

*Australian Senate - Education, Employment, and
Workplace Relations Committee*

Inquiry into the Fair Work Bill 2008

Submission of the
United Firefighters Union of Australia
concerning
Division 4 Part 2-2 of the Bill

28 January 2009

About this submission

- [1] This submission concerns Division 4 Part 2-2 of the Bill, and its associated provisions, which create the right to request flexible working arrangements and enshrine that right as a National Employment Standard (**NES**).
- [2] Whilst the United Firefighters Union of Australia (**UFUA**) supports the intent of this Division, the union is very concerned that as currently drafted it could lead to a disparity of working conditions amongst firefighters and potentially reignite some of the most significant industrial disputes of Australian firefighting history. In this submission we propose some amendments to address these concerns.
- [3] The UFUA is very concerned about a number of other aspects of the Bill, especially those restricting the right of industrial parties to bargain, the declining role of awards, the harsh penalties that apply to people who take industrial action and the Bill's apparent failure to comply with international standards. Submissions about these matters will doubtless be made by others. The current submission focuses on one matter only: the impact of the 'flexible working arrangements' provisions on the firefighting industry. This is not because the UFUA believes the rest of the Bill is perfect or even acceptable. Far from it. However, the UFUA does wish to highlight its concerns with Division 4 Part 2-2.
- [4] This submission contains the following parts:

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About the UFUA

- [5] 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.
- [6] The unions' members in the public sector are employed by both State governments (in NSW, Vic, Qld, SA, Tas, WA) and the Federal government (ACT and Aviation).
- [7] 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.
- [8] In 1993, following 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. Because of its Federal nature, the Victorian situation is used in this submission to illustrate the concerns the UFUA has with the Fair Work Bill. However, the concerns apply across the country, for despite the variety of industrial instruments applicable, there is substantial commonality in the terms and conditions that actually apply. In particular, the overwhelming majority of paid firefighters in Australia work on what is known as a 10/14 roster.

The 10/14 roster and the day work roster

- [9] The 10/14 roster enables 24 hour coverage at a given station and an average 38 hour working week for the firefighter in question.
- [10] 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.

- [11] The hours per week of a 10/14 firefighter average at 42 hours per week during periods worked, but at 38 per week over the course of the year. Of the 42 hours worked in a given week, two are paid as overtime and another 2 accrue as annual leave. Over the course of a year, this results in an average of 38 hours/week.
- [12] A 10/14 firefighter's ordinary total wage is comprised of a base wage plus shift penalties plus overtime for the 2 hours worked.
- [13] At some fire stations where 24 hour coverage is not in place, firefighters work what is known as a day-work roster, a flexible full-time arrangement which has them at work during day-time hours, usually Monday to Friday.
- [14] Day workers work on average the same number of hours and receive at least the same overall pay as 10/14 workers. For example, the clause of the Award applying to the Country Fire Authority Firefighters provides:

11.2 Employees not subject to 10/14 roster

Firefighter, Qualified Firefighter, Qualified Firefighter with Leading Firefighter Qualifications, Senior Firefighter, Leading Firefighter, Fire Officer Grade 1, Fire Officer Grade 2.

11.2.1 Employees shall be required to work an average of 42 hours per week, two of which shall be overtime work and paid for as such and the remaining two hours shall be taken as accrued leave.

...

11.2.3 Such employees shall receive the same total weekly wage as employees on a 10/14 shift roster.

- [15] However, equality of payment was not always the case, and the reason for this seemingly industrially anomalous situation - whereby the few numbers of workers not on 10/14 shift-work receive an amount at least equal to the majority who are on shiftwork - requires some explanation.

The nature of the firefighting industry

[16] Firefighting is characterised by people working in close proximity to each other, often in life threatening situations, where trust in co-workers is vital to performing a job properly. Decisions - such as whether to enter a burning house to try to rescue someone inside - often have to be made in a split-second, with firefighters weighing up the need to rescue with the imperative to keep themselves safe. Knowledge of one's co-workers' skills and how they perform in practice is essential.

