 8 listed in the Bill would provide that other cancers prescribed in the future would also be governed by the provisions established by this Bill.<sup>21</sup>

1.43 These qualifying periods are a conservative but certain benchmark for the latency periods for various cancers. The committee understands that not all firefighters who develop cancer will be captured by the legislation due to these qualifying requirements. They are, however, necessary in order to create a culture of acceptance and certainty for firefighters, employers and insurers.<sup>22</sup>

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20 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 16.

21 Slater & Gordon Lawyers, *Submission 14*, p. 4.

22 For more on qualifying periods see *Proof Committee Hansard*, 2 September 2011, pp 8–9.

# CHAPTER 2

## The science

2.1 The science underpinning this legislation is pivotal to its justification. The committee received as evidence a large amount of the research that has been conducted into the link between firefighting and cancer. These studies were used to inform this report and are all publicly available.<sup>1</sup> Given the quantity and quality of evidence presented, the committee is confident that a link between firefighting and an increased incidence of certain cancers has been demonstrated beyond doubt.

### International studies

2.2 The health consequences of firefighting have attracted substantial academic research due to the occupational risks firefighters are exposed to. Studies have progressively become more sophisticated. The committee was informed that policymakers are now able to access several large-scale studies which conclusively show that a link exists between firefighting and cancer.<sup>2</sup>

It has been stated that firefighting is the most studied occupation in the world when it comes to cancer. There are literally dozens of major studies from around the world spanning over twenty years and they have made a definitive connection between firefighting and elevated cancer risk.<sup>3</sup>

2.3 One of these studies, commissioned by the Canadian province of Manitoba in 2002, looked at evidence gathered from 1994 to 2002. Led by Tee L. Guidotti, the study analysed research conducted worldwide looking at firefighters and five specific types of cancer: brain, bladder, kidney, non-Hodgkin's lymphoma and leukaemia. Processing enormous volumes of information, the researchers concluded that a firm link exists between firefighting and these primary-site cancers. In his report to the Workers Compensation Board of Manitoba, Guidotti stated:

The evidence available since 1994 suggests it is reasonable given the available scientific evidence to adopt a policy of presumption for brain cancer, bladder cancer, kidney cancer, non-Hodgkin's lymphoma (lymphatic cancer) and leukaemia (hematopoietic cancer) for claims associated with occupation as a firefighter.<sup>4</sup>

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1 See *Submission 1 Attachments*.

2 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 2.

3 Mr Alex Forrest, *Submission 1*, p. 6.

4 Tee L. Guidotti and David F. Goldsmith, 'Report to the Workers Compensation Board of Manitoba on the Association Between Selected Cancers and the Occupation of Firefighter,' *Submission 1 Attachment 5*, p. 26.

2.4 The conclusions were used to inform Manitoba's presumptive legislation, the first of its kind in the world, and subsequent presumptive legislation in other jurisdictions.<sup>5</sup>

2.5 Other studies have confirmed a link between more than just the abovementioned cancers and firefighting. Bates *et al* conducted a retrospective cohort study of mortality and cancer in professional New Zealand firefighters in 2000, following a cluster of testicular cancers detected in Wellington firefighters in the 1980s. They looked at the incidence of testicular cancer in a cohort of firefighters and compared it to the incidence among the general population, using data obtained from the New Zealand Health Information Service (NZHIS). The committee was told that the results of the Bates study:

...put the scientific world on its heels. They found that the level of testicular cancer for New Zealand firefighters—I believe they looked at 4800 New Zealand firefighters within about three decades—was upwards of five times that of the general population.<sup>6</sup>

2.6 Mr Alex Forrest, President of United Fire Fighters of Winnipeg and Canadian Trustee of the International Association of Fire Fighters, told the committee:

When this study came out I read it and said: 'Five times the level—it just cannot be true.' Almost immediately different epidemiologists around the world took on the challenge of discrediting this study out of New Zealand. A gentleman by the name of Jockel out of Germany looked at all firefighters in Germany. What he found surprised him. His study almost exactly replicated the results—the rate of testicular cancer in New Zealand was the same as the rate in Germany. That just shows you the global aspect of this.<sup>7</sup>

2.7 Another large meta-study confirmed these results in 2006. Researchers led by Grace LeMasters '...looked at 110 000 firefighters and replicated the rate of testicular cancer....You have three studies—one from New Zealand, one from Germany and one from the United States—all showing the same rate of cancer.'<sup>8</sup>

2.8 The LeMasters study was commissioned by the Department of Environmental Health at the University of Cincinnati college of Medicine and is the largest study of its kind finalised to date. It looked at 32 other studies which addressed the cancer risk to firefighters who are routinely exposed to harmful substances such as lead, cadmium, uranium, chemical substances, harmful minerals and 'various gases that

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5 Since then and following further research Manitoba has expanded its list of recognised occupational cancers for firefighters from five to fourteen.

6 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 2.

7 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 3.

8 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 3.

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may have acute, toxic effects.<sup>9</sup> The LeMasters study found '...an elevated metarerelative risk' of certain cancers among firefighters.<sup>10</sup>

2.9 Studies conducted in the years since Manitoba first introduced presumptive legislation in 2002 have led that province to expand the number of cancers its legislation covers from five to 14.<sup>11</sup>

2.10 The committee heard that most overseas jurisdictions with similar legislation in place have moved substantially beyond the five cancers covered by Manitoba's initial legislation in 2002 and those listed by the proposed Bill. Today, with the benefit of a large volume of scientific research, every province in Canada is moving towards covering 14 cancers.<sup>12</sup>

2.11 This increase in the number of cancers covered has been driven by growing scientific evidence over the past decade, with lung cancer being a strong example of how legislation has progressed:

...[T]here was a major study done out of British Columbia by Tee Guidotti which looked at lung cancer. Once you take out the factor of smoking, firefighters had a risk of lung cancer three or four times as high as the general population. So, within a few months of that study, we saw the provinces of first Manitoba and then Alberta, British Columbia and Saskatchewan add lung cancer in nonsmokers. Again, that shows the specific nature and narrow scope of the legislation, but it also shows that science really drives this more than anything.<sup>13</sup>

### *Scientific consensus*

2.12 A submission from the ACT Chief Minister and Cabinet Directorate argued that a lack of scientific consensus exists on this issue among researchers and clinicians, posing challenges to this Bill.<sup>14</sup>

2.13 This view does not, however, appear to be supported by evidence received by the committee, nor was it expressed by representatives of the ACT Government subsequently. Mr Andrew Kefford, Deputy Director-General of the ACT Chief Minister and Cabinet Directorate, confirmed that a link between firefighting and cancer is recognised, explaining that he was not in a position to ascertain the strength of the scientific link:

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9 Grace LeMasters et al, 'Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 studies,' *Submission 1 Attachment 7*, p. 1189.

10 Grace LeMasters et al, 'Cancer Risk Among Firefighters: A Review and Meta-analysis of 32 studies,' *Submission 1 Attachment 7*, p. 1189.

11 See <http://news.gov.mb.ca/news/index.html?item=10328> (accessed 9 September 2011).

12 Mr Alex Forrest, *Proof Committee Hansard*, 2 September 2011, p. 6.

13 Mr Alex Forrest, *Proof Committee Hansard*, 2 September 2011, p. 7.

14 ACT Chief Minister and Cabinet Directorate, *Submission 24*, p. 2.



I do not think anyone is contesting that there is a link in the exposure of firefighters to smoke for at least the increased risk of contracting cancer later.

...

But whether that is absolute or somewhere in between is not something in which I am in a position to comment. That is not my area of expertise.<sup>15</sup>

2.14 In the absence of clear evidence before the committee refuting the causal link between cancer and firefighting as defined by this Bill, the committee is satisfied that the science underpinning this legislation is sound.

### ***Committee view***

2.15 The committee is confident in the quality of the studies it has seen and considers them to be compelling evidence in support of this Bill.

2.16 The committee emphasises that, as outlined in Chapter 1 of this report, claims under the proposed legislation would be rebuttable. This reflects the fact that science tells us that if a firefighter with a certain number of years of service develops cancer, that cancer is *most likely* to be caused by occupational exposure to carcinogens. Not *definitely* caused by occupational exposure, but most likely. In that light, any potential lack of absolute scientific consensus—which is incidentally absent in most fields of study—becomes immaterial:

Adjudication under workers' compensation requires an examination of the weight of evidence, not scientific certainty.<sup>16</sup>

2.17 The committee also notes that the body of scientific evidence has expanded since presumptive legislation was first introduced to cover five cancers in Canada in 2002. Researchers have since demonstrated that firefighters are at risk of a greater range of occupational cancers.

2.18 The committee is concerned that, even if passed, the proposed legislation would only serve to bring Australian commonwealth law into line with outdated jurisprudence. Considering that similar legislation has been in place overseas for nearly a decade, and has in fact been strengthened to cover more cancers as a result of growing scientific evidence, the committee would prefer to see Australia enact legislation in step with the most advanced jurisprudence available. The committee sees no reason to ignore scientific evidence demonstrating a link between firefighting as an occupation and a greater number of cancers than the seven listed by this Bill.

### **Recommendation 1**

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15 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, pp 7–8.

16 Tee L. Guidotti, 'Evaluating Causation for Occupational Cancer Among Firefighters: Report to the Workers' Compensation Board of Manitoba,' *Submission 1, Attachment 4*, p. 52.

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**2.19 The committee recommends that the types of cancer listed by the proposed Bill be expanded to include multiple myeloma, primary site lung cancer in non-smokers, primary site prostate, ureter, colorectal and oesophageal cancers.**

### **The healthy worker effect**

2.20 Studies looking at firefighters and occupational disease also highlight the impact of what is known as the 'healthy worker effect'. The phenomenon is found across scientific literature and describes the protective effect of above-average health status on morbidity and mortality levels among groups who are otherwise at elevated risk of illness.

2.21 In the case of firefighters, the impact of the healthy worker effect means that their health and fitness levels, which are markedly higher on average than those of the general population, may protect them from diseases—including cancer—to a certain extent. In turn this suggests that were firefighters' health and fitness levels the same as those of the rest of the community, given their occupational exposure to carcinogens, they would suffer from cancers at a far greater rate than is currently the case.

2.22 It also means that the relatively high rates of certain types of cancers among firefighters are still lower than the rates we would see among the general population were the latter regularly subjected to similar carcinogenic environments.

2.23 The healthy worker effect therefore may mask the true level of risk firefighters are exposed to:

One would expect the morbidity and mortality rates to be lower among firefighters than in the general population containing people who are ill, infirm and generally not suited for fire service.

...

Because of this, a study may show no difference in morbidity or mortality rates between firefighter and the general population when, in reality, the firefighters may be sustaining greater illness and death than would be expected in a similar healthy group. Additionally, only healthy firefighters stay on the job. Those who become ill may leave the fire service without documented disability before retirement. Others may leave seemingly healthy, only to suffer the long-term effects long after their association with the fire service has ended.<sup>17</sup>

2.24 The effect has been observed where specific cancers, such as, for example, colon cancer, are concerned. Evidence exists suggesting that physical fitness and activity should protect individuals from certain types of cancer. This does not appear to be the case for firefighters:

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17 Michael Smith, Deputy Chief Officer, South Australian Metropolitan Fire Service, *Submission 13*, p. 5.

Despite the reports of a consistent inverse relationship found in other studies between physical activity and risk of colon cancer...we observed an increased risk of colon cancer among Philadelphia firefighters, suggesting factors exist that negate the protection that might be expected from the increased physical activity.<sup>18</sup>

2.25 Mr Forrest referred in his evidence to studies which concluded that:

...if firefighters never fought a fire, the mortality and morbidity rates for their particular health group would probably be anywhere from 60 to 70 per cent of that for the general population.<sup>19</sup>

2.26 Mr Forrest concluded that studies looking at cancer risk among firefighters were in all likelihood conservative in their conclusions due to the healthy worker effect.<sup>20</sup>

### **Exposure and protection**

2.27 As outlined, studies and meta-studies conducted around the world, including in Australia in the 1980s, demonstrate that certain types of cancer are caused by the release of carcinogens from combusting materials in structure fires. These known carcinogens can include benzene, styrene, chloroform and formaldehyde, and are absorbed by firefighters through the skin or by way of inhalation.<sup>21</sup>

2.28 Submissions to this inquiry discussed the protection available to firefighters through the world-class safety gear and clothing Australian firefighters utilise.<sup>22</sup> The committee heard that this protective gear, although consistent with all national and international safety regulations, cannot and does not form an impenetrable barrier between firefighters and the toxins they work amidst.

### ***Toxins***

2.29 Mr Brian Whittaker, Commander of the Hazardous Materials (HAZMAT) Scientific Unit of the Metropolitan Fire Brigade, Melbourne, provided the committee with extensive evidence based on his expertise in HAZMAT response and public safety. Mr Whittaker concluded the following concerning the risk to firefighters:

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18 Dalsu Barris *et al*, 'Cohort Mortality Study of Philadelphia Firefighters', *American Journal of Industrial Medicine*, vol. 39, p. 723.

19 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 4.

20 Mr Alex Forrest, *Proof Committee Hansard*, 9 August 2011, p. 4.

21 Thomas Fabian *et al*, 'Firefighter Exposure to Smoke Particulates,' (Final Report) 1 April 2010, including Table 3-4 Effluent gases detected in combustion of material-level test samples, Submission 19, Attachment 10 and Appendix A.

22 See for example Mr Brian Whittaker, *Submission 16*; Mr Philip Taylor, *Submission 17*; United Firefighters Union of Australia, *Submission 19*.

Their workplace is an uncontrolled environment where safety controls cannot eliminate all hazardous products encountered. Risk exposure to various toxic gases, vapours and particulate matter found in fire smoke does exist. These products can be carcinogenic and cause irritation, incapacitation, systemic toxicity and asphyxiation. The effects from exposure to the above products can be both acute and chronic.

Many studies have concluded that the combustion or pyrolysis (heating) of general household materials can generate many carcinogenic products. The prediction of combustion products is a complex area and there is potential for generation of a huge range of products depending on the nature of the fire and the conditions of burning.<sup>23</sup>

2.30 Most operational activities undertaken by urban firefighters are structural and non-structural fire incidents. Car fires, although technically considered non-structural, produce toxic chemicals rivalling those found in structure fires. This, the committee heard, is due to the prevalence of plastic components found in cars.<sup>24</sup>

2.31 Unsurprisingly, even ordinary houses and household products release toxic chemicals when they burn.

It is estimated there are tens of thousands of toxins and chemicals in the average household fire. Fabrics, furniture and construction materials give off a range of toxic gasses when burning. These toxins include acetic acid, phenol, formaldehyde, benzene, styrene, ammonia, carbon monoxide and cyanide. In a fire, the combination of these chemicals increases the toxicity significantly.<sup>25</sup>

2.32 The committee heard that although all fires have individual characteristics, there are a number of common toxic chemicals which may be present in most fire effluent:

- Polycyclic Aromatic Hydrocarbons (PAHs): naphthalene, benzo[a]pyrene;
- Irritant gasses: formaldehyde, acrolein, oxides of nitrogen; and
- Asphyxiant gasses: carbon monoxide, hydrogen cyanide.

2.33 Many of these are either known or suspected carcinogens. PAHs, for instance, are substances found in particles of soot and linked to certain types of cancer.<sup>26</sup> As far

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23 Mr Brian Whittaker, *Submission 16*, p. 1.

24 Mr Philip Taylor, *Submission 17*, p. 3.

25 United Firefighters Union of Australia, *Submission 19*, p. 19.

26 Dalsu Barris *et al*, 'Cohort Mortality Study of Philadelphia Firefighters,' *American Journal of Industrial Medicine*, vol. 39, p. 724.

back as the year 1775, an increased rate of cancer among chimneysweeps routinely exposed to soot had already been reported.<sup>27</sup>

### ***Smoke***

2.34 Smoke is an aerosol consisting of liquid or solid particles dispersed in a gaseous medium. This gaseous medium consists largely of toxic gases.<sup>28</sup>

2.35 The toxicity of these gases has been rising with modernisation of industry practices, meaning that the modern environment presents greater hazards to firefighters than their colleagues in past years. This is partly due to changes made by the construction industry, namely the shift away from natural materials such as wood to lighter construction materials that feature synthetics and petroleum-based materials:

These materials ignite and burn 2–3 times hotter and faster than conventional materials and when heated, emit a gas or smoke that will also ignite 2–3 times faster and burn 2–3 times hotter.<sup>29</sup>

2.36 Synthetic materials used extensively in commercial and residential properties include plastics, polymers such as styrofoam and polyurethane foam and nylons. Combustion has a marked effect on these synthetics and the smoke they produce when burning. They are commonly carbon based and bonded with nitrogen, sulphur, hydrogen and chlorine atoms. The increased speed at which they ignite and burn helps in the speedy creation of a toxic environment.<sup>30</sup>

2.37 It is this growing prevalence of synthetic materials that is an enormous cause for concern:

Chemicals are highly pervasive in the modern world. Since World War II, astronomic increases in the variety and production volumes of synthetic chemicals have occurred. Today more than 70 000 distinct chemicals are used commercially in the United States and are registered with the U.S. Environmental Protection Agency. Approximately 1000 new chemicals are registered each year. These chemicals are combined into more than 7 million mixtures, formulations and blends that are found in homes, public buildings and workplaces across the United States.

Testing of chemicals for their carcinogenic and other toxic effects has not kept pace with chemical production. Despite decades of concern about the toxic effects of chemical substances, the toxic effects of most of the chemicals currently in commercial use have never been evaluated...The absence of toxicity data on the majority of chemicals in commercial use means that firefighters are exposed on a daily basis to chemicals with unknown effects. It is quite likely, therefore that in addition to their

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27 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 1.

28 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 1.

29 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 1.

30 'Smoke', Vol. 2, 2009, *Submission 16, Attachment 1*, p. 3.

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exposures to known carcinogens, firefighters experience exposures to carcinogenic chemicals whose cancer-causing potential has not yet been identified.<sup>31</sup>

### ***Protective clothing and equipment***

2.38 The committee heard that occupational environments involving fire inherently preclude the design of personal protective clothing (PPC) that would provide an impermeable physical barrier between firefighters and the toxic smoke to which they are exposed.

2.39 Nevertheless, firefighters work hard to mitigate and eliminate workplace hazards in an emergency situation. Hazards are mitigated through a process known as the Hierarchy of Controls, which includes a range of options:

- Elimination of hazard;
- Substitution of hazard;
- Isolation of hazard;
- Engineering controls;
- Administrative controls; and
- Personal protective clothing.

2.40 The key principle of the hierarchy is to try and eliminate hazards at their source:

In regards to the 'Hierarchy of Controls' the core activity of firefighters is to eliminate, substitute and isolate hazards. This is routinely achieved by the use of engineering controls (equipment), administrative controls (skills and operational protocols) and PPC/E [personal protective clothing and equipment]. However with the inherent nature of fire fighting it is impossible to eliminate all hazards.<sup>32</sup>

2.41 As all hazards cannot be eliminated or isolated, engineering and administrative controls, as well as PPC, remain the principal hazard control mechanisms available. These are far less reliable methods of hazard mitigation, are '...more costly and require more work to ensure they are maintained.'<sup>33</sup>

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31 Philip J. Landrigan *et al*, 'Occupational Cancer in New York City Firefighters,' *Submission 1 Attachment 6*, p. 3.

32 Mr Brian Whittaker, *Submission 16*, p. 2.

33 Mr Philip Taylor, *Submission 17*, p. 3.

2.42 Respiratory equipment available to firefighters can also help eliminate inhalation as a source of exposure or contamination. Protective clothing, however, is limited in its capacity to mitigate contamination, so hazards are managed rather than eliminated through its use.

2.43 Managing hazards is achieved through standards for protective equipment set by the National Fire Protection Association (NFPA):

- Level A: Fully encapsulating gas tight suit with breathing apparatus (BA);
- Level B: Chemical splash suit (protection from liquids and solids) with BA;
- Level C: Chemical splash suit (protection from liquids and solids) with respirator; and
- Level D: Structural firefighting ensemble with breathing apparatus.<sup>34</sup>

2.44 Levels of protection are chosen to be fit for purpose. Levels A, B and C offer protection for incidents which involve hazardous materials but not fire or risk of fire. Therefore, Level A protection is suitable, for example, when firefighters attend an incident involving a chemical spill. The kind of protection required could change if the chemical spill involved fire or if detection equipment indicated a flammable environment.

2.45 In incidents involving fire or risk of fire, Level D protection is designed to offer the best possible protection. However, although it protects firefighters in environments involving fire, it does not offer fully encapsulated protection as provided by Level A:

Structural fire fighting ensemble has limited protection from gases, vapours and particulate matter due to the requirement and necessity to have a compromise between protection from radiated heat exposure and the release of metabolic heat build up. In short the breathability is in effect a hazard to firefighters that cannot be eliminated.<sup>35</sup>

### ***Breathability***

2.46 An average structure fire can expose firefighters to temperatures approaching 1000 degrees Celsius.<sup>36</sup> This means that the protective clothing firefighters wear in fire incidents must be able to breathe in order for them to be able to operate in these extreme temperatures. If the clothing did not breathe, firefighters would suffer heat stress and could quickly perish from metabolic heat buildup damaging their internal organs.

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34 Mr Brian Whittaker, *Submission 16*, p. 2.

35 Mr Brian Whittaker, *Submission 16*, p. 3.

36 Mr Philip Taylor, *Submission 17*, p. 2.

2.47 This requirement for breathability in protective clothing prevents firefighters from wearing fully encapsulated suits designed to seal all routes of chemical entry. The protective clothing they wear when fighting fires protects them from flames, but leaves them exposed to toxins through inhalation or absorption through eyes, skin, or wounds.<sup>37</sup>

2.48 Therefore, the very nature of the environment firefighters operate in prevents the design of protective clothing and equipment which could offer complete protection and isolation from toxic smoke.

### ***'Flash-over' and response time***

2.49 To minimise loss of life, property damage and interruption to business, '...fire services mandate a quick response by applying standards for their firefighters to respond to emergencies.'<sup>38</sup>

2.50 This response time standard is considered crucial:

Underpinning fire services response time standards is scientific research that dictates that a fire must be suppressed within five to 10 minutes of ignition. The physical characteristics of fire cause the temperature in a building to rise extremely rapidly, and a sudden and dramatic simultaneous ignition of most combustible materials and gases is called flash-over. The time required for flash-over to occur varies according to building construction and furnishing materials and usage. The fire spreads quickly once flash-over has occurred. In order to maximise the potential of saving life and minimize damage to property, firefighters must enter the building to commence suppression activities to avoid flash-over. In short, firefighters must enter the toxic environment...It is not an option for a firefighter to delay entering a structure to commence rescue operations and suppression activities.<sup>39</sup>

### ***Committee view***

2.51 The committee understands that firefighters work in uncontrolled environments which make it necessary for their protective gear to breathe, therefore leaving them vulnerable to toxins and carcinogens.

On the weight of considerable evidence supplied to the committee supporting a likely causal link between firefighting and certain cancers, as well as the understanding that claims for compensation would be legally contestable, the committee is confident that rebuttable presumption is a solid—and fair—foundation for workers' compensation policy for career firefighters.

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37 Mr Brian Whittaker, *Submission 16*, p. 3.

38 United Firefighters Union of Australia, *Submission 19*, p. 6.

39 United Firefighters Union of Australia, *Submission 19*, p. 7.





# CHAPTER 3

## Key issues

### Burden of proof

3.1 Firefighters who are killed or injured attending a fire incident are given compensation for work-related injuries. However, firefighters who develop cancer and believe their illness to be work-related currently face substantial obstacles to seeking compensation.

3.2 The committee was informed that, at present, any attempt to obtain compensation requires firefighters to undertake adversarial, costly and often protracted legal proceedings to establish:

- a) The link between firefighting and cancer; and
- b) Causation between a *specific* fire incident and their illness.

3.3 The United Firefighters Union of Australia (UFUA) informed the committee that medical practitioners generally advise firefighters with cancer to minimise stress and focus on their cancer treatment.<sup>1</sup> Many firefighters, as the committee heard from personal accounts relayed in the next chapter, fund their own leave from work and even their treatment. Their families cannot access compensation in the event that they die.<sup>2</sup>

3.4 As a result, the emotional and financial costs of litigation involved mean that not many firefighters who develop cancer seek to access any entitlement or compensation:

These transactional costs and the potential stress and delay often act as a disincentive for firefighters with cancer to pursue their proper entitlements. I myself have seen firsthand several firefighters with potential claims discouraged from pursuing those claims for these reasons. Often the shock and trauma of a cancer diagnosis and subsequent treatment places a great strain on those affected and their families. The threat of litigation is often overwhelming and the need to focus on treatment and improving health is often paramount. In this way, the scheme can sometimes be as confronting as the injury.

The introduction of presumptive legislation will therefore lead to greater transactional efficiency. It will remove some of the emotional and financial

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1 United Firefighters Union of Australia, *Submission 19*, p. 8.

2 United Firefighters Union of Australia, *Submission 19*, p. 8.

hurdles facing workers at the most vulnerable times in their lives. This in turn will improve client satisfaction with the scheme and hopefully drive down litigation costs.<sup>3</sup>

3.5 Those who would pursue compensation face considerable litigation costs. Representatives from Slater and Gordon Lawyers informed the committee that presumptive legislation in other jurisdictions often results in a reduction in litigation:

The presence of the rebuttable presumption means that it is open to insurers to still defend those claims where the cause of the cancer may be in question. However, I have certainly seen it in the proclaimed diseases provisions within the Accident Compensation Act in Victoria, where it does create more of a culture of acceptance of the claim rather than disputation. To give you an example, it might be the occurrence of Q fever amongst abattoir workers. Rather than having a protracted legal argument as to whether that disease has been caused by that type of employment, I have noticed that where that has occurred here it has been more readily accepted. That is to be applauded. It means that we are putting the resources into the appropriate places; they are not going to be expended on litigation. In litigation it is not only the cost; it is the emotional toll too. For workers who are quite ill and who quite often have a battle for their lives, the emotional toll of going to see doctor upon doctor for independent opinion or going to see a lawyer or going to court to give evidence can be quite stressful. Those people are, I guess, discouraged from pursuing that and sometimes will relinquish what their proper entitlement might otherwise be. So when we speak of these amendments not creating a new entitlement, it does not, but it does make it more efficient and more readily available for those who perhaps are most deserving of our support.<sup>4</sup>

## **The SRC Act**

3.6 The Safety, Rehabilitation and Compensation Act (the SRC Act) sets up the framework for workers' compensation and rehabilitation for the Government's Comcare<sup>5</sup> scheme. The Department of Education, Employment and Workplace Relations provided the following on the Act:

It establishes a fully funded premium based system and a licensed self-insurance based system of compensation and rehabilitation for employees who are injured in the course of their employment. The scheme covers approximately 211,000 Australian and ACT government employees and approximately 163,000 employees of self-insured licensees (as of 30 June 2010).

It provides a comprehensive benefit structure that includes:

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3 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 15.

4 Mr Craig Sidebottom, Slater and Gordon Lawyers, *Proof Committee Hansard*, 2 September 2011, p. 19.

5 For more on Comcare see: <http://www.comcare.gov.au/> (accessed 29 August 2011).

- the payment of the reasonable cost of medical treatment;
- income replacement for periods of incapacity for work;
- payment of a lump sum for permanent impairment; and
- payment for rehabilitation programs.

In general, access to benefits under the SRC Act depends upon whether or not the injury, illness or disease can be demonstrated, on the balance of probabilities, to be work related.<sup>6</sup>

3.7 'Disease' is defined by the SRC Act as an ailment suffered by an employee that was contributed to by employment:

The way that scheme works is that there is an ILO [International Labour Organisation] list of occupational diseases. There is an expert panel that assesses exposure and likelihood of causation. Once a disease is on that list, under the provisions of the act as it applies, if—to take a hypothetical—one of our firefighters were to acquire a disease to which these deeming provisions apply, then that would bring into effect the workers compensation arrangements under the act.<sup>7</sup>

### ***The ILO list of occupational diseases***

3.8 All Australian jurisdictions except Queensland already include in their respective workers' compensation legislation lists of biological agents and chemicals with known links to certain diseases. These, including those listed under the SRC Act, are all based on the International Labour Organisation's (ILO) List of Occupational Diseases.<sup>8</sup>

3.9 The ILO list was created following the Workmen's Compensation (Occupational Diseases) Convention (Revised) 1934. Australia ratified this convention in 1959. The diseases included in the ILO's list adhere to set criteria:

- (i) there is a causal relationship with a specific agent, exposure or work process;
- (ii) they occur in connection with the work environment and/or in specific occupations;
- (iii) they occur among groups of persons concerned with a frequency which exceeds the average incidence within the rest of the population; and
- (iv) there is scientific evidence of a clearly defined pattern of disease following exposure and plausibility of cause.<sup>9</sup>

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6 Department of Education, Employment and Workplace Relations, *Submission 25*, pp 4–5.

7 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, p. 2.

8 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 7.

9 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 8.

3.10 Although most Australian jurisdictions list some of the toxins cited by the ILO's list, not all have updated their respective lists of deemed diseases to reflect reviews and updates made by the ILO.<sup>10</sup>

3.11 Furthermore, the committee heard that the list of deemed diseases in the SRC Act, which is based on the ILO list, does not in fact include all the cancers listed by the proposed Bill:

Advice from Comcare is that their preliminary research—noting that that research has not been conducted through a medical or scientific expert—indicates that the existing list of declared diseases that can be caused by exposure to relevant toxins would encompass certain cancers but may not encompass all cancers listed in the firefighters bill. Comcare have further advised that this would continue to be the case even if the current list of declared diseases and toxins under the SRC Act is updated to bring it into line with the current ILO list of occupational diseases.<sup>11</sup>

### ***Subsection 7(1) of the SRC Act***

3.12 Subsection 7(1) of the Act provides that:

Where:

(a) an employee has suffered, or is suffering, from a disease or the death of an employee results from a disease;

(b) the disease is of a kind specified by the Minister, by legislative instrument, as a disease related to employment of a kind specified in the instrument; and

(c) the employee was, at any time before symptoms of the disease first became apparent, engaged by the Commonwealth or a licensed corporation in employment of that kind;

the employment in which the employee was so engaged shall, for the purposes of this Act, be taken to have contributed, to a significant degree, to the contraction of the disease, unless the contrary is established.<sup>12</sup>

3.13 That is, arguably the SRC Act already '...makes specific provision for what is intended by this Bill.'<sup>13</sup> It provides presumptions for certain prescribed occupational diseases, although, as seen in paragraph 3.11, not for all the cancers listed by this Bill.

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10 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 8.

11 Ms Michelle Baxter, General Manager, Workplace Relations Implementation and Safety Group, Department of Education, Employment and Workplace Relations, *Proof Committee Hansard*, 23 August 2011, p. 9. For the ILO list of occupational diseases see: [http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_150323/lang--en/index.htm](http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_150323/lang--en/index.htm) (accessed 12 September 2011).

12 Subsection 7(1), *Safety, Rehabilitation and Compensation Act 1988*.

13 Slater & Gordon Lawyers, *Submission 14*, p. 3.

3.14 It does so by enabling:

...the Minister to specify certain diseases are related to employment of a specific kind, unless the contrary can be proved. This presumes that certain diseases (specified by the Minister), that are contracted by an employee in a specific kind of employment, are related to that employment.<sup>14</sup>

3.15 The ACT Government argued that the above subsection of the SRC Act already provides adequate coverage for ACT firefighters. Mr Andrew Kefford, Deputy Director-General in the ACT's Chief Minister and Cabinet Directorate stated:

...all of those firefighters we have mentioned are covered in the course of their duties by the act to which this bill relates. We note in that context that that act provides a reverse onus of proof where a worker—and they are all classified as workers for this purpose—contracts a disease that is specified under the act. The act provides for compensation for all territory workers where diseases associated with particular toxin exposure in their employment on the balance of probabilities involved exposure to such toxins. This means in practice that, if a firefighter contracts cancer and that disease is linked to exposure to toxins during their employment, then it would more than likely be taken to be a compensable injury, although I note for the information of the committee that to the best we have been able to ascertain from the history there has not been a claim for occupational cancer amongst the territory's firefighters.<sup>15</sup>

3.16 Mr Kefford added that records of incident notifications kept by the ACT's fire services would help ACT firefighters obtain compensation:

If we were in the situation of someone who had been a firefighter in the ACT contracting cancer then part of the process that applies at the moment is that they would need to show that they had been a firefighter and exposed in the course of their work. There would be records that would permit them to do that.<sup>16</sup>

3.17 The records in question refer to the Australian Incident Reporting System (AIRS). The committee heard that AIRS data, however, is used to measure emergency response effectiveness and is not designed to collect information which could be reliably used in compensation claims:

AIRS is a mechanism for fire services to collect data as to the incidence of fire and is used to identify trends in fires and incidents. It is not a system designed to record the event from the firefighter's perspective, experience or exposure to toxins.<sup>17</sup>

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14 Department of Education, Employment and Workplace Relations, *Submission 25*, p. 5.

15 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, pp 1–2.

16 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, *Proof Committee Hansard*, 23 August 2011, p. 5.

17 United Firefighters Union of Australia, *Supplementary submission 19*, p. 6.

3.18 UFUA provided the committee with an excerpt from the Australasian Fire and Emergency Service Authorities Council (AFAC) website, which acknowledges the limitations of AIRS:

Some anomalies in the data exist due to separate development of the reporting systems by each fire service. It is not required that AIRS reports be supported by irrefutable evidence.<sup>18</sup>

3.19 UFUA expanded on the limitations of the AIRS system, citing the following drawbacks:

- The system does not record firefighters' exposure to toxins as a result of combustion at the fire scene;
- The exposure recorded refers to exposure from the fire scene—for example from spread to another structure—not exposure to the firefighter;
- The use of breathing apparatus and specialist protective equipment is recorded as the number of sets used without details about which firefighter used the equipment;
- The recording of respiratory protection and protective equipment is not compulsory for structure fires;
- It is not mandatory to fill each field in the system; this may mean that important information is at times omitted;
- The recorded data relies on what is visible to the officer at the scene; and
- Due to the short timeframes firefighters operate in, officers do not have adequate time to record precisely which toxins or carcinogens are present in the environment.<sup>19</sup>

3.20 Therefore the records available do not appear sufficiently reliable to form the basis of solid compensation claims.

***Does the SRC Act provide adequate cover?***

3.21 The ACT Government's evidence that any ACT firefighters who wish to make a claim can already do so under subsection 7(1) of the SRC Act reaffirmed the position expressed by the ACT Government earlier in its submission:

The SRC Act already provides presumptions for prescribed occupational diseases.<sup>20</sup>

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18 Quoted in United Firefighters Union of Australia, *Supplementary submission 19*, p. 6.

19 For more detail on AIRS see appendices to United Firefighters Union of Australia, *Supplementary submission 19*.

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3.22 However, the same part of the above submission goes on to explain:

That is, the disease is deemed to be work-related if the worker's employment involved exposure to certain chemicals, toxins and biological agents.<sup>21</sup>

3.23 This means that ACT firefighters who develop cancer may technically seek and obtain compensation under the SRC Act as it stands. Importantly however, they still have to prove on the balance of probabilities:

- (i) That the disease (cancer) was caused by the exposure to the particular chemical or toxic compound; and
- (ii) That the employee was exposed to that particular chemical or toxic compound.<sup>22</sup>

3.24 Mr Steve Kibble of Comcare outlined for the committee the tests and process involved in determining claims under subsection 7(1) of the SRC Act as it stands:

When we determine claims under that subsection there are two evidentiary tests considered. The first one is disease of a kind—and I am referring to the legislation—and the second is employment of a kind, which involves exposure to a specified risk. For example, the notice of the deemed diseases provides coverage for occupational diseases caused by benzene, for those employees whose employment involves exposure to benzene.

With that example, firstly, it must be established that the disease is of a kind caused by benzene and the person who is making a decision about the claim would rely on specialist medical evidence or research that provides a scientific and medical link to the contraction of a kind of disease caused by benzene. Secondly, the delegate would rely upon the information provided on the claim form or obtain factual evidence from the employer and/or the employee to establish that the employee was engaged in a kind of employment involving exposure to the risk—that is, of benzene—before they contracted the disease and their employment involved exposure to the risk. For example, if a firefighter fought structural fires, therefore it can be taken that he or she had been exposed to benzene.<sup>23</sup>

3.25 However UFUA reminded the committee that:

Firefighters cannot prove 'exposure' to the particular chemicals or toxins at the specific fires or incidents they have attended. It is simply not possible or practicable for the detection of the numerous toxins firefighters are exposed to at each particular fire. This problem is exacerbated as the exposure can be over a long period of time at a number of fires/incidents and the cancers have various latency periods.

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20 ACT Government, Chief Minister and Cabinet, *Submission 24*, p. 2.

21 ACT Government, Chief Minister and Cabinet, *Submission 24*, p. 2.

22 United Firefighters Union of Australia, *Supplementary submission 19*, p. 4.

23 Mr Steve Kibble, Comcare, *Proof Committee Hansard*, 23 August 2011, p. 10.



Therefore, without being able to prove that exposure at any particular time in the employment, the firefighter fails to meet the test for the presumptive threshold as specified in section 7(1) [of the SRC Act]. The firefighter is left in the impossible position of having to prove the link of the cancer with their particular work as a firefighter.<sup>24</sup>

3.26 Asked how a firefighter could prove exposure under subsection 7(1) of the SRC Act as it stands, representatives of the ACT Government stated the following:

If we were in the situation of someone who had been a firefighter in the ACT contracting cancer then part of the process that applies at the moment is that they would need to show that they had been a firefighter and exposed in the course of their work. There would be records that would permit them to do that. I might come back to what you were saying before about knowledge of the provisions. I should say that safety generally and workers' safety generally in our fire services are things that are at the front of the government's mind. They are at the front of the minds of all of the people involved in it. So I am confident that any firefighter who contracted a disease or work injury that even might have been related to their work would know about the appropriate channels through which they should go to pursue their claim, whether they be a member of our ESA or a volunteer brigade.<sup>25</sup>

3.27 The onus, therefore, would still be on the sick firefighter to prove occupational exposure to carcinogens. In fact, given that cancer results from cumulative exposure, firefighters seeking compensation could be required to provide a trail of evidence on exposure going back a decade or more.

3.28 This, the committee understands, would be achievable only if, after every fire event, authorities conducted a thorough scientific analysis of chemicals present in the fire, and then provide each firefighter involved in the response with a detailed list of chemicals they were exposed to. The administrative burden and cost of such an endeavour would be prohibitive. Easing the extremely difficult task of proving the link between their work and their cancer goes, as outlined earlier in this report, to the very heart of the proposed legislation.

3.29 In addition, this question of proving exposure leads to the fine point of difference between the current SRC Act and amendments proposed by this Bill. The latter would not require firefighters battling cancer to go out of their way to prove exposure. It would assume exposure to carcinogens for firefighters with a set number of years of service.

3.30 Slater and Gordon Lawyers pointed to the out that the Bill does not represent a significant departure from the SRC Act, but rather a narrowing of its intentions:

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24 United Firefighters Union of Australia, *Supplementary submission 19*, p. 4.

25 Mr Andrew Kefford, Deputy Director-General, Chief Minister and Cabinet Directorate, Australian Capital Territory, *Proof Committee Hansard*, 23 August 2011, p. 5.

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This Bill therefore represents an outcome of a type not only already specifically contemplated by the drafters of the current Section 7 [of the SRC Act], but is also narrower in application than that envisaged. It would be errant logic to conceive of this Bill as some new tipping point that will promote a flood of claims.<sup>26</sup>

3.31 The Slater and Gordon submission argued that the effect of the proposed Bill is limited to:

...shift[ing] the balance of an evidentiary burden away from a severely injured worker and their family at a time where that family is likely experiencing significant stress. It shifts this burden to a professional administrator who has ready access to the resources and expertise necessary to assess the merits of the situation. Indeed, it is in many ways the core business of this administrator to make such assessments. It does not deny the administrator any legal defence that it may otherwise consider appropriate to rely upon in the given circumstances.<sup>27</sup>

### *Committee view*

3.32 The committee recognises that subsection 7(1) of the SRC Act already allows for a presumption that employment contributed significantly to a listed disease. However, critically, the Act still requires proof of exposure to be established by the claimant before the presumption can take effect. A firefighter would have to:

1. suffer from a disease listed under the SRC Act (which appears not to include all the cancers covered by the proposed legislation);
2. show that their employment involved a risk of exposure to particular chemicals prior to the disease; and
3. prove a link between the chemical and disease in question.

3.33 The committee considers the SRC Act an inadequate mechanism to achieve the objectives of the current Bill because of the heavy evidentiary burden it places on firefighters with cancer.

3.34 The Bill being considered relies on scientific evidence and assumes an association between the length of occupation as a firefighter and certain cancers. If the Bill is passed, firefighters with these primary site cancers will only have to prove length of service.

3.35 The committee acknowledges the volume of evidence received—particularly that from Slater and Gordon Lawyers—pointing out that the ultimate effect of this Bill would be to merely shift, not scrap, the evidentiary burden. The committee recognises

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26 Slater & Gordon Lawyers, *Submission 14*, p. 3.

27 Slater & Gordon Lawyers, *Submission 14*, p. 3.

that the opportunity would still exist for employers and insurance agencies to overcome claims for compensation in cases where such claims were not warranted.

## Costs

3.36 Workers' compensation claims through Comcare are funded by premiums paid for by governments:

The way our scheme operates is that it is very much an experience based scheme. You may be aware of some of the state and territory workers compensation schemes which have some elements of an experience base in terms of some of the claims experience and performance of individual employers but because of the size of the schemes and the number of employers they quite often operate on an industry basis et cetera. But our scheme is very much an employer based experience, so the premium which is charged in each year is based on the actual claims experience of the individual employers as well as the overall costs of the scheme itself.<sup>28</sup>

3.37 The committee explored the possibility that the Bill could bring about significant increases in premiums by improving the ease with which firefighters can access compensation. However, based on overseas experience as well as the fact that the legislation would not provide for any new grounds to claim, the committee is of the view that there would be negligible impact on the Commonwealth or ACT budget.

3.38 For information on the cost impacts of similar presumptive legislation in other jurisdictions the committee considered evidence provided by the Fire Chief Ken Block of Edmonton Fire Rescue Services in Canada. Fire Chief Block informed the committee that the cost impact of presumptive legislation in Canada had been 'minimal if not negligible.'<sup>29</sup>

3.39 To illustrate the point, Fire Chief Block cited the example of the province of Alberta, Canada, for the committee. Alberta introduced presumptive legislation in 2003, starting with seven cancers listed. In 2005 the province added lung cancer in non-smokers to its list of covered cancers, then expanded the list in 2010–2011 to include another six cancers. In all, Alberta now covers 14 cancers in its presumptive legislation.

3.40 There are approximately 13 500 firefighters in Alberta, of which 3500 are full-time firefighters and 10 000 volunteer or part-time. Figures provided for the committee show that in the period 2006–2010 there were 19 occupational cancer claims with the Alberta Workers Compensation Board (WCB).<sup>30</sup>

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28 Mr Steve Kibble, Comcare, *Proof Committee Hansard*, 23 August 2011, p. 12.

29 Fire Chief Ken Block, *Proof Committee Hansard*, 2 September 2011, p. 3.

30 Fire Chief Ken Block, *Submission 26*, p. 6.

3.41 The committee heard that the total cost of the WCB—including all workplace injury and illness claims—to the Edmonton Fire Rescue Services budget is less than two per cent of its \$158 million recurrent operating budget:

Within the two per cent of the Edmonton Fire Rescue Services recurrent operating budget it is estimated that there would be a very small percentage of work related illness falling within presumptive legislation coverage. Again, that two per cent encompasses all of the work related injuries, not just cancer.

...

From 2003 the WCB cost for Edmonton Fire Rescue Services was \$916,347, increasing over a seven-year period to \$2,332,414 in 2010. To put that into perspective, that is the equivalent of a \$202,295 increase per annum in total for all claims, not just occupational cancer under WCB—and, again, all claims include the range of work related illnesses, such as back injuries, sprains, strains et cetera.<sup>31</sup>

3.42 The committee also heard that much of the increase in costs can be attributed to increased staffing levels, with the Edmonton fire department growing by approximately 15 per cent over the past decade.

3.43 Fire Chief Block discussed with the committee the 'immeasurable but beneficial' impacts of presumptive legislation in Edmonton, Alberta. Raised awareness of the correlation between firefighting and certain cancers has led to a proactive approach to health awareness through the Edmonton Fire Rescue Services Health and Wellness program, introduced in 2005. The program encourages firefighters to undergo regular, voluntary medical assessments, which have resulted in early detection of cancers and subsequently a much higher survival rate.<sup>32</sup>

Through early occupational cancer detection, there is transferring of costs between death benefits and issues such as lost time and medical claims. This is essentially a balancing and neutral costing, while detecting a cancer early and hopefully saving a firefighter, which is the right thing to do.<sup>33</sup>

3.44 Raised health awareness and a proactive approach to health and wellbeing have also resulted in a positive change in employee engagement and have helped Edmonton Fire Rescue Services with recruitment and retention.<sup>34</sup>

### ***Committee view***

3.45 The committee notes the experience-based evidence provided by Fire Chief Block. The committee also notes the very small number of claims lodged in Alberta,

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31 Fire Chief Ken Block, *Proof Committee Hansard*, 2 September 2011, p. 3.

32 Fire Chief Ken Block, *Submission 26*, p. 7.

33 Fire Chief Ken Block, *Submission 26*, p. 7.

34 Fire Chief Ken Block, *Submission 26*, p. 7.

Canada, and has no reason to believe that the introduction of presumptive legislation here would lead to a flood of claims. Evidence suggests otherwise, as only a small number of firefighters will be in the unfortunate position of having to make a claim for occupational cancer.

3.46 On the basis of this evidence, the committee is confident that the cost impact of the proposed legislation would be as insignificant in Australia as it has been elsewhere.

3.47 The committee also notes with great interest that presumptive legislation overseas has led to greater health awareness, earlier detection of cancers and consequently a higher survival rate. First and foremost this is positive in terms of the firefighters' lives saved. However, it also leads to a reduced number of death benefits needing to be paid.

### **Coverage of volunteer firefighters**

3.48 Some submissions sought clarification on which firefighters the Bill would cover.<sup>35</sup>

3.49 The proposed legislation does not expressly differentiate between volunteer and professional firefighters, but subsection 7(9) includes the following definition of being employment as a firefighter:

(9) for the purpose of subsection (8):

(a) an employee is taken to have been employed as a firefighter if firefighting duties made up a substantial portion of his or her duties; and

(b) an employee who was employed as a firefighter for several periods that add up to the qualifying period is taken to have been so employed for the qualifying period.<sup>36</sup>

3.50 This definition means that volunteer firefighters would not be covered by the legislation because firefighting does not comprise a substantial portion of their duties, nor would they be able to satisfy the requirements of the qualifying periods outlined in Chapter 1.

3.51 During the course of its inquiry the committee sought clarification as to why the proposed legislation did not seek to cover volunteers, who are covered in certain jurisdictions overseas. In response to its questions, the committee heard that the definition of volunteer firefighter differs between Australia and overseas:

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35 See for example ACT Department of the Chief Minister and Cabinet, *Submission 24*, p. 1.

36 Subsection 7(9), Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011.

The definition of 'volunteer' in Canada is different from the definition of 'volunteer' here. In Canada, there is no such thing as a person who gives their labour or their services for no remuneration. They are paid on-call or are part-time firefighters.<sup>37</sup>

### **Cause of illness and period of employment**

3.52 Subsection 7(8) of the proposed legislation states:

- (8) If an employee:
- (a) suffers a disease mentioned in the following table; and
  - (b) before the disease was first diagnosed, was employed as a firefighter for the qualifying period mentioned for that disease; and
  - (c) was exposed to the hazards of a fire scene during that period;
- the employment is taken to have been the dominant cause of the contraction of the disease, unless the contrary is established.

3.53 Slater and Gordon Lawyers questioned why subsection 7(8) of the Bill employs the term 'dominant' instead of 'significant' cause, since the threshold test for entitlement elsewhere in the SRC Act is that employment contributed to a disease to a 'significant' degree:

It is not clear why the term dominant has been selected. The threshold test for entitlement to compensation for disease under the Act is that employment has contributed to a significant degree. The threshold test for significance is less than for dominance, so the use of the higher test will not disadvantage workers who otherwise qualify.<sup>38</sup>

3.54 Slater and Gordon Lawyers also pointed out to the committee that section 7(9) of the Bill could result in unintended consequences. It currently states:

- (9) (b) an employee who was employed as a firefighter for several periods that add up to the qualifying period is taken to have been so employed for the qualifying period.<sup>39</sup>

3.55 The above subsection may risk being misinterpreted as not covering firefighters who have only accrued two, instead of 'several', periods of employment. Two periods and several periods can add up to the same number of years, each satisfying the required qualifying period.