[17] The current shift system fosters teamwork and knowledge of skills. How a superior officer deploys her or his subordinate on a fireground, for example, will often be informed by knowledge of their skills and how they perform in particular situations. In the words of one senior fire officer with nearly 20 years experience who gave evidence in the Australian Industrial Relations Commission:

A significant aspect of employment on a 10/14 shift basis is that firefighters are aware of the skills and competencies of their fellow workers. I have many times become aware through training or operations that a co-worker needs further training in a certain discipline. As a shift we then ensure that that person receives sufficient training. I do this because I have to be able to rely with my life on the skills of my coworkers.

Knowledge of co-workers' abilities is also made possible because of the nature of shift-work. By spending all your working hours in close proximity to your co-workers you become aware of others' strengths and weaknesses. You also become acutely aware of how your co-workers operate and act in particular situations. It is only because of this absolute knowledge and trust that I am prepared to expose myself to life-threatening situations as part of a team.

If I do not have this knowledge or trust of my co-workers I would not work as effectively. Only under exceptional circumstances would I put in a position of responsibility, supervision or command a person whose skills and capabilities I haven't been exposed to on a regular basis.

Full confidence and trust in your fellow firefighters is vitally important to the success of any operation. I need the ability to be able to delegate tasks to my co-workers and know that they will be performed in an efficient and reliable manner.

Because of the 10/14 shift system, I have sufficient confidence in my co-workers such that I am willing to put myself in life-threatening situations.

(Statement of Greg Patterson, paragraphs 8-12, attached.)

- [18] In the words of another senior fire officer who now has over 30 years experience:

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 ... 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.

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.

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.

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.

Teamwork and the 10/14 roster

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."

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.

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.

(Statement of Barry Thomas, paragraphs 16-22, attached.)

- [19] When firefighters work with those whose skills they are sure of, they are more inclined to fight fires 'offensively':

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.

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.

We will often spend time on shift debriefing and discussing issues arising out of a recent firefight. 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.

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. ... 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

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.

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".

(Statement of Barry Thomas, paragraphs 23-28, attached.)

Industrial disputation over rosters and hours of work

[20] In the history of Australia's firefighting industry, some of the most disruptive, protracted and acrimonious disputes have taken place over rosters and hours of work provisions. The shift system not only fosters the teamwork necessary for firefighters to perform at their peak, but it requires firefighters to work side by side, performing the same work at the same place, with an expectation of equal pay. When 10/14 workers have had to work side by side with firefighters who don't receive the same pay and entitlements, it has caused significant friction.

- [21] For example, 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.
- [22] 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).
- [23] 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".
- [24] 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. 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.
- [25] So far as the first impetus (a) is concerned, 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.
- [26] 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.

- [27] 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”.
- [28] On 28 May 1982, the CFA ceased regular weekend overtime for day workers. Firefighters 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.
- [29] 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. In 1986, the day workers at the Shepparton Brigade were converted to a shift firefighters. Since this time no-one has been employed under the Award by the CFA on a day basis being paid only the base rate.
- [30] 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, the history of which is set out in the attached statement of Barry Thomas.
- [31] Speaking personally from his experience throughout such disputation, another experienced firefighter spoke of his time as a day-worker on less than 10/14 wages and conditions, and of the impact of any reintroduction of this system, as follows:

Employing firefighters and paying them only the base rate of pay would create a second and lower class of employee within the CFA.

When I was employed as a day firefighter, even though I was of the same rank as other shift firefighters, I was treated as being of lesser status than those shift firefighters due to the difference in pay. I was treated like a labourer. I wasn't respected for my skills or abilities. It was accepted that I had to be supervised all the time. It was seen as a promotion to become a

shift firefighter after being a day firefighter even though it was employment at the same rank and I used the same skills.

I remember that there was significant industrial disharmony within the CFA when there were day firefighters and shift firefighters on different rates. This was the case even though day firefighters did not work on shift fire stations. This disharmony was resolved when day firefighters and shift firefighters were paid the same overall rates of pay.

If day firefighters were employed again now on the base rate only, and especially if these day firefighters were employed at the same stations as shift firefighters, the disharmony referred to above would be worse. It would be ongoing and thus have a greater impact. Morale amongst current employees would be severely adversely affected.

The sense of teamwork, essential to an effective firefighting service, would be reduced as co-workers of the same rank would be on substantially different rates of pay. There would be resentment from day firefighters towards shift firefighters as the shift firefighters would be earning more but doing the same duties and working a similar number of hours.