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37 Mr Peter Marshall, National Secretary, United Firefighters Union of Australia, *Proof Committee Hansard*, 2 September 2011, p. 34.

38 Slater & Gordon Lawyers, *Submission 14*, p. 5.

39 Subsection 7(9)(b), Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011.

### *Committee view*

3.56 The committee agrees with the concerns expressed by Slater and Gordon Lawyers, and believes the reference to 'dominant' cause in the Bill should be revisited in order to preserve consistency within the SRC Act.

3.57 The committee also supports the view that the term 'several periods' of employment should be amended to 'more than one period' of employment.

### **Recommendation 2**

**3.58 The committee recommends that proposed subsection 7(8) of the Bill be amended to replace the term 'dominant' cause with 'significant' cause.**

### **Recommendation 3**

**3.59 The committee recommends that proposed subsection 7(9)(b) of the Bill be amended to replace the term 'several periods' with 'more than one period'.**

### **The case for non-rebuttable legislation**

3.60 The committee is aware that some submitters, such as the ACT Branch of UFUA, believe the Bill should go further and provide stronger presumption of occupational cancer possible for firefighters. This would require the legislation to be non-rebuttable.<sup>40</sup>

3.61 As already outlined, the Bill as it stands reverses the onus of proof from the individual to the employer or insurer, who can then rely on the rebuttable nature of this legislation to deny a firefighter's claim for compensation and have the case heard before the Administrative Appeals Tribunal or the Federal Court.<sup>41</sup> Making the presumption non-rebuttable would render it automatic and not provide employers and insurers with the opportunity to reject a weak or unfounded claim for compensation.

3.62 The committee is not aware of significant support for this alternative approach. Furthermore, this is not the approach taken by leading jurisdictions across Canada and the United States.

3.63 The Bill as it stands enjoys support from the overwhelming majority of submissions to this inquiry. This, it should be mentioned, includes support from the ACT Branch of UFUA, which represents the firefighters who would be directly affected by this Bill:

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40 See for example United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 5.

41 See United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 5.

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The fact remains that whether it is one fire or one hundred fires, our compensation system should be designed in such a way that it protects firefighters, so that they can continue protecting Australian communities.<sup>42</sup>

3.64 The committee is satisfied that the proposed presumptive legislation should remain rebuttable.

### *Committee view*

3.65 The committee understands that this legislation would not create a new right or entitlement, and would not bring about a flood of new claims. Nor would it fundamentally change the nature of the Australian compensatory system. Rather, it would shift the burden of proof from a sick individual to their employer or insurer, and only in defined cases founded on premises supported by scientific research.

3.66 The committee notes that the proposed legislation as it stands could lead to firefighters with two periods of service, which nonetheless add up to the qualifying period, being denied compensation. For this reason the committee has recommended amending subsection 7(9)(b) of the Bill to replace the term 'several periods' with 'more than one period'. Similarly, noting that the threshold test for significance is less than for dominance, the committee has recommended that subsection 7(8) be amended to maintain consistency throughout the SRC Act.

3.67 The committee is convinced that this legislation removes, at least for some firefighters, the unreasonable impediment to compensation that currently exists. It is, the committee believes, legislation which finally recognises the scientifically demonstrated link between firefighting as an occupation and certain forms of cancer. As stated in 2002 when the Canadian province of Manitoba was considering the introduction of such legislation:

A presumption assumes that, all other things being equal, most cases of a certain type of cancer will be associated with occupational exposure, even though it is not possible to determine which case is actually caused by the occupation. A presumption is a way of being inclusive in the acceptance of such claims given that it is not possible to distinguish among them.

...

A presumption is also appropriate when the condition is rare and there is a pattern or strong suggestion of strong association with an occupation that may be concealed by other factor that complicate interpretation of the risk estimate.<sup>43</sup>

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42 United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 5.

43 Tee L. Guidotti and David F. Goldsmith, 'Report to the Workers Compensation Board of Manitoba on the Association Between Selected Cancers and the Occupation of a Firefighter', 28 March 2002, p. 8, as quoted in United Firefighters Union of Australia, *Submission 19*, p. 10.



3.68 On the weight of evidence the committee believes presumptive legislation is the most appropriate protective policy response to recognise the personal risk that firefighters take in the course of their careers and the sacrifices some of them will make.

# CHAPTER 4

## Personal accounts

4.1 The committee heard that firefighters are, upon recruitment, within the top 5–10 percent of the general population in terms of physical health and fitness. Yet, within a few years of employment, firefighters are between 2 and 5 times more likely to develop one of the cancers listed in the Bill than the general population.<sup>1</sup>

4.2 Currently, as outlined earlier in this report, firefighters who develop cancer are required to prove—often through litigation—a causal link between the cancer and their work. The committee received extensive evidence about the hardship and stress this causes firefighters who are battling a serious disease. This Bill, the committee heard, would simply remove that hardship and stress and give firefighters a better chance at recovery.<sup>2</sup>

4.3 The committee received submissions and heard from a number of firefighters, and families of firefighters, whose lives have been changed by cancer. The committee again thanks them for taking the time to make submissions and give evidence. A few of their stories are outlined below.

### *Janet Reed*

4.4 Janet Reed's husband, Robert James Reed, had been a firefighter for 14 years when he was diagnosed with kidney cancer in 2008. He died ten months later, leaving behind a wife, two children and many friends in the firefighting community.

4.5 As a firefighter, the committee heard that Robert Reed was always conscious of safety. He was nevertheless exposed, as all firefighters are, to toxins which were beyond his ability to control:

In Rob's everyday work where he looked after people in our communities as a fire fighter, performing road crash rescues, confined space rescues, dealing with hazardous material spills and other work he was regularly exposed to toxins and risk. He was a safe and conscientious worker and he wore protective clothing and used special safety equipment but it did not prevent him from being exposed to all sorts of toxins and some of that exposure was cumulative throughout his career.<sup>3</sup>

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1 United Firefighters Union of Australia, *Submission 18*, p. 1; p. 21.

2 See United Firefighters Union of Australia, ACT Branch, *Submission 18*, p. 4.

3 Mrs Janet Reed, *Submission 20*, p. 1.

4.6 His widow, Janet Reed, told the committee of the difficult and stressful months of her husband's ultimately unsuccessful treatment:

The circumstances of Rob's treatment was extremely difficult emotionally and physically...In July Rob had routine testing 6 months after his surgery and a CT Scan revealed that the cancer had returned to his lymph nodes in his chest. Rob was hospitalised and had a biopsy which was complex procedure because his lung had to be collapsed to perform the biopsy, and the results confirmed that it was secondary cancer originating from the renal cell cancer. That diagnosis was dreadful and very stressful. Rob was then referred to an Oncologist and he commenced a course of chemotherapy treatment.<sup>4</sup>

4.7 Robert Reed's family remained hopeful for a positive outcome despite a series of hurdles and discouraging results:

Rob's health declined and the cancer spread to his brain. In September Rob had a course of radiotherapy treatment for 4 weeks to treat the cancer in his head and chest. I supported Rob through this terrible time and we were optimistic for a good outcome. Rob wanted to carry on as though it was "business as usual" to minimise the impact of his illness for everyone else.<sup>5</sup>

4.8 Shortly after this treatment, the family went on a short holiday to spend some quality time together. Within two weeks of the break Robert Reed was hospitalised with swelling on his brain. Janet Reed told the committee that her husband died three days later on 29 October 2009, their 21<sup>st</sup> wedding anniversary.

4.9 On 2 September 2011 Janet Reed attended one of the committee's hearings to tell the committee of the emotional and financial stress Robert Reed and his family had to undergo because Robert was forced to return to work for financial reasons:

I am here to ask you to carefully go through this presumption legislation and to consider it, because if this had been available to Rob and me when he had cancer it would have made our life easier. I am here for Rob. That is why I am here. And I believe that if Rob had not had to return to work after he had his operation—he had his kidney removed—after he thought that the cancer was all gone, I believe there would have been a lot less stress in our lives and maybe the lower stress would not have accelerated his cancer so quickly.<sup>6</sup>

4.10 Robert Reed and his family did not have ready access to compensation, and could not face having to go through lengthy and costly litigation to seek any sort of payment or support:

There was no compensation readily available to us and it was not something that we had strength to go and seek money for litigation of any kind when

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4 Mrs Janet Reed, *Submission 20*, p. 2.

5 Mrs Janet Reed, *Submission 20*, p. 2.

6 Mrs Janet Reed, *Proof Committee Hansard*, p. 20.

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we were going through such a hard time especially when his cancer came back six months after he was diagnosed. The last thing that any person needs to do in that situation is to worry about seeking compensation when you are already worrying about how you are going to get through the cancer. That is why I think it is important for me to be here today to let you know that just having cancer alone is a struggle and the financial part is a bigger struggle again that you do not have the strength to fight.<sup>7</sup>

4.11 The committee thanks Janet Reed for her evidence, and acknowledges how difficult it must have been for her to attend the public hearing.

### *Dean Symmans*

4.12 The committee also took evidence from Mr Dean Symmans, a firefighter for 26 years. In April 2009 he was diagnosed with leukaemia, and has been undergoing treatment since that time. He is currently in remission, undergoing chemotherapy, monthly blood tests and bone marrow aspirate tests every three months.

4.13 He told the committee of his treatment:

Upon diagnosis I was given a 70 per cent survival. Treating doctors had less than two weeks to use chemotherapy drugs to place me into remission. Stationed in Albany 400km south of Perth, I was air lifted to Perth by Royal Flying Doctor to Sir Charles Gardner Hospital where chemotherapy and intravenous drugs were initiated.<sup>8</sup>

4.14 Being away from home for treatment meant that his family had to travel, at their own cost, to see him:

Over the next 6 months, I received 3 x monthly intravenous chemotherapy treatments in SCGH hospital. My wife and sons travelled regularly to visit me at my hospital bedside. This was obviously disruptive to family life, schooling and an expensive exercise. My wife had to reduce her hours of work and we relied heavily on friends to assist with childcare and transport.<sup>9</sup>

4.15 Mr Symmans had always been healthy, and had accrued many hours of unused sick leave during his time as a firefighter. He used over 1000 hours of sick leave during his treatment. He was told that, if he relapsed after treatment, he would need a stem cell transplant and more time off work.<sup>10</sup>

4.16 Having exhausted their resources, Dean Symmans and his family had to turn to his colleagues for help:

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7 Mrs Janet Reed, *Proof Committee Hansard*, p. 20.

8 Mr Dean Symmans, *Submission 23*, p. 2.

9 Mr Dean Symmans, *Submission 23*, p. 2.

10 Mr Dean Symmans, *Submission 23*, p. 2.

During my illness with leukaemia fire fighters and my Union rallied to support my family with monetary assistance to help cover the costs with travel and other expenses. Fire fighters maintained my family car and house in my absence over the initial 12 months. Albany fire fighters also travelled 400kms to visit me in hospital. Perth fire fighters sat with me bedside whilst treatment was administered.<sup>11</sup>

4.17 Today, like other cancer sufferers in remission, Mr Symmans now lives with the fear of a relapse:

My big fear was if I did not stay in remission—which I am at the moment, thankfully—I would need to have stem cell transplants. If that takes place it would further chew out sick leave and I would then have to fall onto a charity that the firefighters themselves have set up. It is a sick and death benefit fund. I was, as I said, trying to preserve what sick leave I had left so that I could battle through my treatment.<sup>12</sup>

4.18 He told the committee of the financial strain he and his wife faced during his illness, and the impact on their family and lifestyle:

In my case, being the main breadwinner, it was immense. During my illness my wife, who at that point was job sharing, had to cut back on those hours as well. I guess we were very grateful to her employer, who did the right thing and looked after her—offered her time off and supported her during my ordeal. I have the privilege here today to say how disappointed I was in the return-to-work system of my employer. All that was in place as far as return to work goes was an account-keeping process, which I probably come across as a little bit bitter with at the moment. All they wanted to know was how many hours I was working that day. The hours I did not work they were going to take off my remaining sick leave. That made me livid. I had worked for an organisation for such a long period of time and that was what they were offering me. I thought it was pretty ordinary.<sup>13</sup>

4.19 He added:

I went to the point of contacting my area manager and asking 'How the hell do you work this sort of thing?' It should not be pushed down to people in fire stations and their area managers to try to make the thing work. There should be something put in place. That, to me, is part of this process of getting presumptive legislation up so that I would not have to worry about how much sick leave I have and my family would be looked after.<sup>14</sup>

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11 Mr Dean Symmans, *Submission 23*, p. 3.

12 Mr Dean Symmans, *Proof Committee Hansard*, p. 22.

13 Mr Dean Symmans, *Proof Committee Hansard*, p. 23.

14 Mr Dean Symmans, *Proof Committee Hansard*, p. 23.

4.20 Although Dean Symmans believes he was exposed to iridium radiation, he informed the committee that he did not think he could confidently identify a single incident which had caused his leukaemia:

In 1991, I believe, I was probably exposed to radiation caused by iridium. There are ongoing diesel fume concerns at fire stations and on the fire ground. The leukaemia I have is believed to be caused by an exposure to a chemical or radiation, and benzene gets the green light there. I guess there has been an accumulation of carcinogens over 24 years. The more I look into things, the more I find things. I have only just learnt from a fellow firefighter that the firefighting foam we have been using over the years can be a carcinogen. A lady who is doing research into leukaemia contacted me one time and told me that a chemical called 2-butoxyethanol, I think it is, was in AFFF foam. I'm not a scientist; I did my own home research come home. She indicated that there is a carcinogen in firefighting foam. I don't know how I can nail it down to one specific thing.<sup>15</sup>

### **Scott Morrison**

4.21 Mr Scott Morrison is a leading firefighter with Melbourne's metropolitan fire brigade. He was diagnosed with non-Hodgkin's lymphoma in 2001:

My journey with cancer began 10 years ago. In August 2001 I was admitted into hospital as it was not known what was wrong with me. I was diagnosed with non-Hodgkin's lymphoma. I had large cell cancers which are considered aggressive. That was the start of a battle for my life that would span six years and is something I am still very vigilant and concerned about on a daily basis.<sup>16</sup>

4.22 On 11 September 2001 Scott Morrison began his chemotherapy treatment:

The date 11<sup>th</sup> September 2001 is a day of sadness and shock for firefighters as the New York Fire Department lost more than 300 firefighters in the terrorist attacks. For me that day also marked the first round of chemotherapy. I had six rounds of chemotherapy ending on the 24<sup>th</sup> December 2001. By that stage I had not even told my mother I had cancer as I thought the chemotherapy would be the end of it.<sup>17</sup>

4.23 Unfortunately, chemotherapy did not produce the results Mr Morrison had hoped for, and he had to undergo further rounds of the treatment. Due to ongoing chemotherapy and tests his veins collapsed and a fine tube had to be inserted into his body in order for the chemotherapy to continue:

Then I went back for more tests, and they showed that that had failed, so I had to have a stem cell transplant in February. In March 2002 I went through the procedure, and I was in hospital for eight days. I was returned

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15 Mr Dean Symmans, *Proof Committee Hansard*, 2 September 2011, p. 24.

16 Mr Scott Morrison, *Submission 7*, p. 2.

17 Mr Scott Morrison, *Submission 7*, p. 2.

home for four days because those four days could have been my last four days, but then I went back to the hospital for six weeks—I was in isolation. I finally got through that, and I was sent back for more tests. They said, 'You've still got something there near your left kidney,' and I had to go through six weeks' radiation. In between that, I spoke to the doctor. He said, 'If this doesn't work you're going to palliative care.'<sup>18</sup>

4.24 Fortunately, Mr Morrison responded to treatment and in 2002 went into remission for five years. He was re-diagnosed with non-Hodgkin's lymphoma in 2007, which was successfully treated with radiation therapy. The committee was shocked to hear that he had to rely on the generosity of his colleagues who gave up their own leave entitlements to allow him to take the necessary time off work:

I was lucky because my wife had her own dancing school. She spent the whole time at the hospital when I was there. I had a few hours of sick leave, but I was off for nearly 18 months. When I did run out of sick leave I was lucky enough to have great work mates who put their annual leave up for me so I would not lose money. I cannot thank them enough.

...

They helped me get through everything. I love those guys. Ever since I went back to work I have said 'I owe you all that much.' I learnt to cook and from then on I have cooked lunches every day for the guys. Whatever I could do for them, if they need something, I would go in the car and do it for them. Still to this day I thank them for helping me survive what I went through.<sup>19</sup>

4.25 He told the committee of his emotional struggle to survive:

When I was extremely ill there were times when I thought I was dying. I felt that I was going to die. There were times when it was extremely painful and I hoped I would die. When I looked at my two sons and my wife I thought, 'I cannot die yet because I want to enjoy my life with them.'<sup>20</sup>

### ***Paul Henderson***

4.26 Paul Henderson began his career as a firefighter in 1976, and has worked his way to becoming Senior Station Officer. He was diagnosed with testicular cancer in 2007. His treatment included surgery, radiation therapy and six courses of chemotherapy. He chose to speak to the committee with the full knowledge that he would not benefit from the proposed Bill:

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18 Mr Scott Morrison, *Proof Committee Hansard*, p. 22.

19 Mr Scott Morrison, *Proof Committee Hansard*, p. 23.

20 Mr Scott Morrison, *Proof Committee Hansard*, p. 23.

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I will not personally benefit from this Bill, and neither will my family. But I feel just as strongly about this as if it was going to cover me and my family.<sup>21</sup>

4.27 Mr Henderson's experience reminded the committee of the benefits, outlined earlier in this report, of health awareness and early detection:

I found the lump myself though self examination and mentioned it to my doctor at a health monitoring appointment that is standard practice for the fire brigade. I was being vigilant because I knew of other firefighter that had testicular cancer and knew the earlier it was diagnosed the better chance the person had. I was aware of the link between firefighting and testicular cancer. I understand that testicular cancer is more commonly a young man's disease, but I had known older firefighters to be diagnosed with it so I remained vigilant.<sup>22</sup>

4.28 He related his experience with illness and accident insurance:

I started off with 1,900 hours of sick leave. I exhausted all that sick leave and ended up on a policy that I had when I joined the fire brigade for sick and accident insurance. I ended up on that for a further two months. When I was cleared to be operationally fit to resume duties and got back to the work the insurance company kindly notified me that they no longer wished to cover me and my policy was cancelled. I appealed and in the wisdom of sunlight they agreed to keep the policy running but refused to cover cancer. I did not get any discounts in the policy.<sup>23</sup>

4.29 Mr Henderson reflected on whether it would be possible to reduce the risk posed to firefighters by controlling the materials used in manufacturing. He stated:

I think that what a lot of it comes down to is probably the expansion of globalism. We have ships with containers full of all sorts of goods going from one country to another. We have ships of convenience now, and no-one can systematically keep enough records to link all the dots to find a trend or a commonality in something that is being abused. I think we do have a system, but I think the system also has some holes in it that other people are using to drive their goods through. There is the fire load in this room—these tables and the formaldehyde in them, or what they use in the carpet. You have already had this discussion in Melbourne. From our point of view, we would like to see a system that is fail safe, accountable and credible.

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21 Mr Paul Henderson, *Submission 4*, p. 2.

22 Mr Paul Henderson, *Submission 4*, p. 2.

23 Mr Paul Henderson, *Proof Committee Hansard*, p. 28.



I think it comes down to the lowest common denominator. We want products, and we want them as cheaply as we can get them. To get them cheaply, we have to manufacture them cheaply, and shortcuts are taken.<sup>24</sup>

4.30 Paul Henderson's prognosis is, fortunately, good. Nonetheless, like other cancer sufferers, he lives with the spectre of cancer even when in remission:

When I did not have cancer I never walked around thinking, 'What's going to happen when I get cancer?' Now that I have had cancer and now that I am in remission, is that little monkey going to tap me on the back with 'Knock, knock.' 'Who's there?' 'It's cancer.' I live with that.<sup>25</sup>

### **Ross Lindley**

4.31 Ross Lindley joined Melbourne's Metropolitan Fire Brigade in 1984. He served as a firefighter for 26 years before being retired for medical reasons in 2010.

4.32 He was diagnosed with multiple myeloma in January 2009 after an MRI scan. He immediately underwent an aggressive chemotherapy regime and had a stem cell transplant. The treatment itself was so intensive that it necessitated 18 months of recovery.

4.33 Ross Lindley told the committee how daunting a task he faced when he considered seeking workers' compensation:

I actually applied. I was one of the firefighters that Craig Sidebottom spoke about. The wife and I went in. It is very frightening when they tell you this is what you have to prove, this is what you have got to do: you will take it to court; you will have to fight the insurer; if you lose you are going to have court costs; chances are you are going to lose it because you have to find this information, which is near impossible. So we let it slide. We thought it was just too hard—let's get better.<sup>26</sup>

4.34 Having given up on pursuing compensation, he later sought to obtain records of chemicals he might have been exposed to during the course of his duties. He found that no records existed:

I rang the BA department to try to chase up these records and was informed that the records do not exist—after 24 hours they get thrown out...They were all gone. So there were no records of exposures of any kind. I then sent a letter to the metropolitan fire brigade requesting all the calls I had been to for my entire 26 years in the job and any exposures that I had been to and so forth and so forth—all the incidents and whatever. They sent a letter back saying, 'All we can give you is the reporting system. There are no records on exposures at all.' That was the brick wall I hit. You just

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24 Mr Paul Henderson, *Proof Committee Hansard*, p. 28.

25 Mr Paul Henderson, *Proof Committee Hansard*, p. 26.

26 Mr Ross Lindley, *Proof Committee Hansard*, 2 September 2011, p. 27.

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cannot prove which fire you went to that supposedly started this off. You have nothing to go with. With that we gave it up—we thought it was just going to be too hard. We can't prove a thing.<sup>27</sup>

4.35 His words echoed previous evidence the committee had received concerning the difficulty firefighters faced when seeking to access records of exposure, records which, even when available, are unreliable and often inaccurate.

4.36 Mr Lindley used up his sick leave, and, like many others, turned to income protection:

That reduces your income down to 70 per cent, which you have to pay tax on as well. Then I returned to work on light duties because it was just too much of a financial struggle being on income protection and still having a mortgage and family commitments, medical expenses and so forth. On light duties I could only work two-day shifts, so I was taking the night shifts off as annual leave which I had accumulated while I was crook. Once all that went I then had to go out on a pension. I was not allowed to return to work as a firefighter and I took a pension and left. Financially it has been very hard. I have redrawn on my housing loan, I am paying off a tax debt that I have incurred from the income protection and at this stage I am not working. I am just plodding along trying to make ends meet.<sup>28</sup>

## Conclusion

4.37 The community holds a deep respect and gratitude for those who serve to protect and assist. If we are honest, however, along with this respect and gratitude comes a generous dose of expectation. We expect firefighters to come to our assistance when our homes, schools, hospitals and businesses are ablaze. We expect that a firefighter will enter a burning building when every human instinct tells us to leave. We expect they will search for those trapped inside and bring them out alive. We expect them to do what they can to minimise loss of life and damage to property. While everyone else is fleeing danger, it is the firefighter's duty to tackle it head-on, to enter an extreme and dangerous environment, armed with the best protective gear available.

4.38 It is a duty firefighters take seriously, aware of the inherent risks to their own health and safety. This awareness on their part does not mitigate the community's responsibility towards them.

4.39 The committee has carefully examined the large amount of evidence with which it has been presented. Study after study has pointed to a higher risk of cancer for firefighters than the general population. Science has confirmed what firefighters suspected for decades: that a disproportionate number of them in the prime of their lives are brought down with illnesses usually reserved for the old and the infirm.

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27 Mr Ross Lindley, *Proof Committee Hansard*, 2 September 2011, p. 27.

28 Mr Ross Lindley, *Proof Committee Hansard*, 2 September 2011, p. 26.

4.40 The committee recognises that cancer is an illness that touches many fit, healthy people in the non-firefighter population as well. In many cases it is unpredictable and incomprehensible, due to genetics or factors we do not yet understand. But when the science tells us that a particular group of people who are routinely exposed through their service to the community to known carcinogens are at higher risk of developing certain types of cancer, then the response becomes clear.

4.41 The committee recognises that when a person spends their professional career inhaling and absorbing known—and probably some as yet unknown—carcinogens in the course of public service, it is the moral duty of the community to enable them to seek compensation should they fall ill as a consequence. For this reason the committee believes this Bill needs to be passed after being improved upon through incorporation of the committee's amendments.