Shift firefighters would not respect day firefighters because of the difference in pay, even though they may be of the same rank. I would have to be aware of this as an issue when commanding and managing the people on my shift. It may affect the operational decisions I make as I may not be sure that the two types of firefighters – day firefighters and shift firefighters – worked together as a cohesive unit.

Day firefighters' training needs would be affected when working alongside shift firefighters. Training is organised on a shift basis and a day firefighter would not be 'linked' with any particular shift. That is, their hours of work would span various shifts. Platoons would prioritise their own training and skills maintenance needs over those of a day firefighter. This will have a negative effect on the skills acquisition, skills maintenance competence and morale of a day firefighter.

The employment of people at the same rank on less pay would be perceived as a threat to the conditions of shift firefighters. This would affect shift firefighters' sense of commitment to their job and to the CFA.

These divisions between firefighters as discussed above would affect my roles as a supervisor. The loss in morale, lower commitment, resentment and

division would be something I as a supervisor would have to manage. The effectiveness of our teamwork and our fire service would be increased if these problems were absent.

(Statement of Greg Patterson, paragraphs 29-37, attached.)

[32] Another said about his history and a CFA proposal to reintroduce day firefighters:

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.

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.

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.

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.

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.

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.

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.

I consider that the morale of a day firefighter will be low due to the wage difference.

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.

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.

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.

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.

(Statement of Michael Lia, paragraphs 9-20, attached.)

- [33] 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 has resulted in bargaining and resolution.

Current industrial regulation of hours of work

- [34] Out of disputes such as the above there has emerged a tightly regulated structure of rosters and hours of work. Currently in Victoria, for example, the industrial instruments allow for engagement of operational staff on a full-time basis only on one of the following rosters:

- 10/14 roster; or
- The 10/14 can be varied to create a special duties roster (which is paid the same rate as the 10/14 roster)

(See clause 14 of the part of the Award applying to MFESB; clause 12 for CFA.)

- [35] In some certified agreements, the parties have agreed on a further variation from the 10/14 to expressly allow for day-work firefighters. In the *Country Fire Authority/United Firefighters Union of Australia Operational Staff Agreement 2008*, for example, which regulates a service with a number of non-24hr stations, the relevant provision is:

46.2 Roster of Hours

46.2.1 CFA shall employ each employee on one of the following bases:

46.2.1.1 The 10/14 Roster System (referred to at 12.1 of Part 2 of the Scheduled Award)

46.2.1.2 Special Duties Roster (referred to at 12.2 of Part 2 of the Scheduled Award)

46.2.1.3 Not subject to the 10/14 roster (referred to at 11.2 of Part 2 of the Scheduled Award)

46.2.1.4 Any other configuration as agreed between the parties. This does not affect rights of employees otherwise provided by the Scheduled Award

This does not affect the ability to set the Chief Officer's Emergency Roster on the conditions set out in 12.3 of Part 2 of the Scheduled Award.

- [36] This pay and hours structure - 10/14 as the default unless otherwise agreed by the parties, with all firefighting employees being full-time and paid at least the 10/14 rate - remains a cornerstone of the industrial regulation of firefighters. Further, it has received the express approval of the AIRC.

The Commission has determined part-time work is not appropriate in this industry

- [37] This issue arose during the 'award simplification' hearings in the AIRC, hearings arising out of the then legislative requirement to modify awards to ensure that they did not contain provisions that would hinder productivity and the efficient performance of work. It was also a requirement to introduce provisions allowing for part-time work unless the AIRC considered it inappropriate. Item 51 of *Schedule 5 of the Workplace Relations and other legislation Amendment Act 1996* provided:

(6) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria: ...

(b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;

(c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.

(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;

[38] The Country Fire Authority in Victoria initially sought to modify the firefighting award to vary the roster provisions to allow for part-time work. The material filed by the union made the following points:

- i. Part-time firefighters would encourage employees to be more 'defensive' when fighting fires;
- ii. There would be very real concerns about training and skills maintenance of part-time firefighters;
- iii. The necessary industrial harmony would be threatened; and
- iv. Significant issues would be posed for command and control of incidents.

[39] Evidence given to the AIRC included the following:

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.

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.

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.

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.

Training and skills maintenance

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.

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.

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.

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.

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.

Industrial harmony

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.

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.

(Statement of Barry Thomas, paragraphs 31-41, 48, attached.)

[40] Ultimately, the CFA agreed with this evidence and joint submissions were filed by the parties. With respect to the matters of hours of work and types of employment, these submissions stated:

Since this matter was last before the Commission ... the parties ... have ... reviewed and re-examined the issues involved in the proceedings. In that process they have reconsidered their views as previously expressed to the Commission regarding the nature of the industry and the appropriateness of a number of the parties' proposed variations to the Award. They are now agreed that a number of variations to the Award that were previously proposed are not appropriate and should not be made. ...

In accordance with the outcome of their review and re-examination of the issues in the proceedings the parties now state their agreed submissions on a number of the issues in the proceedings.

1. CFA does not seek any variation to the award to provide for the employment of 'day' firefighters or officers on a lower rate of pay or

lesser conditions than those applicable to firefighters and officers on the 10/14 roster.

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

(Joint submissions 24 November 1999, attached, emphasis added.)

[41] Further joint submissions to this effect were made by the parties:

5. ... the Award provisions relating to day firefighters are obsolete. ...

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.

(Joint submissions 1 December 1999, attached, emphasis added.)

[42] The AIRC agreed with these submissions and the award was not varied to include part-time firefighters. The AIRC held:

[39] 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.

(*AIRC, Hingley C, Dec 128/00 M Print S3127.*)

[43] Accordingly, as a result of a decision by the AIRC, unlike most other awards, there is currently no provision for part-time employment in the Victorian Federal firefighting award.

[44] Further, as a result of a decision by the AIRC, to ensure that employees are paid equally and that there is no industrial disharmony between employees who work side-by-side in often life-threatening situations, employees who work on a non-10/14 roster (e.g. who work daytime hours only) are paid at least the same as their 10/14 counterparts.

[45] If an employee is not able to fully perform operational duties, or there is a need to employ them other than on a 10/14 basis, the ability in the current award to create a special roster for provides the flexibility needed.

[46] It is also important to note that the AIRC has determined that the current rostering arrangements and restrictions do not hinder the efficient performance of work nor restrict productivity in the industry.

- [47] Copies of the witness statements and joint submissions are included as an attachment to this submission. We submit that the Committee should pay close attention to these documents as they make a compelling case for the need to take account of the particularities of the firefighting industry. For what they disclose is that at least in one fire service, ***there is tripartite agreement - employer, union, government - that part-time and day work is not appropriate in this industry.***

Concerns with the Fair Work Bill

- [48] Clause 65, in Division 4 Part 2-2 of the Bill, provides:

65 Requests for flexible working arrangements

Employee may request change in working arrangements

- (1) An employee who is a parent, or has a responsibility for the care, of a child under school age may request the employer for a change in working arrangements to assist the employee to care for the child.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

- (2) The employee is not entitled to make the request unless:

- (a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or
- (b) for a casual employee—the employee:
 - (i) is a long term casual employee of the employer immediately before making the request; and
 - (ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Formal requirements

- (3) The request must:
- (a) be in writing; and
 - (b) set out details of the change sought and of the reasons for the change.

Agreeing to the request

- (4) The employer must give the employee a written response to the request within 21 days, stating whether the employer grants or refuses the request.

(5) The employer may refuse the request only on reasonable business grounds.

(6) If the employer refuses the request, the written response under subsection (4) must include details of the reasons for the refusal.

- [49] By virtue of Subdivision A of Division 3 of Part 2-1 (which deals with the relationship between NES and awards and agreements) and Division 4 of Part 2-4 (which deals with approval of enterprise agreements), it does not appear possible to bargain over flexible work arrangements if it affects an employee's right to make a request under section 65.
- [50] There appears to be nothing in Division 4 Part 2-2 or its associated provisions to prevent:
- (i) the employment of an operational firefighter (who meets the criteria in s65(1)) on a part-time basis;
 - (ii) the employment of an operational firefighter (who meets the criteria in s65(1)) on a day-work only basis but on a roster different to that provided in the current award or certified agreement; or
 - (iii) the non-payment to any such person of the various benefits that accrue to full-time employees.
- [51] Any of the above scenarios would result in employees working side by side on different wages and conditions, the very source of the pre-10/14 roster disputation.
- [52] Further, any such arrangement would be inappropriate for the industry, given the nature of firefighting work.
- [53] Presumably unintentionally, Part 2-2 Div 4 of the Bill threatens a number of existing provisions in certified agreements and will reignite an old dispute by permitting the introduction of part-time firefighters, day-time firefighters on rosters other than those in the award or certified agreement, or other variations not currently contemplated by industrial instruments.
- [54] It is also disturbing that only the employer is able to determine whether to grant a request and that unions - who may be party to an agreement which directly regulates rosters, hours of work and other matters directly touched

upon by the request to work flexibly - are not involved in any way in a transaction that directly affects the agreement (cf subsection 65(5)).