4.42 The committee has conducted its analysis in the hope that similar legislation will be introduced across state jurisdictions in future as part of the harmonisation of workers' compensation laws. If this Bill is passed, the committee encourages state jurisdictions to engage in a dialogue which will eventually see a positive, and fair, outcome for firefighters across Australia.

#### **Recommendation 4**

**4.43 The committee recommends that this Bill be passed subject to the foregoing recommendations.**

**Senator Gavin Marshall**

**Chair**

# **COALITION SENATORS' ADDITIONAL COMMENTS**

Coalition senators welcome the opportunity to inquire into this important issue, and broadly support the arguments underpinning the committee majority's report. Coalition senators wholeheartedly share the committee majority's objective of securing a workable compensatory system for firefighters who fall ill with cancer related to their service. However, coalition senators remain to be convinced that presumptive legislation is necessarily the best mechanism to achieve this.

## **Recommendation**

**Coalition senators recommend that further consideration be given to ascertain how best to streamline firefighters' access to compensation for occupational cancer without necessarily resorting to presumptive legislation.**

**Senator Chris Back**

**Senator Bridget McKenzie**

**Deputy Chair**



# **APPENDIX 1**

## **Submissions received by the Committee**

- 1 United Fire Fighters of Winnipeg
- 2 Mr Mick Busst
- 3 Mr Phillip Wigg
- 4 Mr Paul Henderson
- 5 Mr Frank Besanko
- 6 Mr Guy McCrorie
- 7 Mr Scott Morrison
- 8 Mr Ross Lindley
- 9 Mr Philip Brown
- 10 Ms Karen Lindley
- 11 Fire Brigade Employees Union and United Voice, Northern Territory Branch
- 12 WorkSafe Victoria
- 13 Mr Michael Smith AFSM
- 14 Slater and Gordon
- 15 Australian Council of Trade Unions
- 16 Mr Brian Whittaker
- 17 Mr Phil Taylor
- 18 United Firefighters Union of Australia, ACT Branch
- 19 United Firefighters Union of Australia
- 20 Mr Janet Reed
- 21 Ms Sarah Reed
- 22 Mr Corey Reed
- 23 Mr Dean Symmans
- 24 ACT Department of Chief Minister and Cabinet

25	Department of Education, Employment and Workplace Relations
26	Mr Ken Block
27	Volunteer Fire Brigades Victoria

## **Additional Information received by the Committee**

- 1 DVD and transcript tabled by the United Firefighters Union of Australia, on 9 August 2011
- 2 Document tabled by Mr Ken Block, on 2 September 2011
- 3 Film Clip tabled by Mr Ken Block, on 2 September 2011.
- 4 Film Clip tabled by Mr Ken Block, on 2 September 2011.

## **APPENDIX 2**

### **Witnesses who appeared before the Committee**

**St James Court Conference Centre, Melbourne, Victoria  
9 August 2011**

FARRELL, Mr Mick, National President and Aviation Branch Secretary,  
United Firefighters Union of Australia

FORREST, Mr Alex, Private capacity

MARSHALL, Mr Peter, National Secretary, United Firefighters Union of  
Australia

TAYLOR, Commander Philip Taylor, Private capacity

WATSON, Ms Joanne, National Industrial Officer, United Firefighters Union of  
Australia

WHITTAKER, Commander Brian, Private capacity

**Parliament House, Canberra, Australian Capital Territory  
23 August 2011**

BAXTER, Ms Michelle, General Manager, Workplace Relations  
Implementation and Safety Group, Department of Education, Employment and  
Workplace Relations

BRIGHTON, Ms Meg, Director, Continuous Improvement and Workers'  
Compensation Branch, Chief Minister and Cabinet Directorate, Australian  
Capital Territory

KEFFORD, Mr Andrew, Deputy Director-General, Chief Minister and Cabinet  
Directorate, Australian Capital Territory

KIBBLE, Mr Steve, Comcare

LIS, Mr Henry, Branch Manager, Workplace Relations Legal Group,  
Department of Education, Employment and Workplace Relations



SULLIVAN, Ms Sarah, Acting Branch manager, Safety and Compensation Policy, Department of Education, Employment and Workplace Relations

**Cliftons Conference Centre, Perth, Western Australia  
2 September 2011**

BLOCK, Mr Ken, Private capacity

FORREST, Mr Alex, Private capacity

HENDERSON, Mr Paul Xavier, Private capacity

LINDLEY, Mr Ross Edward, Private capacity

MARSHALL, Mr Peter, National Secretary, United Firefighters Union of Australia

MORRISON, Mr Scott, Private capacity

REED, Mrs Janet Lucille, Private capacity

SIDEBOTTOM, Mr Craig Andrew, Practice Group Leader, Workers Compensation Department, Slater and Gordon Lawyers

SYMMANS, Mr Dean, Private capacity

WATSON, Ms Joanne, National Industrial Officer, United Firefighters Union of Australia

**IN THE FAIR WORK COMMISSION**

**s. 156 - Four Year Review of Modern Awards**

**Fire Fighting Industry Award**

**Matter No. AM2014/202**

**STATEMENT OF CORY WOODYATT**

I, Cory Woodyatt, of [REDACTED] in the State of Victoria, make the following statement in this matter before the Fair Work Commission:

1. I am employed by CFA as a Senior Station Officer at Melton Fire Station. I have been employed by CFA as a firefighter for approximately 16 years. I was appointed to the rank of Senior Station Officer on 12 January 2012
2. I understand that the CFA/MFB seek to vary the Modern Award by introducing part-time employment; and (ii) a new 'day worker' roster. I am opposed to part time employment for the reasons set out in this Statement. I understand that Day Workers were engaged by the CFA until about 1984 but I have no personal knowledge of that. However I consider that the 10/14 shift roster works well and is the best method of service delivery and best facilitates the training needs of firefighters for the reasons set out in this Statement.
3. As Senior Station Officer, I am in charge of all employees on my shift. This includes responsibility for ensuring that employees on my shift have adequate training and skills. Melton station is a 24 hour road rescue station which means that firefighters are required to possess and maintain specialist skills to perform these duties. The skills required to crew the rescue take approximately 4-6 months to obtain. This timeframe is dependent on other required skills maintenance training or operational response.

4. The majority of skills maintenance and training occurs on shift. I often spend time with other crew members discussing a recent incident such as a fire or road accident rescue that we have attended. This can lead to a number of hours performing drills and discussing the incident to make sure that, if a similar incident occurs in the future, our skills will be adequate. Performing these types of activities gives me confidence that my crew has the required skill level.
5. Firefighting training involves a wide variety of subjects. This includes shorter drills that require firefighters to demonstrate that they possess particular skills. For instance, some drills such as 'Safety and Survival' require a firefighter to demonstrate that they are able to use a particular piece of equipment. This kind of training involves all crew members on shift. The training is organised at station level and not coordinated by CFA.
6. Because I work with the same crew members on each shift and we are reliant on each other having required skills and abilities, we are able to be confident that essential tasks will be performed to the required standard. For instance, each day a thorough check of each appliance is performed to ensure that all required equipment is present and working and that the appliance itself is working properly. This ensures that the people who drive the appliance and depend on it working properly at an incident are the same people responsible for making sure it is in proper working order.
7. Because firefighters work on the same shifts and regularly spend large amounts of time together, we are able to assess whether there are any issues with the skill levels or attitudes of firefighters on our shifts. As a senior station officer, I have frequently been able to identify issues with firefighters on my shift that I have been able to rectify through additional training or mentoring. It is only possible to properly identify these issues when working with team members on a full time basis. It is not possible for me to make a proper

assessment of any deficiencies that a firefighter may need to address if they are not working on the same shift full-time.

8. Another advantage of spending regular time with the same fire fighters allows me as the Senior station officer to observe the welfare of the individuals. In this profession fire fighters are exposed to a wide variety of traumatic incidents that can have a psychological effect on them. Working with the same crew allows you to continue to monitor their welfare.
9. If part-time employment was introduced to the CFA it would make it more difficult for CFA to provide an effective fire-service. There would be significant issues with the introduction of part-time fire-fighting particularly in the area of skills maintenance.
10. Training on shift is scheduled at times that may not coincide with the hours of part time employees.
11. Part time employees may not spend all their hours with a particular shift. This would mean that it may not be possible for officers on the shifts that the employees work across to understand the training needs of the employees. If a part time employee was to work on one shift only it would be extremely impractical to arrange training to suit the needs of the part-time employees.
12. Arranging training to ensure that the skills of part-time employees were maintained would be particularly difficult given that scheduled training on shift is frequently required to be rescheduled or postponed due to operational incidents. Even if training was able to be scheduled this would involve inefficient use of resources.
13. If part-time employees were to have a separate training regime to full-time employees this would also be an inefficient use of resources because the part-time employee may need to be relieved by a full-time employee whilst they complete required training.

14. Shift meetings are necessary to ensure operational efficiency and proper communication in fire stations. In particular, these meetings set the focus for the following shift. If a firefighter was not present at the previous shift, they will not be aware of the focus for their current shift.
15. Operational issues with part-time employees would be particularly problematic if a part-time employee occupied a leadership or management role such as the position of Station Officer. A Station Officer is required to manage employees on their shift as well as issue orders. A part-time officer would not have constant exposure to the members of the shift. The shift may be subject to the direction of multiple officers which would mean that the efficiency associated with having a single officer in charge as occurs in the 10/14 system would not be realised.
16. The CFA's staffing needs are able to be met through the current rostering system which provides for all required flexibility. There is no need for a new operational roster.
17. There is no problem within CFA with retention of female firefighters. I am not aware of any female firefighters who have left the CFA since they began to be employed in the 1990's. As I understand it they are able to access the existing roster provisions which provide flexibility.
18. There are significant problems with the maintenance of specialist skills within the CFA. For example, a PIN notice was recently issued due to the failure of CFA to maintain sufficient numbers of employees with trench rescue qualifications.
19. The CFA train only a bare minimum of employees to hold specialist skills due to the cost of the training. CFA are also reluctant to maintain these skills, particularly where they may not be required at the station where the employee is based.

20. Firefighting has become significantly more complex since I began working for CFA. Accordingly, there has been a greater need for training and skills maintenance activities. For example, the station that I am based at is a road accident rescue station. The task of removing an accident victim from a modern vehicle has become more complicated due to changes in car safety. For instance car materials are harder and therefore difficult to cut. Crumple zones mean that car materials make the extent of damage to a vehicle more difficult to assess and access points more difficult to understand. Cars now contain up to 20 airbags. It is vital that firefighters understand their positioning in order to avoid the risk of piercing a gas cylinder and causing an explosion when cutting into a vehicle.
21. Firefighters now utilise a much greater variety of equipment to perform their duties due to advances in technology. For instance, there are a much greater amount of sensors that are used to gauge fire conditions. Use of these sensors requires additional training and adds to the complexity of firefighting.
22. If part time employment was allowed, it would be essential for part-time employees to perform both day and night shifts in order to maintain skills due to the different demands and types of incidents that occur on day shifts and night shifts.
23. For instance, on day shifts, essential activities such as inspection of special hazards and community education and engagement occur. The majority of drills also occur on day shift due to more time available because firefighters do not rest and recline.
24. Operational incidents, especially fires, are more frequent during night shifts.
25. If part-time work was allowed - it should at the very least be restricted to ranks that have achieved a level of competence through training and several years of experience. It should never apply to lower ranks. For recent employees the

need for full-time training and skills maintenance is too great. Training is directed at delivering a breadth of experience and is delivered full time.

26. If part time work was allowed, CFA would need to have discretion to reject the application to due to operational reasons and to maintain services.
27. If an employee worked part-time in order to work in another business including their own, it may constitute a breach of the CFA Act or CFA's employment policies.
28. CFA are required to maintain the safe staffing levels set out in the 2010 Enterprise Agreement. This means that there will never be less than the required number of firefighters working on shift at any time. If the number projected fall below that level (for example due to leave or a major incident), the CFA are required to recall an employee to maintain a safe level of staffing. CFA generally rosters more employees than would usually be required to meet safe minimum staffing obligations to avoid the requirement to recall of employees if unplanned absences occur.
29. The safe staffing provisions in the enterprise agreement also encompass the ranks and specialist qualifications required to be held by rostered employees. If employees were rostered part-time it would be extremely difficult to ensure the required mix of skills and ranks was rostered.
30. Unlike the MFB, where firefighters are rostered to districts, in the CFA they are allocated to stations. At each station, an equal number of firefighters are allocated to A, B, C and D platoon. These shifts rotate between day shifts, night shifts and days off. This mean that the required number of employees is available to be rostered at each individual station. If a part-time employee was rostered to a platoon but did not perform all shifts, it would be likely that that platoon would either have more firefighters than required to meet minimum staffing requirements at different times or less, unless another employee was

engaged to work the residual shifts. A similar problem would exist if a part time employee worked across different platoons/shifts.

31. For the reasons expressed in paragraphs 27-29, if part time employment were to be permitted on shift it would have to be above minimum crewing levels, and should be spread across day and night shifts.
32. I am on the Consultative Committee established under the CFA Operational Staff Enterprise Agreement. The CFA has not brought any proposals for job sharing or part-time work to that committee. I am not aware of any other initiatives put forward by the CFA that would overcome (if possible) the enormous issues that would be presented if such changes were to occur as those proposed in the award variation.

**Cory Woodyatt**  
**6 April 2016**



**IN THE FAIR WORK COMMISSION**

**s. 156 - Four Year Review of Modern Award**

**Fire Fighting Industry Award 2010**

**Matter No. AM2014/202**

**WITNESS STATEMENT OF PATRICK GEARY**

I, Patrick Geary, of Corio Fire Station, [REDACTED], in the State of Victoria say as follows:

1. I Patrick Geary am employed by the Country Fire Authority (CFA) as a firefighter. I have been employed by the CFA for more than 28 years.
2. I currently hold the rank of Operations Officer. I have held that rank for approximately 2 years. I am currently acting as officer in charge of the Corio Station.
3. As the officer in charge of Corio Station I am responsible for the day to day running of the fire station which employs approximately 45 employees. I am also responsible for the Corio Fire Brigade, Lara Fire Brigade and Geelong Coast Guard each of which contain approximately 60 volunteers.
4. I am a member of the United Firefighters' Union of Australia – Victoria Branch (UFU) and have been for my entire career as a firefighter.
5. I am authorised by the UFU to make this statement on its behalf.
6. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.

## **OPPOSITION TO PART-TIME WORK**

7. I oppose the introduction of part-time work into the CFA. The negative effects of part time work would be more pronounced if part-time employees formed part of the 10/14 roster and/or minimum crewing.
8. If part time work was introduced the efficiency, productivity and community safety benefits of the 10/14 roster would be substantially reduced.

## **BENEFITS OF 10/14 ROSTER**

9. Firefighting is a unique profession. Firefighters may be required to place themselves in situations that are life threatening at any time. In order to be confident that they will be safe in these situations firefighters must be able to trust each other and work effectively in teams. Training and skills maintenance are critical to this. The 10/14 roster system also has an important role in building members' confidence in each other's skills and capabilities and to learn to know and trust each other.
10. Firefighters are extremely committed to the 10/14 roster system. The main benefit to firefighters of the 10/14 roster is that it enables firefighters to manage fatigue as much as is possible. At the same time, the system enables stations to be staffed 24 hours a day. The system benefits individual firefighters because it is predictable and enables them to plan activities and family responsibilities. It is not generally departed from once it is compiled. The system is, however, flexible enough to cater for individual circumstances. Existing arrangements such as the special duties roster and the employees not subject to the 10/14 roster cater for employees performing roles that are performed on a day-shift basis.
11. Firefighters working the 10/14 roster regularly work with the same members who work on the same shift or platoon at another station. For instance,

firefighters at Corio and Geelong city stations regularly work together. The fact that employees work the same shifts helps to maintain vital links between crews at different stations that enable them to effectively support each other.

12. A majority of training takes place on shift and is not centrally directed by the CFA. Because firefighters are always on the same shift, it is possible to identify when certain training is required. For example, following a factory fire it will be apparent what had been done well and what might be improved. The ability to work and train together constantly is critical to the ability of firefighters to trust each other in life threatening situations.
13. As an Operations Officer and formerly as a Senior Station Officer I have frequently delivered training following an unusual event. This has been disseminated to other shifts through the chain of command.
14. If part-time employees were engaged at my station, I would be concerned that they would not be able to access the same skills maintenance and training as full time employees. This is because they would not perform all of the shifts performed by a full time employees and therefore not have participated in training delivered- formally or informally- on those shifts they were not present for. Because they had not participated in the same training as full-time employees or been exposed to the same incidents, I would have concerns regarding their level of competency. As an Officer in Charge I would be concerned that part-time employees would not be accepted by the crews that they work on as part of the team due to them not being a constant part of those crews. I would be concerned that this perception within the station could contribute to a breakdown of necessary trust, cooperation and team work.

## **MANAGEMENT OF OPERATIONAL RESPONSE**

15. As an officer in charge, I believe that the introduction of part-time work, if introduced within the 10/14 system and as part of minimum crewing would negatively impact operational response.
16. As an officer I am responsible for developing fire plans. During the initial stages of an incident firefighting resources are often scarce relative to the size of an incident. In Corio, there is a large amount of heavy industry including an oil refinery. Due to concerns about the skill level of part-time employees I would be likely to develop a more conservative fire plan due to concerns regarding the skill level of part-time employees. The reason for this is that fire-fighters are responsible for each other's health and safety. I would, therefore, not place an employee I am in charge of in a situation where they are dependent on an employee with inadequate skills. This approach may result in the loss of property and at worst put community safety at risk.
17. As mentioned previously, this is because I could not be certain that part-time firefighters had performed required skills maintenance activities. Responsibility for ensuring skills maintenance occurs on shift falls to the officer in charge of that shift. As the officer in charge of the station, I am confident that officers in charge of shifts are able to ensure adequate skills maintenance training takes place around operational calls and other station requirements. Because training may be at irregular times due to operational requirements, I would not be able to be confident about this if employees were part time. As a consequence, I would seek to limit the roles that they perform on the fire ground. This would in turn have a negative effect on the well being of other fire fighters on the fire ground as they may be forced to perform particular roles for a longer period which would be a risk to their health and safety, as well as posing workload issues.

18. In summary, I believe that the part-time engagement of firefighters would be a risk to both the health and safety of the part-time firefighters themselves as well as others they work with.

#### **MANAGEMENT OF FIREFIGHTER WELFARE**

19. The introduction of part-time work would also have a negative effect on fire fighter welfare. In particular, it would reduce my ability to monitor the welfare of and provide support to employees on my station because employees would mean more employees at the station meaning their needs would be harder to keep track of. If employees were to work part-time across a number of stations it would be difficult for any officer to understand what their experience was like and provide appropriate support.
20. As an Officer in charge I have a critical role in ensuring the wellbeing of my employees. In order to do this, I ensure that I am aware of the various jobs that have been attended by employees at the station. If jobs were particularly traumatic such as suicides and jobs involving deaths which are more common in Corio than other areas, I ensure that I monitor the welfare of employees that attended and provide and seek to ensure that the welfare of the employees is looked after as far as possible by the CFA. Ongoing support and communication with employees is essential to prevent burn out and other mental health issues and to try to ensure that firefighters continue to be able to perform their job.
21. Because crews work together regularly and on a full time basis, I become familiar with the way in which particular crews operate. This enables me to observe where there are issues with particular employees and provide support as required. Firefighters agree that the 10/14 system also enables

other members of a crew to identify if there are issues with a particular employee and provide necessary support. This would not be possible if an employee was employed on a part time basis, particularly if they worked across different shifts. The necessary close relationship and understanding that is reached through the 10/14 system cannot be reached through part time work. Team work and esprit de corps is critical to the health and safety of firefighters and cannot be achieved through part-time work.

### **SPECIAL DUTIES ROSTER AND EMPLOYEES NOT SUBJECT TO THE 10/14 ROSTER**

22. There are a number of roles within the CFA that are not performed on a 10/14 basis across various districts and regions. This includes part-time work. I believe the roster system under the Operational staff agreement as well as CFA more generally provides sufficient flexibility for those who do not wish to work on a 10/14 basis.
23. I do not believe that part-time work should be introduced to the CFA in any form. Were part-time work to be introduced it would create a risk that I do not believe is acceptable. The only way this risk could be managed would be if part-time employees were engaged on a job-share basis and were only rostered in addition to (ie, over and above) safe minimum staffing levels.

**Patrick Geary**

**6 April 2016**

**IN THE FAIR WORK COMMISSION**

**s. 156 Four Year Review of Modern Award**

**Fire Fighting Industry Award 2010**

**Matter no. AM2014/202**

**WITNESS STATEMENT OF MALCOLM ROBERT HAYES**

I, Malcolm Robert Hayes, of Mildura Fire Station [REDACTED], in the State of Victoria say as follows:

1. I am employed by the Country Fire Authority (**CFA**) as an Operational Firefighter. I have been employed by the CFA for approximately 12 years.
2. I currently hold the rank of Senior Station Officer and the position of Station Officer and I have held that rank for approximately 5 years. I currently hold the position of Station Officer Mildura Fire Station.
3. In this position I am responsible for the day to day management of all operational firefighters on my shift. There are currently 6 operational firefighters on my shift, 2 Station Officers, 1 Leading Firefighter and 3 Firefighters.
4. I have been awarded a Unit Citation for protecting the Hazelwood power station.
5. I am a member of the United Firefighters' Union of Australia – Victoria Branch (**UFU**) and have been for my entire career as a firefighter with the CFA.
6. I am authorised by the UFU to make this statement on its behalf.
7. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.

## **OPPOSITION TO PART-TIME WORK**

8. I oppose the introduction of part-time work into the CFA generally, and especially as part of the 10/14 roster and/or minimum staffing.
9. I believe that the introduction of part-time work as part of the 10/14 roster and/or minimum staffing could diminish firefighter safety and well-being as well as the level of service to the community.

## **BENEFITS OF 10/14 ROSTER**

10. The role of an operational firefighter requires firefighters to work in stressful and life-threatening situations. To cope with this environment, firefighters rely on their team to work together.
11. The 10/14 roster allows for the team to work together, both in operational situations as well as training. The team works together on the same shift with the same hours. This teamwork ensures that the firefighters can trust and rely on their fellow firefighters in emergency situations.
12. The 10/14 roster allows for 24 hour protection to the community at the same time as providing certainty for the employees on the roster.
13. The roster system also provides for flexibility to accommodate sick leave, other forms of leave, parental leave through other forms of rosters such as not subject to the 10/14 roster.
14. The 10/14 roster consists of two 10 hour day shifts, two 14 hour night shifts and then a rostered break. This provides for service delivery to the community and ensuring the continuity and teamwork between crews who tend to regularly work together on the same shift.
15. The 10/14 roster also provides for training to take place on station including regular station drills. This regular training ensures that the same members will work and train together to prepare them for facing operational decisions together.



16. As a Senior Station Officer I regularly perform training on station with the crews as a group. If I had part-time firefighters on shift, on station I would have concerns about them accessing ongoing skills maintenance and training as they may not be able to undertake the training and maintenance with the group or be able to access it outside the team.
17. I would also have concerns as the Officers on the shift will face obvious challenges in knowing their level of competency and skills maintenance. This would potentially break down the essential trust and confidence operational firefighters must have within their team to perform their duties on the fireground.
18. Another potential impact of a part-time firefighter or a firefighter rostered solely on day work may be the lessening of their pay due to the removal of shift penalties. This may affect how the firefighter is seen within the team.

#### **MANAGEMENT OF OPERATIONAL RESPONSE**

19. I would also be concerned about how I perform my role as an Incident Controller if part-time work were introduced within the 10/14 roster and/or minimum staffing.
20. As an Incident Controller I would obviously be more limited in how I might use a part-time firefighter in responding to an operational incident as I do not know what skills maintenance they have done or whether they are competent in the tasks I might assign them. As an Incident Controller, this may restrict what roles they perform on the fireground and limit the effectiveness of our response.
21. This poses a risk to not only the firefighters health and safety, but also a potential risk to the community.

## **MANAGEMENT OF FIREFIGHTER WELFARE**

22. The introduction of part-time firefighters on the 10/14 roster and/or minimum staffing would also impact the management of welfare of operational firefighters.
23. As a shift, we provide ongoing support and communication within the crews which is essential to health and welfare of the crew and their families. Part-time firefighters would be likely to have limited access to the same crew and therefore would reduce the ability for the part-time firefighter to access the support and for the firefighters on 10/14 to obtain that support from the part-time firefighter.
24. As the close relationship and understanding of each other is essential to the development of the team, it is also crucial to the safety and welfare of firefighters on that team. I do not believe that this teamwork can be strengthened or maintained if part-time becomes a regular part of the 10/14 roster.