[55] The UFUA accepts that the Government intends to provide flexibility for workers with newborn and young children. The UFUA endorses this intention. However, whilst the intent of Division 4 Part 2-2 is generally supported, we are very concerned that there are currently inadequate safeguards to ensure that:

- i) terms and conditions of employment of the employee or other employees are not undermined by any flexible work arrangement;
- ii) equality of wages and conditions in the firefighting industry is preserved; and
- iii) the operational standards of non-10/14 employees are maintained.

[56] To resolve these competing tensions, and ensure that the firefighting industry provides flexibility for parents without compromising the standards of firefighters or their industrial conditions, it will be necessary to allow the industrial parties to properly and freely bargain over this issue.

Amendments sought

[57] In our submission, an amendment to the Bill is needed to ensure that in essential services - like firefighting - where the employer operates a 24-hour a day business and roster provisions are in force:

- i. An enterprise agreement can include provisions about flexible working arrangements, including concerning how any flexible working arrangement is to be made, the terms and conditions of any flexible working arrangement and the appropriateness of any flexible working arrangement for particular categories of employment; and
- ii. Subdivision A of Division 3 of Part 2-1 (which deals with the relationship between NES and awards and agreements) and Division 4 of Part 2-4 (which deals with approval of enterprise agreements) are amended so

that such terms in the enterprise agreement are permissible and the NES can be altered where appropriate given the nature of the industry.

[58] This would allow, for example, parties at an enterprise level to bargain over:

- i. The wages, terms and conditions of any flexible working arrangement;
- ii. The appropriate span of hours for any employee on a flexible working arrangement;
- iii. The creation of new jobs or categories of jobs for employees with young children to ensure their retention in the workforce;
- iv. Whether it is appropriate to have part-time operational firefighters and officers, and if so, what if any conditions ought apply to their engagement; and
- v. Innovative means of ensuring skills maintenance for employees on flexible working arrangements in highly demanding industries like firefighting, where significant on-the-job time is required to ensure skills are current.

[59] Parties in the firefighting industry should be able to bargain about flexible working arrangements so that it is not just an employer's decisive and self-determined 'operational requirements' test which applies (cf s65(5)), but regard is also had to the nature of the industry, the work being performed and the terms and conditions of other employees.

[60] If the Bill is not amended, then we fear that employers may interpret the Bill as allowing for the creation of part-time or day-time working arrangements on wages and/or rosters not envisaged by the current award and agreements and the payment of such employees on terms other than those envisaged by the current award and agreements.

Conclusion

[61] The provisions of the Bill to which we have drawn attention may appear beneficial to employees and, in most industries, probably are. However, in

this industry, unless there is proper legislative clarification, these provisions could reopen some of the most bitter disputes in firefighting history.

- [62] The UFUA has a strong commitment to increasing the number of women in firefighting and providing proper working arrangements for parents. The UFUA has a vibrant official National Women's Network that meets regularly and informs our national policy. Branches of the UFUA have also hosted diversity conferences, at times in conjunction with the relevant employers.
- [63] However, the promotion of these aims could in fact be hampered if the use of 'flexible working arrangements' for new parents provokes disputation over the wages and conditions of firefighters. By adopting the recommendations set out in this submission, and retaining the minimum standard in legislation but also recognising the peculiarities of this industry and allowing the allowing the parties to bargain effectively over these issues, disputation will be avoided and flexibility increased.
- [64] We would appreciate the opportunity to appear before the committee to explain the particular features of our industry and the need to be able to freely bargain over our hours, wages and rostering arrangements.



Signed and submitted on behalf of the UFUA by the

National Secretary, Peter Marshall, 29 January 2009