## **SPECIAL DUTIES ROSTER AND EMPLOYEES NOT SUBJECT TO THE 10/14 ROSTER**

25. I am aware that the CFA currently has the roster arrangements where employees can be rostered not on the 10/14. I am aware that firefighters can currently work flexible or part-time rosters within these roles.
26. I believe that this adequately caters for the needs of employees who wish to work different hours to the 10/14 roster and has the flexibility to address different requirements.

**Malcolm Hayes**

**6 April 2016**

**IN THE FAIR WORK COMMISSION**

**s.156 Four Year Review of Modern Awards**

**Fire Fighting Industry Award 2010**

**Matter No. AM2014/202**

**WITNESS STATEMENT OF ARCHIE CONROY**

I, Gerald Anthony Conroy,[ Archie] of [REDACTED], in the State of Victoria  
say as follows:

1. I am employed by the Country Fire Authority (**CFA**) as an Operational Firefighter. I have been employed by the CFA for over 30 years.
  - Operations Officer for the last 14 years in Victoria: managing a Catchment, and detailing and reporting in emergency service in planning, preparedness, response and recovery in rural and urban areas.
  - Involvement in strategic planning and resourcing of new stations, plant and equipment.
  - Operational Officer in Charge of a major fire station during which time I was the direct line manager for a work force of 42 personnel and 25 volunteers.
  - Senior Instructor at CFA Training College Fiskville
2. I am presently an Operations Officer based at Ararat.
3. I have been a member of the UFU since I commenced work for the CFA.
4. I have worked as a senior instructor of firefighters at the Fiskville training facility for 2 years between 2000 and 2002.

5. I understand that the CFA/MFB seek to vary the Modern Award by introducing (i) part-time employment; and (ii) a new 'day worker' roster.
6. I am opposed to part time employment in the CFA beyond the circumstances presently permitted by industrial instruments. All members of the UFU employed by the CFA that I have spoken to agree.
7. It is important that firefighters have a skill level, standard of training and fitness level.
8. Firefighters train together, acquire on the job training together and have a team approach as a result. This is done on the 10/14 shift.
9. If an employee such as a part time employee is not part of that team I would not know the capabilities, fitness or training levels of that employee because they are not part of the team. Even if they were a regular member of the roster I would not be confident that they had the same level of competency, training and fitness I would not have that knowledge.
11. On shift teams train together, work together, understand their work methods together and, a slogan of the CFA, "Train together – play together" is what the CFA promotes.
12. The team environment is so important in firefighting. It is necessary that every member of the firefighting team has every confidence in the team. As an Operations Officer I must have confidence in the ability of the teams on the fireground. If I have any doubts it will affect the approach on the fireground. In a hostile environment any flaw in the team could jeopardise the team's members health and safety and put at risk the task being undertaken and the time in which to effect a rescue etc.. If a part time employee was part of the team I would not be confident that he/she had the team exposure, experience, competency and training to be an effective part of the team on the fireground and would adjust the way I would direct the incident.
13. CFA values mention the key to safe and efficient firefighting by stating:  
*"CFA values our members*  
*CFA is a service organisation, with a mission to protect people and property.*

*Employees and volunteers are core to us achieving our mission. So, we need to ensure you have a positive, supportive and safe working environment.*

*Our CFA Values are:*

**Safety**

*We actively pursue zero harm*

*We want everyone to get home safe and well*

*We have a harmonious workplace*

*We encourage discussions on safety matters*

**Respect**

*We acknowledge each other's ideas, opinions and contributions*

*We welcome diversity*

*We show empathy and understanding*

*We respect the time of our people*

**Together**

*We unite to deliver on our mission*

*We work in and promote inclusive teams*

*We work collaboratively with the community and the sector*

*We communicate openly*

**Integrity**

*We do what we say we will do*

*We are honest, open and act fairly*

*We make transparent and timely decisions*

*We are accountable and will hold one another to account*

**Adaptive**

*We are open to the challenge of change*

*We are proactive and make it happen*

*We challenge the status quo and recognise innovators*

*We learn from each other and our community”*

13. Because of the importance of the team environment and the other matters I refer to, part time employment of operational staff would be unsafe in any circumstances unless it was over minimum manning, and I would have doubts about it even in those circumstances.
14. It is inefficient to have part time workers, such as requiring more inductions on shift; more instruction/supervision if the OIC is not familiar with the employee and their skills.
15. I would have concerns about whether part time firefighters could satisfy me about various matters and which will affect my willingness to deploy them and the role I would be prepared to have them perform. Queries I would have about part time firefighters would include:
  - Do they know the equipment and are accredited in the use of it?
  - Do they know the area and preferred routes to major hazard facilities and the secondary routes?
  - Are they competent in the use of CABA (there are three types in use in CFA depending on the area you work in)
  - Do they have the necessary accreditations and experience to drive and operate Pumpers, tankers, aerial appliances, Breathing apparatus Vans, decontamination vans?
  - What crew leader qualifications and do they have experience to use them efficiently and in a major urban area exposure?
16. I am responsible for incidents and the employees/ volunteers who attend. I must have confidence in and an understanding of the familiarity of the location such as maps, the skills and shortfalls of the teams that respond, the training of those teams’

members It is my opinion that part time employment cannot be sustained as a working method and will be inefficient.

17. I do not believe that part time employees can be part of minimum crewing as I consider they will not necessarily have the requisite qualifications, competencies, and training with teams who work on 10/14 shifts as full time firefighters. If they were included they would be artificially making up the numbers and would not provide the minimum crewing required for safety.
18. The minimum crewing level is a safety requirement. It will be undermined by part time employment. If part time employment were to be permitted it would have to be above minimum crewing to maintain that safety.
19. The 10/14 roster works well and provides the best service to the community over other roster model. It provides a structure where members can train as a team and deliver a service to the community that is second to none. Other rosters such as the triple 8, 72 hour and 56 hour rosters have been used in the past and the 10/14 roster has been the preferred roster nationally and internationally.
20. I have worked a Day roster with the CFA. My experience was that a Day Worker was like being a Trades Assistant compared to a Tradesman in that we were paid almost 50% less than a shift worker firefighter; we were allocated menial duties mainly cleaning toilets after Officers, and other things such as mowing lawns and manually cleaning below ground pump pits. We had limited opportunities for training apart from training ourselves as the one other person on the shift had other responsibilities. We were considered the lowest on the food chain in the CFA. This created a division between Day Worker and career shift workers and reduced morale amongst day workers. Aside from the pay difference, I would expect that any introduction of Day Work would recreate similar divisions and adversely affect morale. I believe that is why CFA abandoned the day worker concept in or around 1984.
21. It would be very difficult for part time firefighters to undergo the requisite training. To train a person to the required level would be the same as training a full time

employee. These people have undergone a selection process where they have demonstrated they have the fitness, level of intelligence to acquire new skills and the ability to deal with situations that most people cannot tolerate or function correctly as well as being vital team members in high stress situations.

22. I consider that women are encouraged by the CFA and there is no disincentive for them not to seek employment with the CFA. Existing female firefighters are supported and encouraged by the members as they have been able to demonstrate that they can perform and achieve the required levels to progress from recruit Firefighter through to being part of minimum crewing on a station.

Quentin Conroy

6 April 2016



## **IN THE FAIR WORK COMMISSION**

### **s.156 – Four Year Review of Modern Awards**

**Matter No. AM2014/202**

#### **WITNESS STATEMENT OF GLENN RAYMOND VEAL**

I, Glenn Raymond Veal, C/o Sunshine Fire Station, in the State of Victoria say as follows:

1. I am employed by the Metropolitan Fire and Emergency Services Board (**MFB**) as a Senior Station Officer. I have been employed by the MFB for over thirty-one years.
2. I currently hold the rank of Senior Station Officer. I am stationed at Sunshine Fire Station. I have held this rank for approximately 14 years. I have held the rank of Officer for approximately 26 years. I regularly act up to the Commander rank when required.
3. In this position I am responsible for attending and taking a leadership role in various types of emergencies including but not limited to emergency calls including fire, hazardous material incidents, road and industrial rescue incidents and emergency medical calls throughout the Western District for the MFB and beyond. I also undertake non-emergency roles including building fire safety inspections, annual inspection of premises, various MFB community education programs related to fire and safety. I also supervise and manage staff within the station and within the Western District.
4. I am a member of the United Firefighters' Union of Australia – Victoria (**UFU**) have been a member for 31 years.
5. I am authorised by the UFU to make this statement on its behalf.
6. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.

## **OPPOSITION TO PART-TIME WORK**

7. I oppose the introduction of part-time work into the MFB as it will have an impact on the 10/14 roster and minimum crewing.
8. I believe that the introduction of part-time workers as part of the 10/14 roster and/or minimum crewing will diminish the benefits gained from the 10/14 roster to firefighter safety and well-being as well as affecting the service delivery which may impact on community safety.

## **BENEFITS OF 10/14 ROSTER**

9. The 10/14 roster enables 24 hour 7 days a week coverage at a given station. On the 10/14 roster, a firefighter works as follows:
  - i. 2 x 10 hour days commencing at 8am and finishing at 6pm that evening followed by
  - ii. 2 x 14 hour night shifts commencing at 6pm and finishing at 8am and then
  - iii. 4 consecutive days off.
10. Firefighting relies heavily on the ability of crews to work as a cohesive team which is built on training together, knowing each other and having a confidence that we have all undertaken the same training and competencies. This means that when firefighting crews enter a dangerous environment they will operate in a professional, uniform and consistent manner ensuring firefighter safety which in turn leads to a better outcome for the community. This cohesiveness and teamwork is built on training and development, including the regular scheduled skills maintenance sessions. Other operational training includes that determined by the Officer in charge or that which the MFB decides is important at the time.
11. The 10/14 roster system plays an important role in that it allows teams to form and for team members to build confidence and trust in each other's skills and abilities.

12. There is a very strong commitment amongst firefighters to the 10/14 roster. I have always worked in an environment with the 10/14 roster and a minimum crewing level. This provides consistent protection to firefighters and the community 24 hours a day, 7 days a week. It also assists in the management of firefighter fatigue and wellbeing. The roster provides firefighters with a level of predictability as to where and when they are working. This allows lifestyle planning for rest and recuperation for their next tour of duty. Where instances occur that firefighters are unable to report for duty due to personal matters, the system is flexible enough to accommodate this by various forms of leave as per the 2010 operational staff award. These include accrued leave, long service leave, approved change of shift, bereavement leave, pressing necessity leave, return to work or parental leave including through the existing arrangements such as the Special Duties Roster.
13. As a Senior Station Officer the consistent and predictable nature of the roster system provides me with confidence in my crews and their abilities. It also allows me to constantly monitor the physical, emotional and mental well being of my crew.
14. Skills maintenance training is regularly and consistently carried out with crews rostered at all stations throughout the MFB fire district. This is done on a regular and scheduled basis and ensures that the same information and skills are shared and maintained by all staff. This training however, is conducted on a station-basis at times convenient within that station as well as being secondary to attending emergency call outs. Training is conducted between call outs and at times convenient to do so taking into account other demands on firefighter's time. Therefore due to the unpredictable nature of any particular shift it is foreseeable that part-time employees may be unable to participate in regular and ongoing skills maintenance sessions. As fire calls cannot be predicted, neither can it be predicted when training sessions are conducted.
15. As a Senior Station Officer I am responsible for ensuring that the scheduled monthly skills maintenance sessions are conducted. Additionally as an Officer I can conduct any other training that I believe will further develop the skills of the firefighters under my

supervision. These may occur at any convenient time. Again, these may be times when a part time firefighter is not present.

16. My personal view is if I had part-time firefighters on shift I would have concerns about whether or not their competency levels and experience were adequate and the effect this could have on the rest of my staff - potentially breaking down the absolute necessary trust and confidence firefighters must have between each other.
17. The overall safety of all firefighters can be affected if a member has not had the training necessary to provide the skills and or experience to carry out their function.

### **MANAGEMENT OF OPERATIONAL RESPONSE**

18. If part-time work were introduced within the 10/14 roster and/or minimum crewing, I would be concerned about how I manage operational responses. As a Senior Station Officer in charge during a dynamic event I believe my job would be made more difficult as I would have to be more conscious of tasking a part time firefighter to ensure their health and safety. This would be due to being unsure of their skill levels, abilities and experience. I therefore I see a higher risk to both their and other firefighter health, safety and welfare.
19. I would be more conservative about how I might use a part-time firefighter in responding to an operational incident. If I had part-time firefighters I would not have the certainty about them that I would have of my full time crew. It is therefore likely that I would restrict their role on the fireground which in turn limits my resources. This may lead to a higher risk situation for other firefighters on scene by limiting my ability to rotate crews and manage workload fatigue.
20. Firefighting is a unique profession dependent upon a cohesive team. It is a technical and dangerous occupation and one that carries great responsibility for community safety. I believe full time crews with ongoing training, development and practical experience provides the best firefighters and emergency outcomes for the community.

## **MANAGEMENT OF FIREFIGHTER WELFARE**

21. I also object to the introduction of part-time firefighters on the 10./14 roster and/or minimum crewing as it would impede my ability to provide adequate support and tend to the welfare needs of my crews if they were part-time.
22. As an operational Senior Station Officer, myself and my team of firefighters attend many stressful and confronting incidents ranging from fires to rescues to emergency medical response events. Working with my firefighters on a permanent full time basis and knowing them well allows me to fully monitor their behaviour after such confronting events. This enables me to identify when a firefighter might be struggling and provide them extra support. This ongoing support and communication with the crews is crucial to the mental health and welfare of the crews and their families and therefore, their ability to continue to do their job.
23. As a Senior Station Officer I am responsible for firefighters not only from my own station but from numerous other stations who also attend confronting incidents. The ongoing welfare issues this presents is already a heavy workload. Accessing people who are part-time to provide this ongoing support would be extremely difficult to do.
24. In addition to me knowing my crews well, they know me well also. This allows them to be aware of how I am travelling and it is comforting to know that my welfare is being considered. Full time firefighters who work regularly with the same crews across the same 10/14 hour shifts on a full-time basis also know each other well. They are aware of and understand the behavioural traits of each other and easily identify if anyone has any work related or personal issues requiring assistance.
25. The 10/14 roster provides full time firefighters the ability to develop close relationships with each other and leads to a strong team and work ethic. This is vital to the safety and welfare of firefighters. I do not believe the same operational efficiencies, relationships,

teamwork and welfare considerations can occur with the introduction of part time firefighters.

### **SPECIAL ADMINISTRATIVE DUTIES ROSTER**

26. I am aware that the MFB currently has the special administrative duties roster, known as day work. I have previously worked in these roles myself. I am aware that firefighters can currently work flexible or part-time rosters within these roles.
27. I believe that this adequately caters for the needs of employees who wish to work different hours to the 10/14 roster. These roles are situated across many locations in and Departments.

**Glenn Veal**

**6 April 2016**

**IN THE FAIR WORK COMMISSION**

**s. 156 - Four Year Modern Review**

**Fire Fighting Industry Award**

**Matter No. AM2014/202**

**WITNESS STATEMENT OF JOHN KENNETH RADFORD**

I, John Kenneth Radford, of Traralgon Fire Station [REDACTED],  
in the State of Victoria say as follows:

1. I am employed by the Country Fire Authority (**CFA**) as an Operational Firefighter. I have been employed by the CFA for over 20 years.
2. I currently hold the rank of Senior Station Officer and the position of Station Officer and I have held that rank for approximately 12 years. I currently hold the position of Station Officer at Traralgon Fire Station.
3. I have also performed higher duties as an Operations Officer at Ballarat City, Fiskville, District 14, District 10 and District 27. I am about to commence 12 months of higher duties as an Operations Officer at District 27 as Officer in Charge of Traralgon Fire Station.
4. In my position as a Station Officer at Traralgon I am responsible for the day to day management of the reliever platoon and the operational firefighters on that platoon. The minimum staffing profile on my platoon is one Station Officer, two Leading Firefighters and two Firefighters, plus any above strength firefighters.
5. As an Operations Officer I will be responsible for the day to day management of the Traralgon Fire Brigade and the Hyland group of fire brigades. The staffing profile for Traralgon is currently 27 operational firefighters, with my responsibility for a number of volunteer brigades and volunteers attached to their brigades.

6. I have been awarded a National Medal and a long service award. I have also been awarded the National Emergency Medal for my work in the 2009 campaign fires.
7. I am a member of the United Firefighters' Union of Australia – Victoria Branch (**UFU**) and have been for my entire career as a firefighter.
8. I am authorised by the UFU to make this statement on its behalf.
9. I make this statement from my own knowledge except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.

#### **OPPOSITION TO PART-TIME WORK**

10. I oppose the introduction of part-time work into the CFA generally, and especially as part of the 10/14 roster and/or minimum staffing.
11. I believe that the introduction of part-time work as part of the 10/14 roster and/or minimum staffing will diminish the benefits gained from the 10/14 roster to firefighter safety and well-being as well as service delivery to the community.
12. I believe that the introduction of part-time work will be divisive and will be an interruption to the continuity of platoon management.
13. If part-time work is introduced, employees will be at different levels of pay (with reduced shift allowances) working different hours alongside operational firefighters working the 10/14 shift roster.
14. This presents major difficulties in continuity of essential emergency training such as major appliance increments and maintaining basic skills.

#### **BENEFITS OF 10/14 ROSTER**

15. The role of firefighters depends heavily on members of the same shift being unified and having a level of understanding and trust. This understanding and



trust is developed via teamwork through joint training and an equal knowledge of fire and emergency response.

16. When firefighters train and work alongside each other, they develop this knowledge and understanding of everyone's strengths and limitations which provides for a safer work environment. This safer work environment is essential for better operational firefighting.
17. This ability for teamwork and understanding that develops over a number of years between firefighters on shift means that I can as an Incident Controller rely on my team to perform tasks without doubt as to their abilities. This enables me to confidently make decisions in a short amount of time as required by my position.
18. Firefighters are committed to the 10/14 roster as it maintains an equal level of protection to the community that professional firefighters serve, independent of location. For example, the 10/14 roster provides 24 hour protection to such locations as Mildura, Traralgon, Geelong and Wangaratta due to the minimum staffing profile.
19. The 10/14 roster also provides for a level of certainty in rostered work hours and break, as well as addressing fatigue management. The 10/14 roster affords its employees a work life balance to ensure that the stressful nature of the job is balanced with time away from the job and with your family.
20. The 10/14 roster also addresses individual needs whilst maintaining stability and fire service delivery/continuity of service at professional firefighters such as a crew of firefighters at all professional firefighter locations.
21. The roster system is also flexible and provides for individual needs. These include leave such as sick leave (including return to duties after long periods of illness or injury), long service leave, parental leave. The roster system also allows members to commit to other community activities such as the Defence Force/Army Reserve.

22. Unless agreed to be diverted from by the employer and employee, the 10/14 roster provides for 2 ten hour day shifts and 2 fourteen hour night shifts per cycle. After the night shifts the roster provides for a period of days off before the next cycle. The 10/14 roster supports the ability to manage your fatigue as well as work life balance.
23. The 10/14 roster also allows for members career development via promotional programs. The roster provides for operational firefighters to be able to be involved in off-station training and assessment in the career development of professional firefighters. This involvement of operational firefighters in the career development is essential to passing on lessons learnt, new techniques and skills as well as giving firefighters a safe environment to train in.
24. The 10/14 roster provides for continuity between operational firefighters who work on the same shift.
25. A large part of my role as the Station Officer at Traralgon is to ensure that the operational firefighters on my shift are trained and ready to respond to emergencies and community needs.
26. This training generally takes place whilst on shift at the station and the shift trains as a group. Although members of the shift at different career levels require individual needs, the training is generally based around the individual needs whilst support the shift as a group.
27. The importance of the unity of the group is supported and developed through this style of training such as skills acquisition and skills maintenance. This is essential for the team when responding to fires and emergency as these can often present the team with life-threatening situations and personal stresses.
28. The whole idea of working as a team is to reduce these stresses however if you have an inconsistent shift environment i.e different people on your shift that you do not always train and respond with, this can lead to unwanted stresses in regards to identifying skills and skills gaps.

29. If there were part-time firefighters on shift at my station I would have concerns and doubts about their ability to access ongoing skills maintenance and training due to the part-time nature of their employment. If they did not work the same shifts as their 10/14 roster counterparts, they would miss vital and essential training that is conducted on shift. The officer on that shift would also be impacted upon as they would be required to constantly revisit the training that has already been presented for the other firefighters i.e short duration drills.
30. The Station Officer would also be impacted by the part-time firefighters level of competency. As they would not be performing all the required hours, they would likely not be able to acquire and maintain the bread and butter skills that are required for operational firefighting.
31. As they would not be consistently with the team on shift, I would also be concerned about the impact of the safety of other members of the team due to the rest of team not being aware or confident about their base level of skills. Firefighters all do the same process of recruit training, come onto the station at the same level and grow at the same level through on-station training and off-station development. I would be concerned that part-time employees would not be afforded or could not take up the same opportunities and would then be a possible liability to themselves and the team on the fireground.
32. The 10/14 roster also provides the ability to mentor members into leadership roles, as there is consistency regarding who is on shift, which allows the Station Officer and at times the Leading Firefighter to mentor other employees through their career development. This would be difficult to achieve with part-time employees due to the inconsistent roster arrangements and availability of the mentor and part-time employee on the same shift. This would likely lead to a reduced ownership of the duty to mentor fellow firefighters and limit career development.

33. The impact of having part-time employment or employment only on the day roster would impact on the acceptance of those firefighters by the operational firefighters on the 10/14 roster as they would likely be paid less through removing shift allowances. This would affect morale of the workforce due to them having to train new people, having concerns about the level of competency of the new firefighters and having inconsistent employees with constantly differing skill sets and levels placing undue stresses on the other firefighters.
34. The affect on morale has occurred previously as the CFA has previously sought to introduce, and did indeed introduce limited-tenure firefighters. This deeply affected morale due to the uncertainty of both shift staffing and the inconsistent nature of who would be working on a shift on a given day. This had a profound effect on training as the limited-tenure firefighters had completely different and lesser training than their 10/14 counterparts.

#### **MANAGEMENT OF OPERATIONAL RESPONSE**

35. I would also be concerned about how I manage operational response if part-time work were introduced within the 10/14 roster and/or minimum staffing.
36. As a Station Officer I perform the role of Incident Controller and I am required to manage operational firefighters and implement strategies and tactic for the successful combating of an incident. I would be hesitant and concerned about how I might use a part-time firefighter in responding to an operational incident.
37. I would concerns as to their skills set as it is likely I would not be observing their training and they would likely be completing lesser training due to their shortened experience.
38. If I did not have a proper knowledge about their level of training, or they did not have enough training I would have a problem from an occupational health and safety perspective to assign them the usual roles on the fireground.

39. At Traralgon, we also have a specialist appliance being the Rescue Ladder Platform. To accommodate a part-time employee who may not have the specialist skill set due to the possible lack of opportunity for training on the specialist appliance, other firefighters on the 10/14 roster would be required to fill the gap and miss out on vital experience on other appliances.
40. These impacts would limit the flexibility available on the fireground to rotate crews and provides a riskier work environment.
41. Therefore the introduction of part-time work would severely interfere the day to day routines and response to fire and emergencies, including providing a safe workplace both at the station and on the fireground.

#### **MANAGEMENT OF FIREFIGHTER WELFARE**

42. Because of the comradarie that is developed through the 10/14 roster, members are more in tuned to each other's needs and welfare. It affords you the ability to be able to communicate with each other and deal with the problems as a work group.
43. The introduction of part-time firefighters on the 10/14 roster and/or minimum staffing is likely to reduce the ability for the team members to support each other as there is less ownership and less joint experience together due to the part-time nature of their employment.
44. Firefighters who work on the 10/14 roster have a kinship and an understanding of the stresses that result from the job. The ongoing support and communication provided by team members extend outside the 10/14 roster ie. catching up on days off.
45. This kinship and support contributes to the team's ability to de-stress or defuse stresses. This is crucial to the mental health and welfare team members and their families and maintaining a team environment to do the job.

46. Accessing team members who are part-time to provide this ongoing support would be difficult to maintain. This would affect teamwork, team morale and team safety and would critically undermine the safety of operational firefighters.
47. As an example, on a recent shift I attended a motor vehicle accident resulting in the death of woman. The team members rallied around each other via an informal de-brief at breakfast. This debriefing was conducted off station at the conclusion of the shift in a neutral and stress free environment. If there was a part-time employee, we may not be able to include them in this activity due to the differing hours.

#### **EMPLOYEES NOT WORKING 10/14 ROSTER**

48. I am aware that the CFA currently has the ability to place 10/14 employees on a roster other than the 10/14. I am aware that firefighters can currently work flexible or part-time rosters within the current roster structure roles, including for safe or modified duties.
49. I believe that this adequately caters for the needs of employees who wish to work different hours to the 10/14 roster. Employees can work in training, project roles and other roles. The employer can also benefit from this roster arrangement without introducing part-time firefighters on the 10/14 roster and/or minimum staffing.

John Radford

6 April 2016

**IN THE FAIR WORK COMMISSION**

**s. 156 - Four Year Review of Modern Awards**

**Fire Fighting Industry Award 2010**

**Matter No. AM2014/202**

**STATEMENT OF MICHAEL (TONY) MARTIN**

I, Michael (Tony) Martin, of [REDACTED] in the State of Victoria, make the following statement in this matter before the Fair Work Commission:

1. I am employed by the MFB, currently as a structural firefighting instructor at the rank of station officer. I have approximately 12 years experience in providing training to recruit firefighters and others, and have nearly 27 years' service in total.
2. I understand that the CFA/MFB seek to vary the Modern Award by introducing part-time employment; and a new 'day worker' roster. I am opposed to part time employment for the reasons set out in this Statement.
3. The MFB has limited day work. I am a day worker. The existing provisions to facilitate day work give sufficient flexibility. However I would oppose the expansion of day work into stations for the same reasons that I oppose part time employment. I consider that the 10/14 shift roster works well and is the best method of service delivery and best facilitates the training needs of firefighters for the reasons set out in this Statement.
4. During the period that I have been employed with the MFB firefighting has become more and more complex. This has meant there has been more frequent training and skills maintenance exercise.

5. In my role as a structural firefighting instructor I am responsible for providing instruction to new employees on recruit courses, and employees from all ranks up to and including the Chief Officer.
6. The recruit courses are intensive. Instruction is full-time for 18.8 weeks. The aim of the course is to provide an immersive and challenging experience that will serve as a foundation for the recruit's career as an operational firefighter.
7. A recruit course could not be delivered effectively on a part time basis.
8. After a firefighter completes their recruits course, significant learning and development is required before they are considered competent in a variety of other areas.
9. A firefighter consolidates the skills obtained through the recruits course as well as obtains new skills through training on the job over several years.
10. A firefighter is generally not considered fully trained until they have obtained the rank and competency of a Qualified Firefighter.
11. It would not be workable for a firefighter below the rank of leading firefighter to perform part-time work due to the requirement to maintain, consolidate and develop skills through regular training, skills maintenance and attendance at fires/incidents in order to achieve/maintain competence.
12. If part-time work was allowed, employees would need to perform both day and night shifts in order to be able to maintain skills.
13. A wide variety of operational and skills maintenance activities are only performed during the day. These include crucial activities such as conducting on site inspections of special hazards. The reason for this is that facilities may not be open or staff not available to facilitate inspections. Inspections are critical to enable firefighters to understand significant and unique hazards. Other activities such as fire education and other community service activities occur during day shifts only.



14. Different types of fires/incidents tend to occur during night shifts. In particular house fires, factory fires as well as road accident rescues are more common during night shifts. It is vital that firefighters be exposed to different kinds of incidents in order to maintain overall competence.
15. Firefighters are required to be rostered whereby they rotate between day shifts, night shifts and days off. This creates productivity and efficiency advantages because a similar number of firefighters are available at all times.
16. In order for these efficiencies to be preserved, part-time employment would only be possible on a job share basis.
17. Job share would create additional planning and rostering difficulties. This is because the two employees would be required to possess and maintain the same skill level as well as being of the same rank. If a firefighter was to earn promotion to a higher rank, they would no longer be able to job share with an employee who remained at the lower rank.
18. Firefighters work in teams. It is a feature of the 10/14 shift roster and full time firefighters that this fosters teams. Part time or day work for operational shifts on station would adversely affect the cohesion of the team. As part of the team approach, firefighters are familiar with their fellow firefighters on the shift crew and know they can depend on them in potentially life threatening incidents. If the employee was a part time or day worker they would not have the same familiarity and confidence. This potentially affects the way in which incidents will be dealt with.
19. If part time work was permitted it would have to be restricted to above minimum crew levels as it would otherwise be impractical for training, service delivery, rostering and rank structure.
20. I am on the Consultative Committee established under the EA. The MFB have not brought any proposals for job-sharing or part-time employment to the Committee.

**MICHAEL (TONY) MARTIN**

6 APRIL 2016

## IN THE FAIR WORK COMMISSION

s.156 – Four Yearly Review of Modern Awards  
Fire Fighting Industry Award 2010

**Matter No. AM2014/202**

### WITNESS STATEMENT OF MICHAEL LIA

I, Michael Lia, of [REDACTED], in the State of Victoria say as follows:

1. I am employed by the Country Fire Authority (CFA) as an Operational Firefighter. I have been employed by the CFA for over 30 years.
2. I am presently the Senior Station Officer at Hallam.
3. I have been a member of the UFU and previously its amalgamation partner the CFA OA since I commenced work for the CFA.
4. I understand that the CFA/MFB seek to vary the Modern Award by introducing (i) part-time employment; and (ii) a new 'day worker' roster.
5. I have previously made a statement in 1999 for use in proceedings in the Fair Work Commission. I have reviewed that statement and consider that it was and is true and correct. Annexed to this Statement and marked **LIA-1** is a true copy of that statement.
6. I am otherwise opposed to part time employment in the CFA beyond the circumstances presently permitted by industrial instruments. I believe that other members of the UFU employed by the CFA agree.
7. I have the same concerns that I expressed in that 1999 Statement today in relation to part time employment and day work in the CFA. Even if Day Workers were remunerated at the same rate as shift workers I would have all the other concerns that I previously expressed and believe that it would still be divisive.

8. I am accustomed to work with qualified firefighters and with teams who work on 10/14 shifts as full time firefighters. I have an expectation of what the members of the team can and cannot do based on my knowledge of their training and experience, and I plan and implement any management of incidents accordingly.
9. When the turnout is fully crewed I know who is on shift and where they are coming from if not part of the regular shift.
10. From a management perspective and from an incident response perspective it is disruptive if I do not know who is to be on shift.
11. I consider that part time employment would cause problems on the fireground. I would have doubts about the skills maintenance and lack of commitment of part time employees. As I may not be familiar with those employees I would not know if I count on them and would allocate them a role which required less dependence on them for the team. This would cause me to adopt a more cautious approach to fighting fires and dealing with incidents. For example, I would allocate a part time employee to a driver/pumper role and would evaluate the response by other firefighters in the light of the restricted role that a part timer would be allocated. This would be especially so if the part time employee did not have experience and qualifications such as LFF or SO.
12. I think that part time employment would create a greater risk to firefighter safety and should not be permitted. If it were permitted it could not be safely implemented unless it was above minimum crewing.
13. If a part time employee is inexperienced or lacks training including specialty training it will also require greater supervision, especially on the fireground, which will impact on the ability to respond effectively and to operate efficiently.
14. It is important that firefighters experience all conditions that will face them. An employee who does not work either day or night shift will not be exposed to the things which occur on that

shift eg day shift conducts community activities such as education and community liaison, is able to familiarise with premises which are not ordinarily accessible after hours, which cannot take place on night shift. Even experience in dealing with incidents in the dark is important.

15. In my experience of having worked Day Work and shifts, I consider that it is more productive for a 10/14 shift to be worked. This can be as simple as the time saved on changeover.
16. Any other shift pattern of shorter hours than a 10/14 will also disrupt the ability of employees to undertake 'project work' such as familiarising themselves and mapping risks in the station area.
17. Firefighting has become complex and demanding and requires more training and ability to devote the blocks of time which a 10/14 roster permits.
18. I consider that any use of part time employees will adversely affect the attitude of the CFA volunteers to the commitment the CFA has to their training and participation. The volunteers are familiar with the career firefighters who work with them and train them and have trust in them. I do not believe that they would have the same trust in part timers who they were not familiar with and who could not have the same experience and training as career firefighters known to them in their community and who they work with in an operational sense and who train them on the job. Part time employment will undermine the volunteer model.
19. I have not experienced any desire from full time firefighter to work part time. I understand it is suggested that some firefighters may seek part time employment as a means of transition to retirement. I have never heard any such suggestion by firefighters. I suspect it cannot be the case because the effect on retirement is so detrimental because benefits are calculated on an average of final year salary.
20. I consider that women are encouraged by the CFA and there is no disincentive for them to seek employment with the CFA. Existing female firefighters are supported and encouraged

by the members, and have the special duties roster and employees not subject to the 10/14 roster there for flexibility.

21. The 10/14 shift otherwise provides certainty for management, firefighters, and stakeholders such as councils and the community.

**MICHAEL LIA**  
**6 April 2016**

**IN THE FAIR WORK COMMISSION**

s.156 – Four Yearly Review of Modern Awards  
Fire Fighting Industry Award 2010

**Matter No. AM2014/202**

**“ANNEXURE LIA -1”**

**This is the annexure as referred to in the Witness Statement of Michael Lia.**

**IN THE AUSTRALIAN INDUSTRIAL  
RELATIONS COMMISSION**

C No 37547 of 1997  
C No 31397 of 1998  
C No 31407 of 1998

**IN THE MATTER**  
of the *Victorian Firefighting Industry Employees*  
*Interim Award 1993 Division B*

**AND IN THE MATTER**  
of a Review pursuant to the  
*Workplace Relations and Other Legislation Amendments Act 1996*

**WITNESS STATEMENT OF MICHAEL LIA**

I, Michael Lia, c/o Doveton Fire Station, in the State of Victoria, state as follows:

**A. BACKGROUND**

1. I am a Fire Officer Grade 2 stationed at Doveton and employed by the CFA since 1983.
2. I worked as a day working firefighter at Boronia paid at the base rate of pay only from December 1983 to May 1984. I was then transferred to Springvale. I worked at Springvale on what was known as 'Z shift'. 'Z shift' involved me working during the day but being paid the same overall rate of pay as a 10/14 shift firefighter.



3. I was transferred from Springvale to Dandenong in November 1987 and then to Doveton in March 1996.
4. Doveton is one of the busiest CFA fire stations. Minimum manning at Doveton is set at 1 Fire Officer and 1 Firefighter. Doveton supports 5 volunteer brigades and 1 integrated brigade.
5. In addition to my usual responsibilities, I coordinate the Trench Rescue Training for Region 8. This involves 69 brigades. I budget the training, program courses and select instructors.
6. Career staff at Doveton also conduct training for volunteers. We run courses to train volunteers to the level of AFC Level 1. This initiative was instigated by career staff. We also run specialist course for volunteers. I am involved in this training.
7. I have been the UFU shop steward at Doveton since 1996. I represent 14 people in my capacity as shop steward.

## **B. DAY FIREFIGHTERS**

8. I understand from "CFA Updates" I have read that the CFA is considering employing firefighters and paying them only the base rate of pay.
9. I began working for the CFA on the 26th September 1983. After completing the recruit Firefighters training course I was appointed to Boronia Fire Brigade as a Day Firefighter paid only the base rate of pay. Being a Day Firefighter on severely reduced wages caused myself and my family much distress.

10. My former occupation was a plant operator, operating earth moving machines. My wages were \$25.00 a week above that of a builders' labourer. On starting with the CFA my weekly wages reduced by \$91.00 take home. My family had a drastic alteration to their standard of living.
11. To survive, I subcontracted on weekends as a security guard. This lasted for about three months after which I was required at home to help my wife with our three young daughters.
12. The original Day Firefighter employed by the CFA began at base level and was educated into the CFA and professional fire fighting. I found coming from a non-skilled industry receiving an average income to a highly skilled and fairly closed industry with below average income very demeaning. Here I was, previously a person who's only skill was to drive a bulldozer, now given the responsibility of life saving, expensive equipment, standard operating guide lines and all maintained to very high level, feeling as though I was a second rate employee.
13. This was reinforced by the extra hours' overtime given to each Day Firefighter to supplement their wages and by the attitude of the Volunteers who treated us as lackeys. In the eyes of the Volunteers we were just Day Firefighters and were there to clean up after them. I was not viewed as a Career or Professional Firefighter.
14. I transferred to Springvale Fire Brigade as a Shift Firefighter working day shift Monday to Thursday and discovered that my duties and responsibilities were the same as when I was a Day Firefighter but now I received a greater salary and was treated as a professional by my co-workers (Firefighters and Officers)

and the Volunteers. This change all came about due to a transfer from a Day Station to a Shift Station where I received the wage that recognised my skills.

15. With the proposed Day Time Firefighter I consider that many similar problems will arise. The Day Time Firefighter will be working on inferior wages alongside a fellow Firefighter on superior wages and yet be expected to execute his/her duties to the same level as the shift Firefighter.
16. I consider that the morale of a day firefighter will be low due to the wage difference.
17. This division of firefighters into two classes of employee doing the same work at the same rank, and the consequent disharmony, will apply to all areas of station life. A Day Firefighter would be working across platoons as they complete their rotating shifts and as such a Day Firefighter will, on each day, have to adjust to the running of each platoon. The Day Firefighter will find it hard to incorporate him/her self into the platoon structure on station. As the one person out, it will be very difficult to foster team building let alone team work.
18. Currently on my platoon, which consists of myself as Fire Officer and one (sometimes two) Firefighters we work as a team. We (one Officer and one Firefighter) are capable of arriving on scene at a fire where the Firefighter will don Closed Air Breathing Apparatus (CABA) while I run out the hose line to the fire (doing a quick size-up at the same time). I return to the appliance, engage the pump then don CABA and return to assist the Firefighter. All of this is performed with few words said. This can only come about by team work and practice.

19. For a Firefighter working days, being paid inferior wages and working across shifts, there will be no exposure to the ongoing, team nature of shift work. It will be difficult to build up the kind of teamwork referred to in this paragraph.
20. If the Day Firefighter has any ranking such as Leading Qualifications, there will be considerable problems fitting that person into the platoon structure. That person would be a higher ranking Firefighter yet lower paid than a Firefighter. All this will create is disharmony. For example, the day Leading Firefighter may order others to do duties because they are paid more, or the Day Firefighter may refuse to do duties because other Firefighters are paid more. It will also detrimentally affect the respect that co-workers have for that person.
21. I understand that the CFA may wish to employ Day Fire Officers on the base rate of pay. Such a Day Fire Officer may earn less than a Leading Firefighter yet have command over this person. This will create enormous problems. The Day Fire Officer may expect the junior Firefighters to perform tasks above their ability because they are being paid more than him. A day Fire Officer should not be expected to take on the responsibilities that come with being an Officer when he/she is being paid well below other Officers. A Fire Officer must be motivated so that he/she shows initiative towards work or station duties, training for the Career Firefighters, training the Volunteers and community safety. I consider that a Fire Officer's morale would be dangerously affected in this regard if he/she was getting paid less than co-workers he/she was supervising.

### **C. PART TIME FIREFIGHTERS**

22. I have very serious reservations about the CFA's proposal to employ part-time firefighters.
23. As a Fire Officer, I cannot effectively manage a Part Time Firefighter at the station or on the fire ground if I am unsure of their ability. I do not accept that a Part Time Firefighter that arrives at a station will be of any benefit to me just because they are an "extra" person above my usual crew. To gauge the skill or knowledge level of a part-time employee, I as a Fire Officer would have to arrange training and set drills for them so I could make an assessment of their abilities. As such I could not use them to their full capacity until this has been achieved. Thus I would have to spend the few hours that they are infrequently with me trying to ascertain their skill level. Unlike other on shift employees who I see regularly, I may then not see this part-time employee for a considerable amount of time and may have to repeat this process when I next see them or when I see a new part-time employee.
24. With Part Time employees' having less exposure to the profession, I consider that their ability to maintain and acquire skills would be compromised. Further, a Part Time Firefighter, due to the lack of contact time at station, will require more supervision than a full-time firefighter because of their relative inexperience. This would draw resources away from our operational capacity where, according to Russell Rees, this new system is supposed to delivered resources.
25. I am stunned at a suggestion that Part-Time Fire Officers could be employed. A part-time Officer would have no knowledge about where the information is

kept on station, have no knowledge on how the station operates and as the title implies it will only be a part time job.

26. Due to their lack of contact with people on shift, a Part Time Fire Officer will have very little knowledge of his/her crew and possibly no knowledge of the fire district. The on duty Firefighters will have to take the lead and guide the Part Time Fire Officer on the requirements for the station. Issues such as which appliance usually goes to an incident, what's the best route to take, where on the appliance is the information kept, what support brigades will come, what do the support brigades offer and what Volunteers can do tasks assigned will probably be outside of the knowledge of a part-time officer. This will hinder the Career Firefighters in performing their duties on the fire ground because they may have to "carry" this Part Time Officer.

## **IN THE FAIR WORK COMMISSION**

### **s. 156 - Four Year Review of Modern Awards**

#### **Fire Fighting Industry Award**

**Matter No. AM2014/202**

#### **WITNESS STATEMENT OF JEREMY XAVIER MURPHY**

I, Jeremy Xavier Murphy, Industrial Officer of the United Firefighters Union of Australia Victoria Branch, say as follows:

1. I am employed by the Victoria Branch of the United Firefighters Union of Australia (UFU) as an industrial Officer. I have held that position since October 2012. I have an Honours Degree in History and a Masters Degree in Employment and Labour Relations Law.
2. My duties as an Industrial Officer include responsibilities representing the UFU's Victoria Branch members.
3. I am authorized by the National Secretary of the UFU (who is also the Victoria Branch Secretary), Peter Marshall to make this statement on behalf of the Applicant.
4. I make this statement from my own knowledge – including my perusal of the union records - except where otherwise indicated and where I make statements based on information from provided by others, I believe such information to be true.
5. I have read various publications of the firefighting unions industrial history including *Life Under the Bells: A History of the Metropolitan Fire Brigade, Melbourne, 1891-1991*, written by S. Wild and *Against All Odds: The History of the United Firefighters Union in Queensland 1917-2008*, written by B. Bowden. I have also read the submission of the United Firefighters Union of Australia to the 2005 Senate Inquiry into the Workplace Relations Amendment (Work Choices) Bill and the 2009 Senate Enquiry into the Fair Work Bill.

6. Firefighting unions have had to fight hard to standardise working-time arrangements. Such arrangements figure as one of the main themes of the history of firefighter unions. This industrial history is relevant to present question of whether such hard fought conditions of employment previously consented to and approved by the Commission should be fundamentally varied.
7. I have also spoken to various officials and staff members of other branches of the UFU.
8. The publications in the union records disclose that from 1845 to 1890 firefighting in Victoria relied upon volunteers and 'auxiliaries' who typically had other primary employment but who responded to emergencies and were partly paid in recompense. Volunteers and auxiliaries were poorly trained and organised, often confined to private organisations run by insurance companies or by employers with large premises. This system was ineffective.
9. The 1890 Fire Brigades Act provided for the establishment of a permanent, salaried Fire Brigade, divided between the Metropolitan Fire Brigade (MFB), covering Melbourne, and the Country Fire Brigades Board, covering country Victoria. By 1891, the MFB had 59 permanent firefighters + 226 auxiliaries. In 1950 volunteer and partly paid firefighters were disbanded within the MFB and only full-time firefighters were employed. Full-time work in teams provided the framework for the ongoing training and equipment checks that were necessary to ensure readiness.
10. Initially full-time firefighters were on 'continuous service' or 'continuous duty'. That is they lived on the job and were available up to 24 hours a day, 365 days a year. In Victoria in 1892, for example, employment was almost continuous, though with one day off a week and three days annual leave. As late as the 1940s, firefighters worked up to 108 hours per week. The answer was to push towards a shift system suited to the rhythm of firefighting. This would ensure 24 hour service, but would not assume that working hours for individual firefighters had to be the same as operating hours. The continuous duty system was not completely abolished in Victoria until 1950, when the Industrial Appeals Court introduced a 40 hour, 5 day week.
11. The dominant arrangement in Victoria (and other states) is a 10/14 roster. The term has been applied to varied arrangements; however, the current version is a four platoon version. This is based on two day shifts from 8am to 6pm (10 hours each shift), followed by two night shifts from 6pm to 8am (14 hours each shift), followed by four days off. This is 48 hours over four days,



but over the course of a full rotation of eight weeks the average per week is 42 hours. Full coverage over the eight weeks requires four platoons.

12. The 10/14 system in its current form was introduced in Victoria in 1972. Prior to this, firefighters worked a shift system based on an eight-hour day, comprising two day shifts, two afternoon shifts, two night shifts and then two days off. To reduce the average hours worked to 40 hours per week, an operational firefighter called the 'Z man' was added to the platoon to work the additional shifts over the eight-week roster cycle. The 10/14 roster was a major advance over this previous roster.
14. The new 10/14 system was initially resisted by the CFA, who appealed to the Industrial Appeals Court. The Court retained the 10/14 roster but allowed for the employment of day firefighters paid only at the base rate (ie without shift allowances). This led to later industrial disputation.
13. Today in Victoria, nearly all operational career firefighters work on the 10/14 roster.
14. The UFUA has more than 13,000 members across the country in government and private sector employment. It is the primary union for paid professional firefighters in Australia. For a number of historical and legal reasons, firefighters' conditions of employment are regulated by a variety of industrial instruments, some in the relevant State system and others in the Federal system.
15. In 1993, following Victoria's the referral of industrial relations powers to the Federal Government, the UFUA achieved the first Federal award. The Award applied to Victorian firefighters and was known as the Victorian Firefighting Industry Employees Interim Award 1993. Since then, Victorian firefighters have remained covered by the federal IR system, with both the Award and certified agreements applying. The overwhelming majority of paid firefighters in Australia work on what is known as a 10/14 roster.
16. The 10/14 roster facilitates 24 hour coverage at a given station. Firefighters. Individual firefighters work an average of 38 ordinary hours per week. On the 10/14 roster, a firefighter has consecutive 4 days on that include 2 X 10 hours day shifts followed by 2 X 14 and then 4 consecutive days off. After working 4 days then taking 4 days off the cycle is repeated.
17. Firefighters working the 10/14 roster work 42 hours per week during weeks that they are rostered to work. Of the 42 hours worked, 2 accrue towards a firefighters annual leave balance and two are paid as overtime. Over the

course of a year, this means that firefighters work an average 38 ordinary hours over the course of a year.

## **INDUSTRIAL DISPUTATION**

18. Throughout Australia's firefighting history, a large number of disruptive and protracted disputes have taken place over hours of work provisions. The 10/14 roster system both fosters teamwork and requires teamwork. Where firefighters have worked with other firefighters performing the same work but receiving different pay work it has caused substantial friction.
19. There has been a long history of disputes and industrial unrest within the CFA caused by CFA's attempts to introduce roster patterns that were not agreed with employees. Some of this history will be summarized below.
20. The union's records disclose that, in 1972 the Victorian Firefighters Wages Board (FFB) made a ruling to introduce the 10/14 roster. They did not make a ruling to introduce day work, which had been proposed by the CFA. The CFA appealed the FFB decision to the Industrial Appeals Court (IAC) seeking to overturn the decision to introduce the 10/14 roster system and provide for the employment of firefighters on day work. The appeals court decided to retain the 10/14 roster provided that firefighters not be paid penalty rates or shift allowances.
21. Between 1972 and 1982 the Union's State Committee of Management made a number of resolutions calling for an end to day work firefighters. For instance, in 1981 the union made a policy that stated: "The abolition of day worker firefighters by having them up-graded to stand-by shift firefighters. This matter is to receive the highest priority by the Union and all CFA members are to be kept fully aware of the progress".
22. At this time, the union contended that day shift stations did not provide 24 hour coverage, firefighters were required to turn out by themselves, resulting in additional danger, and that there was poor morale at these stations because the pay was less for performance of the same work.
23. During the CFA appeal of the decision to introduce the 10/14 roster the CFA claimed in their submission that day work was viable because volunteer turnout was less predictable during the day.
24. The union contended that the problem of erratic volunteer turnout was no less significant at night. Where volunteers failed to turn out the individual firefighter on duty would be required to attend an incident by himself which created significant risk to the firefighter and the general public.

25. The dispute intensified on 28 May 1982 when the CFA stopped rostering regular overtime during weekends at day work stations which meant that the stations were unmanned on weekends as well as at night. The dispute remained unresolved despite attempts at conciliation and arbitration throughout the remainder of 1982 before it was resolved by an agreement that included introduction of a 56 hour week for officers and the conversion of almost all day workers to shift workers in 1983 or 1984. The remaining firefighters on day-work, who were engaged in Shepparton, were converted to shift work in 1986.
26. A number of firefighters have provided statements in relation to disputes that have occurred regarding hours of work and rostering as part of Senate inquiries and also in relation to the making of the Modern Firefighting Industry Award. This included evidence that firefighters engaged on day work were negatively affected due to lower wages and status within the Brigade and this caused significant disruption.
27. As is apparent from the above, the introduction of work other than on a 10/14 basis has been the subject of significant disputation between the parties in the firefighting industry. Ultimately, however, this disputation had resulted in bargaining and resolution.

#### **CURRENT REGULATION OF WORK**

28. As should be apparent from the above, disputes regarding hours of work have often been protracted and divisive. However, these disputes have ultimately lead to agreements between all parties regarding the best way of structuring rosters and hours of work should be structured. As a consequence, rosters and hours of work in Victoria are tightly regulated and structured.
29. Currently, firefighting employees performing operational firefighting duties can generally only be rostered on the 10/14 roster system.
30. Firefighters in the MFB may work on either a 10/14 roster or, alternatively, that roster may be varied where they perform special administrative duties. Special administrative duties are frequently utilized by the MFB to provide flexibility to employees returning from maternity leave. A diverse range of roles are available including training roles, roles providing support to the chief officer and project roles.
31. In the CFA employees may work on either the 10/14 roster, or an equivalent to the MFB's administrative roster called the Special Duties Roster.

32. The requirement for employees to be engaged on a 10/14 basis unless otherwise agreed remains a cornerstone of the industrial landscape in firefighting.
33. This was confirmed in the decision of the AIRC in the Award Simplification matter in 1999.
34. The UFU provided evidence in that hearing regarding safety, firefighter welfare and other concerns regarding part-time employment. In particular, firefighters gave evidence that skills maintenance and training would be affected if part-time work was introduced and that they would fight fires more defensively.
35. The CFA agreed with the UFU that part-time work was inappropriate in the firefighting industry and provided a statement to that effect.

Jeremy Murphy

6 April 2016

The statement has been amended on 4 May 2016, please refer to amended [statement](#)

**IN THE FAIR WORK COMMISSION**

**s. 156- Four Year Modern Review**

**Fire Fighting Industry Award**

**Matter No. AM2014/202**

**WITNESS STATEMENT OF BARRY THOMAS**

I, Barry Thomas, of Traralgon Fire Station [REDACTED], in the State of Victoria say as follows:

1. I am employed by the Country Fire Authority (**CFA**) as a Firefighter. I have been employed by the CFA for over 28 years.
2. I currently hold the rank of Operations Officer. I have held this rank for approximately 5 years. Prior to my appointment as an Operations Officer, I held the rank of Senior Station Officer for approximately 5 years. I currently hold the substantive position of Operations Officer at Corio Fire Station.
3. In my position as Operations Officer at Corio fire station my responsibilities include overall management of the fire station and various volunteer brigades that are attached to it.
4. I have been awarded a National Medal and a long service award. I have also been awarded the National Emergency Medal for my work in the 2009 campaign fires.
5. I am a member of the United Firefighters' Union of Australia- Victoria Branch (**UFU**) and have been for my entire career as a firefighter.
6. I am authorised by the UFU to make this statement on its behalf.

7. I am aware that this matter relates to the introduction of a clause to the Fire Fighting Industry Award that facilitates the introduction of part-time work to the Fire Fighting Industry Award 2010.
8. I oppose the introduction of part-time work into the CFA generally, and especially as part of the 10/14 roster and/or minimum staffing.
9. I have previously made a statement regarding the introduction of part time work that was provided in relation to the Fair Work Commission as part of a submission regarding the exposure draft for the Fire Fighting Award 2010.
10. I have reviewed the statement and can confirm that its contents remain true. I wish to adopt that statement for this matter. Annexed to this statement is a true copy of that statement marked **BT-1**.
11. I am aware that a number of options exist if Part-Time work was implemented.
12. As is apparent from my statement, I do not consider that any option for the introduction of part-time work is acceptable. In particular, I don't believe that part-time employment of firefighters would be safe where they form part of minimum crewing requirements on the 10/14 roster.
13. I do not believe that job-sharing would work for the same reasons that part-time work generally. However, were part-time work to be implemented and firefighters were required to assume risks associated with it, the only conceivable way to manage that risk would be for part-time work to be performed on the basis of job-share, above minimum safe crewing requirements.

**Barry Thomas**  
**6 April 2016**

**FAIR WORK COMMISSION**

Matter No. AM2014/202

s. 156 – 4 yearly review of modern awards

**ATTACHMENT DK-1**

This is the exhibit marked **BT-1** referred to in the Statement of Brian Thomas dated 6 April 2016.

**IN THE AUSTRALIAN INDUSTRIAL  
RELATIONS COMMISSION**

C No 37547 of 1997

C No 31397 of 1998

C No 31407 of 1998

**IN THE MATTER**  
of the *Victorian Firefighting Industry Employees*  
*Interim Award 1993 Division B*

**AND IN THE MATTER**  
of a Review pursuant to the  
*Workplace Relations and Other Legislation Amendments Act 1996*

**WITNESS STATEMENT OF BARRY THOMAS**

I, Barry Thomas, of [REDACTED], in the State of Victoria, state as follows:

**A. BACKGROUND**

1. I am a Fire Officer Grade 2 employed by the Country Fire Authority ('CFA') and permanently appointed to the Corio Fire Brigade.
2. I have been employed by the CFA since September 1976 when I commenced as a Day Worker Firefighter at North Geelong Fire Brigade. Since that time, I have gained promotion to the positions of Senior Firefighter, Station Officer Grade 1 and Station Officer Grade 2. At times I have performed higher duties as the Officer in Charge of both Norlane and Corio Fire Brigades.



3. I have worked at a number of different CFA fire stations including Norlane, North Geelong, Geelong City, Belmont, Warrnambool and Corio.
4. I have attended a number of CFA conducted training courses including hazardous materials handling in emergency situations, advanced fire protection, fire investigation, advanced fire investigation, incident control systems and teacher training.
5. I have also attained the Certificate of Fire Technology from Ballarat School of Mines. Now produced and shown to me and marked with the letters "BT1" is a copy of the certificate.
6. I am a qualified as a workplace assessor, having completed the module 'Conducting Assessment' as part of the Certificate IV in Workplace Training through University of Ballarat. Now produced and shown to me and marked with the letters "BT2" is a copy of the Statement of Achievement.
7. I am part of the Corio Management team. The Management Team is responsible for the management of the fire station. I have been involved on the interview panel for the recent appointment of Leading Firefighter at Corio Fire station. I was active in the development and remain active in the implementation of a new management structure currently on trial at Corio.
8. I am the Team Leader responsible for training at Corio Fire Station. Now produced and shown to me and marked with the letters "BT3" is a diagram illustrating the structure and functions of the Corio Management Team. The training function involves training of both CFA permanent staff and CFA

volunteers. There are 23 permanent firefighters and fire officers attached to Corio fire station and about 30 active volunteers.

9. I have been a member of the UFU since I commenced employment with the CFA. I have represented the UFU in a number of working parties and negotiations with the CFA. Some of the more significant matters I have been involved with include the conversion of day firefighters to shift firefighters in 1983-84; the establishment of a 38 hour week for firefighters; the reduction in hours of duty for CFA Station Officers from 72 to 56 and the establishment of a 38 hour base for Station Officers; the establishment of clauses in the Award prescribing Expenses and Relieving Allowances and the Rank Restructure Project. I was on the Victorian Branch Committee of Management ('BCOM') from 1979 to 1988. Each time I stood for election to BCOM there was a contested election and I was elected. I am no longer on BCOM as I did not stand for re-election to the 1989 committee.
10. I was introduced into rostering by being placed on a UFU roster sub committee in 1979. This committee looked at roster issues both within MFB and CFA. I have been actively involved in rostering since this time. As a result of my participation in that sub-committee I have obtained extensive knowledge and understanding of rostering principles. I represented the CFA in the rostering committee established in early 1991 to oversee the implementation of the 10/14 system for officers.
11. On behalf of the CFA I have provided verbal and written advice to a number of CFA officers throughout the State on rostering principles and practices. For example, in 1991 I was asked by the CFA to design a roster for the officers

which would better utilise existing manpower. I did that and the roster I designed was implemented in that year and officers have worked under it since.

12. I have also developed a computer generated rostering program to assist me in my rostering. The program was extensively utilised in the CFA including by rostering officers in Dandenong, Doveton, Chelsea, Springvale, Frankston, Shepparton and Morwell. The program, or a program similar to it, is used in many locations today. The program provides a spreadsheet detailing the work commitments and availability of individuals over a cycle of 88 weeks. From 1991 until 1995 I was also responsible for rostering in Region 7.
13. I have considerable expertise regarding rostering in the CFA and have maintained and improved my knowledge of rostering throughout my employment. I am still regularly asked by the UFU and the CFA to advise on matters concerning rostering. For example, I am currently assisting the CFA to resolve a problem relating to Alignment of Leave Cycles. The CFA is paying me at overtime rates for all travel and work on the project. Now produced and shown to me and marked with the letters "BT4" is a signed agreement confirming my involvement in this project.

## **B. THE PROFESSION**

### **B.1. Teamwork**

14. Being a firefighter or fire officer is a unique profession. My co-workers and I may at any time be subjected to dangers that are life threatening. As a matter of course we enter areas that we are trained to advise the public to leave. Now

produced and shown to me and marked with the letters "BT5" is a copy of an advertisement from a newspaper for CFA Firefighters. I agree with that part of the advertisement that states that a firefighter must:

"have excellent communication and interaction skills and have the ability to work under adverse physical situations involving for example heights, confined spaces, heat and poor visibility. The position will involve shift work and the potential to perform duties outside normal working hours. You may also be required to work in hostile environments which may be physically, mentally and emotionally demanding."

15. Now produced and shown to me and marked with the letters "BT6" is a copy of a document produced by the CFA called "Firefighter Application Information". I agree with that part of the document at page 2 that states:

"Firefighters work in teams in the front line saving lives and protecting property. As well as fighting fires Firefighters attend road and workplace accidents and chemical spills. A firefighter has personal integrity, is community orientated, accepts responsibility and enjoys working as part of a team."

I also agree that the duties listed on pages 2 and 6 of this document are performed by a firefighter.

16. Firefighters responding to any emergency rely heavily on teamwork to survive any situation that may become life threatening. The very basics of operations require firefighters to put their lives in the hands of other firefighters. For example, when entering a burning dwelling to effect a rescue, the only safe manner is for two firefighters to enter together. As stated in the Chief Officer's Standing Order, a copy of which is now produced and shown to me and

marked with the letters “BT7”, it is the incident controllers responsibility to ensure personnel undertake tasks in a safe manner. In such a situation, a firefighter must trust that the incident controller has assessed the incident correctly and made the correct decisions. The pump operator must be able to keep the supply of water up to the branchman. The firefighters entering the building also want to know whether the other person entering with them is someone they can rely upon. Proper teamwork allows us to fight a fire “offensively” – we put our lives at risk to successfully perform an operation. If this teamwork and total reliance on my co-workers are not present I may find myself inside a burning building with nothing to protect me. Unlike most other professions, the consequences of a lack of teamwork may be fatal.

17. The significance of teamwork is magnified many times when it comes to industrial fires or incidents as the consequences of a fire can be catastrophic. As a firefighter located at Corio, I am responsible for responding to calls to the Shell Refinery and to many other industrial sites. In my experience, permanent firefighters attend calls to such places before volunteers. The staff first on scene are required to perform the more dangerous and difficult tasks.
18. For a major incident at Shell, for example, we will turn out four people. Two will be on the aerial appliance and two will be on the pump. In such a situation I would usually be one of the 2 on the pump. It is an essential part of my role that I leave the pumper and go to talk to the shift controller from Shell. The person left on the pump would effectively be the brigade control point.
19. With the limited initial resources we provide at a fire, I rely heavily on the person left on the appliance to perform the tasks we have trained together,



such as sourcing water supplies, ensuring that reserves of water are available, securing the scene, acting as a marshalling point for incoming resources and communicating with me on those issues he or she understands that I need to know.

**B.2. Teamwork and the 10/14 roster**

20. A crucial way that teamwork is developed so that we have optimum operational capacity is through the shift system. Each shift at a station is comprised of a group of firefighters who train and work together to develop the trust and knowledge of each other's abilities and reactions to pressure situations. Due to the amount of time each shift spends together, we effectively live "in each other's pockets."
21. Each shift has their own normal method of operation. I don't always need to give orders because I know how my co-workers will operate. When people work overtime or who otherwise aren't part of our roster work with us, I notice the difference in the method of operation. Working becomes less 'automatic' and the shift is commonly less effective for that reason.
22. Spending considerable amounts of time together is also integral to ensuring that the firefighters trust the person in command. Such trust and respect is developed over time and through continued contact with the firefighters on a shift.
23. I am prepared to put my life at risk and fight a fire "offensively" because I have full confidence that my coworkers are fully trained. I know this because I have trained them and trained with them. I spend a significant amount of "non-

fireground" time with my co-workers engaged in skills maintenance, debriefing and training.

24. Skills Maintenance is an important part of a Firefighter's duties. This involves spending time on shift demonstrating skills that the Firefighter has already learned with the aim of ensuring that the Firefighter remains competent in those skills.
25. We will often spend time on shift debriefing and discussing issues arising out of a recent fire. By way of example, it is often the case that a spontaneous 5 minute discussion or drill can result in hours of discussions or drills as we attempt to ensure our skills are adequate. Performing such activities together gives me confidence in the skill levels of my co-workers.
26. Training involves a wide variety of subjects including short duration drills and lessons that require a definite outcome, such as Safety and Survival, where a Firefighter would be required to show that they could use a certain piece of equipment. Now produced and shown to me and marked with the letters "BT8" are documents detailing training completed at Corio Fire Brigade. As can be seen, such training involves all persons on the shift. Such training is organised on a station by station basis and is not part of an overall CFA strategy
27. As we are all working together on the same shift and reliant on each others' skills and abilities, we are confident that essential tasks will be performed properly. For example, each day an extensive check of a truck is performed involving a thorough check of its equipment, removing ladders and jacking the

cabin of the appliance. This way, the people who will be driving and relying on the truck are the same ones who are attending to the appliance and thus the shift trusts that the work has been done properly.

28. Further, a significant amount of informal training occurs on shift. I and other more experienced firefighters ensure others are sufficiently trained and, where a deficiency is apparent, we encourage them to rectify it. We make sure everyone on the shift is committed to their job and “up to speed”.
29. As we work in a team employed on the same shift and spending significant amounts of time together, we can assess a co-workers’ needs and attitudes and take action to address problems. One such case was a leading firefighter on my shift who appeared to become stale in his approach to his job. This had nothing to do with his skill level. After discussion with him I was able to get him to perform higher duties as a fire officer at another fire station for a number of months. He returned to our shift with significantly improved morale. It is only possible to make such assessments because shift firefighters are working closely together. It is very difficult to “informally” assess the deficiencies of someone who is not working on the same shift full-time.

### **C. PROPOSED PART-TIME EMPLOYMENT**

30. The CFA’s proposal for part-time employment would be detrimental to the CFA’s ability to provide an effective fire service. Significant problems arise in relation to part-time employment of firefighting personnel. Below I address the operational problems which would arise: from implementing this proposal under the following headings:



- **Defensive firefighting**
- **Training and Skills Maintenance**
- **Industrial Harmony**
- **Command**

My statement also focuses on the proposed rationale for part-time firefighters, addressing:

- The absence of data supporting day or part-time firefighters
- So-called “peak demand” times
- **Manning**
- Training
- The current training needs of firefighters

From what I say at paragraphs 91 to 101 it is apparent that there is sufficient existing flexibility under current employment arrangements for the CFA to meet its perceived needs.

## **C.1. OPERATIONAL PROBLEMS**

### **C.1.1. “Defensive” firefighting**

31. Firefighters would be more cautious and concerned about their safety on the fireground working with a part-time employee than if they were working only with people on their shift. Firefighters are very alert to anything which might compromise their teamwork and affect the trust they have in their fellow firefighters. I have no doubt that firefighters would be more reluctant to put

themselves at risk when working with a part-time employee. This would greatly affect my operational capacity and that of my shift.

32. For example, as a Fire Officer responsible for assessing the situation at a burning dwelling I would have to consider the effect of having a part-time employee present. If this person working on the pumper were a part time employee then my focus would include his actions as well as the planning of the firefight as I would need to be mindful of the skills, experience and previous exposure of the part time employee. This would affect my willingness to leave the pumper and would not allow me to devote my full attention to planning the firefight. Firefighters would also have doubts regarding the competence of a part-time employee and would not view him of their team and would be less likely to put themselves in a life threatening situation.
33. I would choose to fight the fire “defensively”. That is, we would not go inside and do a search. Instead we would fight the fire from outside of the building. This could endanger life if we were unaware someone was inside. It is very likely to result in increased property damage. There is greater likelihood of putting a fire out if we are working from inside. Simply put, the more defensive a firefight the greater the likelihood of serious injury or death of occupants or increased property damage.
34. A part-time employee who is not part of a 10/14 team and who has not had experience working with that team will affect the proper operation of that team. In such a situation, firefighters will be more reluctant to put themselves at risk.

### **C.1.2. Training and skills maintenance**

35. As detailed above, training is organised on a shift basis and occurs over a spread of hours which does not coincide with the proposed hours of employment for the part-time employees proposed by Mr Rees and Mr Davies in their statements of 23 July 1999.
36. Due to the hours of their work and the fact that they would not be spending all their working hours with one particular shift, a part-time employee who 'overlaps' shifts would not be exposed sufficiently to all of these aspects of skills maintenance. It would be extremely difficult to ensure that the part-time employee is at the required level of competence and receives sufficient skills maintenance training. Accordingly, if part-time employees are to 'straddle shifts' or work within a shift, it would be highly impractical if not impossible for each 10/14 shift to rearrange their skills maintenance training to ensure that the part-time employee was adequately trained. Even if it were so rearranged, it would entail an inefficient use of resources.
37. If the CFA is proposing that the part-time employee will have a separate training regime, and a full-time employee perform the duties of the part-time employee while the part-time employee engages in their 10 hours of training, this would also be an inefficient use of resources.
38. Further, shift meetings are a necessary part of our communication process in that they set the focus for the day or any following period. Shift meetings held on days or at times when a part timer were not on duty would see those part

timers not being aware of the shift focus. Many of these meetings are held on night shifts.

39. The part-time employees proposed by Mr Rees at paragraph 27 of his statement will spend 10 hours - almost half of their working hours - engaged in skills maintenance. Due to their proposed hours of work, they would not be attached to a particular shift and that shift's training schedule. Rearrangement of shift activities to meet part-time training needs would affect the ability of the full-time employees to train.

#### **C.1.3. Industrial harmony**

40. I consider that the introduction of a part-time roster system would negatively affect staff morale and industrial harmony. Based on my experience, as a shift manager I am concerned that CFA would not be able to continue let alone improve its current service delivery. I am well aware that our service delivery is directly related to the team environment and the employees willingness to achieve. If significant changes are introduced which affect those who deal with firefighting emergencies, it will inevitably lead to inefficiencies related to the negative effect such changes will have on employee morale.
41. It is inappropriate to introduce part-time employees if for no other reason than that employees would see it as contrary to their interests and needs as referred to above and this would negatively affect their performance and morale.

C.1.3.1. Consultation at Corio

42. Issues regarding the implementation of new staffing systems to meet perceived demands should be resolved through a full consultative process.
  
43. As Region 7 was listed on the documents given to us on 21/5/99 (referred to in paragraph 61 of this statement) as having 2 part time employees, on 23 June 1999 I spoke to Barry Foss, my Officer in Charge, in person and asked to meet with my Area Manager, Lex de Man to do with the issue of part-time employment. Barry Foss said he would arrange the meeting. I told him I was happy for him to be there. That meeting was held on 25 June 1999 at about 1500 hrs at region 7 Headquarters in Lex de Man's office and Barry Foss attended. I said that we had been told area managers wanted part-time employees. I said you're my area manager, what's going on. He told me that such an issue had been raised. He said he was approached by Brent Jones at Headquarters and asked if he (Lex De Man) could use part-timers. He said he told Brent Jones he could but that it was a very quick discussion. Lex de Man then told me he believed it would go through the appropriate discussion process. I understood this to mean that this proposal would be discussed with the union. There were other matters related to this issue also discussed at this meeting. In a later phone conversation dated 29 July 1999 I spoke to Lex de Man and told him that I was intending to give evidence in these proceedings and discussed with him what aspects of my conversation I could refer to in my evidence. He told me I could refer to that part of my discussion that I have reported in this paragraph.

44. As a shift manager and part of the management team at Corio it is reasonable to expect that I would have input at management level into any proposal that was planned to operate at or impact on the conditions of Corio employees.
45. I am not aware of any discussions regarding part-time employees that have taken place with my Officer in Charge regarding part time employees working across stations.
46. Paragraph 28 of Mr Russel Rees' statement of 23 July 1999 makes mention of training. I would expect as a team leader for training at Corio and the station's representative on the Region 7 Integrated Brigade Training Committee, that I would have some input into the effective delivery of training in the Corio brigade. This has not been discussed with me.
47. I am not sure why the CFA thinks it is appropriate to employ part-time firefighters in my region. I do not perceive any such need. For the reasons detailed above, I believe it is inappropriate to employ part-time firefighters in our region.

#### **C.1.4. Command**

48. The above operational problems are magnified if the part-time employee is a leading Firefighter or Fire Officer. Such a person occupies significant leadership roles and is required to manage, command and control those under them. A part-time person in a supervisory position who is not part of a shift would have very little exposure to other members of the shift. Those other members would also have different superiors depending on whether a part-time employee was working a particular shift, detracting from the efficiencies



and productivities of the 10/14 system. These problems are further exacerbated if the part-time employee is performing a relieving role and is not only moving between shifts but moving between stations.

## **C.2. PROPOSED RATIONALE FOR PART-TIME AND DAY EMPLOYEES**

### **C.2.1. Absence of data supporting part-time or day firefighters**

49. I have been part of the UFU team involved in negotiation for a Certified Agreement with the CFA. I have also been part of the UFU team on Award Simplification and have been in discussions with the CFA about this issue.
50. Some of the issues in dispute between the UFU and the CFA include:
- The level of staffing at CFA fire stations;
  - Whether the CFA may employ “day firefighters”; and
  - Whether the CFA may employ part-time firefighters.
51. During these discussions, I have asked the CFA representatives on numerous occasions to supply information on the proposed part time and day work so that the UFU can evaluate it.
52. On or about 28 April 1999, I attended a meeting at CFA Headquarters along with a number of members of the UFU team and several representatives of CFA. Mr Len Foster, the Chairman of CFA, was in attendance. He spoke about a number of matters. One of the matters he spoke about was staffing. He said that an analysis of staffing at stations was underway and that once it was resolved, the information would be shared with the UFU. He expressed

concern that given the State Budget was to be announced soon, and that this would have implications for staff, he wanted to explain to the UFU the methodology behind the staffing analysis as soon as possible. He explained further that the analysis was not finished but that trends were emerging which showed that more stations were needed, especially to the west of Melbourne. He also said that the CFA wanted to employ day firefighters and part-time firefighters. He finished by explaining that next week he would tell us that 18 to 20 firefighters would be employed in the near future.

53. I don't remember who asked the question, but someone from the UFU team asked how staffing levels would be determined. Mr Foster said this would be explained in more detail next week when the "LaTrobe Valley model" was explained to us. Towards the end of the meeting, UFU members asked more questions about staffing and other matters.
54. Now produced and shown to me and marked with the letters "BT9" is a copy of a transcript of a media conference addressed by Mr Len Foster on 6 May 1999. I was not in attendance at this conference and did not read this transcript until later, however the statements made by Mr Foster are generally in accordance with his statements to us 28 April.
55. On 11 May 1999, I attended a meeting at CFA Headquarters along with a number of members of the UFU team and several representatives of CFA. Mr Trevor Roche, Chief Officer, was in attendance. This was the meeting referred to on 28 April. I expected that at this meeting it would be explained to me what the LaTrobe Valley model was and how it related to the questions about staffing levels and part-time and day firefighters. Trevor Roche explained that



the LaTrobe Valley Pilot project was in its infancy. In the La Trobe Valley, he said, the CFA had collected various types of information about fire risks and other data and had developed a model for determining scientifically where stations should be located and how they should be resourced. He said that this was a long term project. He then said that in the short term another process was being used to determine these issues but that in the future these two processes would be pulled together. Mr Roche then introduced David Nicholls who gave a presentation regarding the LaTrobe Valley project. Now produced and shown to me and marked with the letters "BT10" are copies of Mr Nicholls' Powerpoint presentations. During the course of his presentation he said it would be at least one year before this system could be applied elsewhere. Mr Nicholls did not mention how this system related to staffing levels, part-time or day firefighters.

56. Mr James Hollyman then gave a presentation. He said that as the LaTrobe valley project was not complete, the CFA had collected various kinds of data in the "new career fire station" areas and that this – rather than the information collected in the LaTrobe valley study – was used to determine staffing levels. Now produced and shown to me and marked with the letters "BT11" is a copy of Mr Hollyman's presentation. I cannot remember who asked the question, but a UFU member asked how the data referred to led to the conclusion that certain numbers of firefighters were required at certain stations and on certain hours and conditions of employment. He said it followed an analysis of the availability of volunteers and discussions with brigades. It was apparent to me that, contrary to what was said on 28 April and 11 May, the system referred to by Mr Foster on 28 April was not used to determine the hours and conditions

of employment of the firefighters. In fact in relation to a direct question the Chief Officer replied that "professional judgement" had instead been used in determining staffing levels.

57. The first time that anyone from the CFA told me how many firefighters they wanted to employ on a part-time or day basis was on 21 May 1999 at a meeting between CFA and UFU representatives at Corio. The CFA representatives at that meeting gave us several documents. Now produced and shown to me and marked with the letters "BT12" are copies of those documents. These documents were discussed for several hours. I remember discussing with Mr Rees the employment of day workers at Eltham and explaining to him how the conditions of the award could provide the CFA with further flexibility. When questioned as to where the existing award was inflexible he had no answer. He said that other people tell him what to do. When asked if the matter was only to deal with cost, Mr McDonald, a representative of the CFA, intervened and said cost was important. I remember the UFU representatives pursuing the issue that "professional judgment" was not an acceptable way of establishing manning.

58. On the basis of the answers to my questions and those of other UFU representatives on a number of occasions, I am of the view that (1) the La Trobe valley model referred to by Mr Foster was not used to reach the conclusion that part-time and day firefighters were desirable, and (2) the method outlined by Mr Hollyman was not used to reach the conclusion that part-time and day firefighters were desirable, and (3) the CFA does not have

any data or scientific basis supporting their claims for part-time and day firefighters.

### **C.2.2. “Peak Demand” times**

59. In his statement Russel Rees states his belief that part-time employment is necessary because of the perceived problems which arise because of the coincidence of “peak” call-out times with the changeover of shifts.
60. Assuming that Russell Rees is correct in his assessment of the “peak” call-out times, I consider that the current changeover of shifts in fact provides the optimal staffing structure for such times. In terms of fire response the time near the changeover of shifts is currently our most productive and efficient time. We effectively double our manpower. Our shifts currently change at 0800 hours and 1800 hours daily. At these times and up to 30 minutes either side of these hours the numbers available on station are greater than the normal minimum manning as staff attend or leave the station. At the change of shift the firefighting strength is doubled. If the on duty shift was out at a fire or call, there are a number of options open to the incident controller. Pursuant to the Award, he may:
- Bring onto the fire the oncoming shift and thus double the permanent staff strength at the fire.
  - Bring on the oncoming shift to the fire and dismiss all or part of the off going shift.

- Hold the oncoming shift at the station and thus provide a primary response from the station to another call.
61. I have never heard any suggestion from management or anybody else that changeover of shifts was a problem for the CFA. If it were a problem, which I don't believe it is, capacity exists to change existing rosters to solve the problem. In my experience such changeovers are not a problem; to the contrary, during changeover there are more firefighters available than at any other time.

### **C.2.3. Minimum number of employees**

62. I consider that prior to determining whether 'supplementary' part-time employees are appropriate, it is necessary to determine whether the existing 'core' complement of career staff is adequate.
63. In 1996 the CFA set its minimum number of employees at 278. At the time, I did not consider that this was a sufficiently high number of staff. I still consider this to be the case. In 1996 the UFU provided me with the information given to it by the CFA in relation to its proposal for a minimum number of employees. I analysed that information. It was apparent to me from that information that the CFA's calculations were in part based on a number of errors and that the minimum of 278 was clearly too low.

#### **C.2.4. Minimum Manning**

64. **The CFA currently has minimum manning, at any one time, of 51 employees on shift. There is a minimum number of 278 employees to provide this manning across four shifts.**
65. **The inadequacy of current minimum manning can be demonstrated by reference to the situation at Corio. Corio Fire station is responsible for the area detailed on the map which is now produced and shown to me and marked with the letters "BT13". The Corio Urban Fire Brigade is located within the boundaries of the City of Greater Geelong and to the north of the Geelong CBD. The Corio Fire Brigade area is predominantly urban in nature and contains the majority of Geelong's industry. To the north & west of the Brigade area is the urban/rural interface. I have identified in the document now produced and shown to me and marked with the letters "BT14 the major non-residential areas of risk and related issues in the Corio fire district.**
66. **According to the Chief Officer's Standing Order 3.01, referred to in paragraph above, there is a preferred minimum of four firefighters at the scene of a fire or incident. Corio's minimum manning is one Fire Officer 2, one Leading Firefighter and two Firefighters.**
67. **I do not believe that this number of four is sufficient to perform a safe fire attack. When Corio responds to an alarm at Shell Refinery, for example, the volunteers are paged for the fire but for safety reasons they must respond to the Corio Fire Station. The response to the scene is therefore slower than the normal response where volunteers attend a fire in their own transport. As**



stated previously the responding officer from Corio must seek out and meet with the Shift Controller from Shell. Further, all of the criteria listed in the Chief Officers Standing Order 3.01 at point 2.2 apply to Shell Refinery. Therefore this standing order requires the responding officer to appoint a Safety Officer. Our response of four would now be down to two firefighters to perform any firefighting operations. Similar conditions apply to any major industry or large complex or a difficult residential fire.

68. It is unwise to rely on volunteer attendance to provide sufficient manning in many situations. Unfortunately, there are sometimes problems in obtaining volunteer attendance. I now refer to three instances of such problems.
69. **Geelong Grammar School – 22 May 1999.** This call reporting this incident was received at 9:55am on Saturday 22 May 1999 a day and time which is outside of the proposed hours of employment of the part-time employees proposed by Mr Rees. This school is a large residential school on the extremity of the Corio fire district. Because of the distance from the station to the school, our response time to a fire would enable any fire to develop. This school has a large life risk and poor water supply for firefighting. The dormitory accommodation is in two storey old style buildings with high fuel loads. In the event of fire it would take a great deal of trained firefighters to conduct a search or internal fire. On 22 May 1999, no volunteer responded to the call for their attendance. Now produced and shown to me and marked with the letters "BT15" is a copy of the fire report relating to this call.
70. **Grace McKellar – 9 June 1999.** The call reporting this incident was received at 5:59pm on Wednesday 9 June 1999, a time which is outside of the proposed

hours of employment of the part-time employees proposed by Mr Rees. Grace McKellar is a large aged care nursing home with many bed ridden patients. This call was to an alarm of fire caused by smoke from burnt toast setting of a smoke detector. Had this call been a fire there would have been insufficient firefighting crews to perform an evacuation and firefight. The supporting volunteer brigade also failed to respond. Now produced and shown to me and marked with the letters "BT16" is a copy of the fire report relating to this call.

71. **Residential address – 3 April 1999.** The call reporting this incident was received at 10:07 am on Saturday 3 April 1999, a day and time which is outside of the proposed hours of employment of the part-time employees proposed by Mr Rees. Upon arrival at the address it was apparent that the call was a malicious false-alarm. However, no volunteers responded to this call. Had this been a situation where we were required to perform a rescue, there would have been insufficient manpower to safely do so. Now produced and shown to me and marked with the letters "BT17" is a copy of the fire report relating to this call.
72. I do emphasise that these incidents are only examples. There are many other incidents that also occurred outside that "peak demand" time. These examples given above occurred outside of the times referred to by Russel Rees as "peak demand" times or outside of the days of work indicated to be performed by part-time employees.
73. The difficulty ensuring that volunteers are available is not confined to times other than "peak demand" times.

74. The fact that the CFA cannot rely upon volunteer response is illustrated by its decision in relation to the Lovely Banks Fire Station. Because there was a continuing inability to rely upon volunteer response in relation to Lovely Banks turnout area, the CFA has had to direct Corio to respond in the Lovely Banks area by providing two appliances from the Corio station. Now produced and shown to me and marked with the letters "BT18" is a Memorandum from Operations Officer Barry Foss regarding this matter.
75. There is no correlation between the so-called "peak demand" times and the times when there are insufficient firefighters on the fire ground. It is wrong to suggest that the problem of response is limited to when the most calls are received.
76. A presumed resolution of the problem of response during certain hours masks the real issue of response to all fires. Equally as important as the issue of "peak demand" – if not more so – is the issue of whether sufficient qualified people will turn out for any given call and whether they will turn out in time.
77. In instances outside of "peak demand" time where inadequate response occurs, I am of the opinion that proper 24 hour coverage is not being maintained. In other words, response is a "full-time" problem which does not lend itself to a "part-time" solution.

#### **C.2.5. Training**

78. One of the roles proposed by the CFA that a part-time employee at Shepparton would perform is training of volunteers. I believe that the training of



volunteers is an issue which should be **addressed on a CFA wide basis**. The CFA is **currently having discussions with the UFU regarding current permanent firefighters training the CFA volunteers to Certificate 2 standard**. I am involved in these discussions **together with representatives of the CFA and the UFU**.

79. Adequate training of volunteers to the CFA proposed standard will require many hours of work. I estimate that it will require 500 to 1000 hours to bring each volunteer up to **this standard**. **The CFA and the UFU are still discussing the most appropriate ways of delivering this training**. At no stage during these negotiations has it been suggested that this issue should be approached on a station by station basis, nor **that the it is a job especially suited to part-time employment, nor that the current rostering provisions would be an impediment to the effective delivery of this training**.

80. I consider the discussions between the CFA and the UFU demonstrate that the CFA **accepts that training of volunteers is an issue requiring considerable planning**. Given the preliminary stage of **the discussions between the UFU and the CFA towards developing such a plan**, it is not appropriate to rely on the **apparently perceived (but unresearched) need to train volunteers at one station as a reason for introducing part-time employment**.

81. I agree with that part of Rees' statement at paragraph 7 of his statement where **he refers to staff as a highly skilled workforce**. I believe that the **permanent firefighting staff as a group has the skills necessary to deliver the majority of outcomes necessary for the training of volunteers for the foreseeable future**. However, I do not believe that one person can be employed to deliver the

necessary training needs. The effective delivery of training should be based on management having the resources necessary to release the appropriate people to deliver that training irrespective of whether or not the appropriate person is on day or night shift or some other agreed roster configuration.

82. Given the preliminary stage of discussions, I do not believe that CFA has accurately assessed its needs or outcomes in the Shepparton or any other area.
83. Through my involvement in training I have found that using shift personnel to deliver training to volunteers or the public is a productive method of management of resources. It not only delivers the required outcomes of training to our volunteer members and the public but also provides skills maintenance to our shift personnel. This cannot happen on an increasing scale for CFA without the introduction of staff that can regularly relieve 10/14 shift workers outside of day hours.

**C.2.6. The current training needs of career firefighters**

84. The current training needs of firefighters are not a justification for employing part-time firefighters. Although additional staff may be needed to meet these needs, current training needs of firefighters can be met by using the existing range of rosters.
85. For more than a year, I have been involved in discussions between the UFU and the CFA to align the annual leave of firefighters so that training needs could be properly met. Now produced and shown to me and marked with the letters "BT19" is a letter dated 14 August 1998 from WJ McIntosh, Deputy Chief Officer, Operations, to Dick Lowe, UFU, outlining the CFA's

**commitment** to align leave cycles in this manner. **The UFU then wrote to the CFA on 8 April 1999 seeking an assurance that the overtime required of firefighters (so that other firefighters would be “freed-up” to be trained) as part of the training process would not be used as a reason for introducing new types of employment. Now produced and shown to me and marked with the letters “ BT20” is a copy of that letter. Brent Jones of the CFA responded by letter of 3 June 1999 giving an undertaking that the process of ‘leave alignment’ is in no way connected to the creation or introduction of other types of employment within the CFA. Now produced and shown to me and marked with the letters “BT21” is a copy of that letter.**

86. **At no stage during these discussions about training existing firefighters did anyone from the CFA suggest that part-time firefighters were necessary, desirable or appropriate to perform training or relieving functions. The issue of part-time firefighters has not been mentioned in this context at all.**

### **C.3. EXISTING EMPLOYMENT FLEXIBILITY**

87. **Any assertion that full-time employees could not meet the CFA’s perceived needs is misleading. The CFA can currently employ firefighters on any one of the following bases:**

- **The 10/14 Roster system (Clause 8(a) of the Award)**
- **Employees Not subject to the 10/14 Roster (Clause 8(c))**
- **Special Duties Roster (Clause 10)**

88. It is misleading to suggest that CFA's business plan objectives cannot be met under current Award arrangements. I believe this to be an inappropriate tunnel vision view by CFA management. This tunnel vision view by CFA in relation to rostering has been typical since 1979.
89. I am of the "can do" philosophy and have spent many years both on behalf of the UFU and CFA altering perceptions and views to come up with systems that have the support of employees and provide positive outcomes for CFA.
90. For example, in about 1983 I was aware that local brigade management believed that staff above the minimum manning were exclusively for their local use. I was actively involved in changing that view so that relieving staff on fire stations became a resource available to CFA across all stations. This concept has progressed and continues today.
91. Management members who have had little exposure to rostering tend to look in isolation at a problem area instead of taking a broad view of using our resources to achieve a desired outcome.
92. One such case was in 1991 when I was asked by CFA to become involved in the rostering of station officers changing from a 56 hour per week to a 42 hour per week roster. (I had previously designed the leave system for the 56 hour roster.) CFA was of the view that the only cost efficient way of delivering its minimum manning was to use the Officer in Charge of the work location to relieve other staff. This was seen as being undesirable for both the OIC's and CFA. As a result of becoming aware of this problem, I designed a leave system that overcame the use of OIC's as part of the relieving component.

93. This system introduced significant change to the conditions of relieving officers in that hours of work were calculated over 88 weeks provided that the relieving officer followed the pattern as shown in the 1991 agreement. This showed that by adopting a wide focus on the organisation, a desired outcome can be achieved. This system is still in operation today.
94. The suggestions that the current system creates inefficiencies at Shepparton is a good example of the "tunnel vision" which does not look for solutions to perceived problems in a global fashion. It is clear that with committed discussion and negotiation some very positive flexible outcomes can be achieved.
95. I believe the CFA should explore the flexibility that can be achieved by looking at manning other than on the fire station in order to provide a coordinated approach to training and risk management. One of the aims of the 1991 rank restructure was to have a multi skilled workforce that could both work at station or regional office level. In accordance with the rank restructure aims, it would be appropriate for people in the headquarters to maintain their fireground skills and for those in the fire station to be able to do the work performed in headquarters. If this were done the fire station would have access to extra appropriately trained personnel. This would, for example, provide extra flexibility at a station such as Shepparton I understand that the regional headquarters and the fire station are next to each other.
96. Based on my experience I consider that if extra employees were made available under the "employees not subject to the 10/14 clause" then productivity would be much greater than under a day worker or part-time

system. The benefits available through employees working 'not subject to the 10/14 roster' would enable the management teams both station and regional to set priorities based on 24 hour manning.

97. On the basis of my experience, day workers or part-time workers as proposed by the CFA would not give the CFA the flexibility to provide relief for shift workers to be released from rostered duty to deliver training. The most productive method for rostering for special duties is to have shift workers above the minimum number required, and allow management station/ region to select the most appropriate person to deliver the outcomes. It would usually be the case that different employees will have the best skills to deliver different outcomes. And such an employee may have to be taken from either a day or a night shift. "Above strength" shift workers/ relievers will enable the CFA to facilitate a wider range of training and training times.

#### **D. CFA PROPOSED DAY FIREFIGHTERS**

98. There is a long history of dispute and industrial unrest surrounding the CFA's attempts to employ firefighters on a roster of hours not agreed to by CFA firefighting employees. Following is a brief summary of this history.
99. In 1972, the Fire-Fighters Wages Board (FFB) voted to introduce the 10/14 roster system. The FFB made no ruling in relation to the day work principle proposed at the time by the CFA. The CFA appealed to the Industrial Appeals Court ('IAC') seeking: (i) to overturn the FFB's introduction of the 10/14 roster; and (ii) to amend the FFB's determination in order to provide for the employment of permanent firefighters on day work. The Court retained the



10/14 roster but allowed for **the employment of day firefighters paid only at the base rate (i.e. without shift allowances).**

100. Between 1972 and 1982 the UFU State Committee of Management (SCM) passed **numerous** resolutions calling for the elimination of day firefighters. For **example, on 10 May 1981, the UFU instituted policy** calling for: “The abolition of day worker firefighters by having them up-graded to stand-by shift firefighters. This matter is to receive the highest priority by the Union and all CFA members are to be kept fully aware of the progress”.

101. It is to be noted that persons employed as day firefighters at that time were not located at a station where there were firefighters on the 10/14 roster. They **operated only out of stations where all other firefighters were day firefighters only.**

102. I believe that the impetus for this policy was twofold: (a) day workers suffered from low morale; and (b) did not provide the 24hr coverage necessary to guard **against the dangers of a one man turn out.**

103. So far as **the first** impetus (a) is concerned, I consider the problem of morale arose because day workers’ remuneration was less than that enjoyed by shift firefighters. Not only was the **ordinary weekly remuneration less than that enjoyed by shift firefighters but the overtime payments were calculated on a time-and-a-half basis, as against double-time for shift firefighters.** Day workers’ lifestyle was also inferior to that enjoyed by **shift firefighters.**

104. When I was employed as a day Firefighter I worked within the hours of 0730 to 1830 Monday to Friday. My duties consisted primarily of cleaning, maintenance of equipment, personal training and emergency response.
105. I spent more time on duty but earned considerably less than my shift counterparts. I felt that because we received less pay we were not treated as equal to shift firefighters. I was treated like a second-class citizen in that I was given tasks to perform which shift-workers felt were beneath them.
106. In relation to the second impetus (b), the inability of day workers to provide 24hr coverage was an issue because it posed safety risks for firefighters and the public. In 1972, when the day worker clause was introduced, the CFA claimed that day firefighters would solve the problem of erratic volunteer turnout, at least in respect of day call outs.
107. However, at night or on the weekend the problem of volunteer unavailability was undiminished. If volunteers failed to respond to a call out at night or on the weekend, the lone permanent firefighter on duty would have to respond. This is the problem known as the "one man turnout".
108. On 28 May 1982, the CFA ceased regular weekend overtime for day workers. We regarded this move as a provocation and a dispute ensued. The dispute passed through many forums and elicited unsuccessful Government attempts at conciliation and arbitration.
109. In or about 1983 or 84 the dispute was resolved through the negotiation of a package which included the introduction of a 56hr week for officers, a more efficient regional manning system and the conversion of all day workers,



except those at Shepparton, to shift workers. Thus, the day workers at North Geelong, Norlane, Boronia and Doveton Brigades were up-graded to shift work. I was involved in the process of converting day workers to shift work.

110. In 1986, the day workers at the Shepparton Brigade were converted to a shift firefighters. As far as I am aware, since this time no-one has been employed under the Award by the CFA on a day basis being paid only the base rate.

**D.1. Special Duties Roster**

111. Another example of the industrial disharmony being caused by the CFA introducing without agreement a new roster system is the history of the introduction of the special duties roster.
112. On 21 December 1990, the Industrial Relations Commission of Victoria decided, amongst other things, to oversee a trial of 12 hr shifts at two stations as proposed by the CFA. The Shepparton and Boronia brigades were nominated. Both were stations where permanent firefighters were stationed. The parties were to monitor the trial and the results were to be reported to the Commission.
113. The UFU subsequently conducted a plebiscite of members in relation to the issue. Now produced and shown to me and marked with the letters "BT22" is a document dated 24 October 1990 detailing the results of that vote. As the CFA firefighters were unwilling to work these hours, a dispute in relation to this and other issues arose. The Commission intervened and on 8 March 1991 handed down its decision to postpone payment of a wage increase until the dispute was resolved.

114. The UFU and the CFA then commenced negotiations regarding alternatives to the 10/14 and the 12/12 roster.
115. Following considerable discussions, on 22 March 1991, the special duties roster was inserted, by consent, into the Award. This roster serves the same function as the day worker system, but provided parity with the 10/14 roster in terms of pay and conditions. Another flexibility mechanism introduced at around this time was the clause dealing with "Employees not subject to 10/14 roster", which provided for variation of duties and rostering at the same level of pay as the 10/14 roster. This is now clause 8(c) of the current Award.
116. I consider that the introduction by consent of the Special Duties Roster into the Award provided the CFA with considerable flexibility in its staffing arrangements. I am not aware that this roster has been tried on any shift station where firefighters are employed. The one station, Eltham, where it has been applied, has operated efficiently.
117. Award employees who work in regions work the flexible 'not subject to the 10/14 roster'. I am not aware that this roster has been tried on any shift station where firefighters are employed. The CFA has not provided Corio with sufficient manning to be able to trial such a rostering system at my station. I consider that this is because the CFA's primary focus in this regard is on providing minimal numbers on shift rather than on that shift meeting other outcomes such as training or risk management.

118. **My experience has led me to believe that for a system of hours of employment to work effectively, it must have the support of the people who are working the system.**
119. **On the basis of my statements in the above paragraphs, if a new system of hours of employment was introduced without the CFA firefighters' staff consent, I believe that it would drastically affect the usual efficient performance of work.**

#### **E. HIGHER DUTIES**

120. **It is not acceptable to allow someone to act up more than one rank.**
121. **By allowing someone to act up more than one rank, that person will be taking on significant command and management responsibilities that they would not ordinarily exercise. Qualifications alone are no guarantee that someone will be able to perform a command or management role. To be promoted to Fire Officer level, an employee must have an excellent performance record in operational command and Brigade management. It is not appropriate to act a firefighter up to a level where they are required to have experience in command and management. Such a person could be required – almost immediately upon being acted up – to command a fireground operation. Doing so without proper experience is dangerous.**
122. **Further, in addition to this lack of experience, one could not expect firefighters to practice and maintain the skills 2 ranks above their existing rank which they would be called upon to exercise.**

123. In terms of productivity it is essential given the nature of the industry to have a manning strategy that ensures the best people are available for command and control of fires or incidents. In terms of emergency management it is essential that those performing the management role demonstrate an excellent performance record in operational command and Brigade management areas. It is not appropriate to place cost before safety in emergency management by acting someone up more than one rank so that the cost to the CFA is less than if someone of the same level relieved the absent employee.

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**LIST OF EXHIBITS**

- 1 Certificate of Technology – Fire Technology, School of Mines and Industries Ballarat Limited
- 2 Conducting Assessment Certificate, University of Ballarat
- 3 Corio Management Diagram
- 4 Agreement of 6 August 1999
- 5 CFA Firefighters Job Advertisement
- 6 CFA Firefighter Application Information
- 7 Chief Officer’s Standing Order 5.01
- 8 Sheets detailing skills maintenance training
- 9 REHAME Transcript of Mr Foster
- 10 Powerpoint presentation of Mr Nicholls
- 11 Presentation of Mr Hollyman
- 12 Documents relating to staffing produced by the CFA on 21 May 1999
- 13 Map of Corio fire station
- 14 Areas of Risk - Corio
- 15 Report, Geelong Grammar School, 22 May 1999
- 16 Report, Grace McKellar, 9 June 1999
- 17 Report, Residential Address, 3 April 1999
- 18 Memo From Barry Foss, 15 May 1999
- 19 Letter from WJ McIntosh, 14 August 1998
- 20 UFU letter of 8 April 1999
- 21 Brent Jones letter of 3 June 1999
- 22 Results of Plebiscite