

**IN THE FAIR WORK COMMISSION
AT MELBOURNE**

FWC Matter No: B2023/771

The United Firefighters' Union of Australia
(Applicant)

Fire Rescue Victoria
(Respondent)

MINISTER'S POSITION DOCUMENT

1. This position document is made pursuant to Order 4 of the directions of the President dated 25 October 2023, and summarises the position of the Minister for Emergency Services, the Honourable Jaclyn Symes MLC (**Minister**) in respect of:
 - (a) the agreed terms for the intractable bargaining workplace determination (**IBWD**) pursuant to section 274(3) of the *Fair Work Act 2009* (Cth) (**FW Act**); and
 - (b) the matters at issue pursuant to section 270(3) of the *FW Act*.

Agreed terms

2. There are no matters that meet the definition of 'agreed terms' in section 274(3) of the *FW Act* for the purposes of inclusion in an intractable bargaining workplace determination.

Matters at issue

3. In circumstances where there are no agreed terms, each of the terms of the proposed operational enterprise agreement are 'matters at issue' within the meaning of section 270(3) of the *FW Act*.

Substantive workplace determination matters

4. Although each of the terms of the proposed operational enterprise agreement are 'matters at issue' and, as such, are subject to the assessment required by section 275 of the *FW Act*, to assist the Commission and aid the efficient conduct of the arbitration to make a workplace determination:
 - (a) the following matters are identified as matters that will require substantive determination by the Commission (the **Substantive Workplace Determination Matters**):
 - (i) the matters in Attachment A; and

- (ii) matters arising from the operation of the IBWD provisions of the FW Act (including mandatory terms under s.273(5), including the model consultation term); and
- (b) all terms of the proposed agreement V14, outside of the Substantive Workplace Determination Matters, are not contested by the Minister and the Minister is not intending will be the subject of substantive submissions opposing their inclusion in the IBWD.

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17 November 2023

Attachment A

No.	Matters at issue (contested)	Clauses affected from UFU draft EA	Primary reasons why these clauses are in issue, beyond any merit arguments
1.	Wages and Allowances	Various - The quantum set out in clauses 97, 104, 132, 134, 162, 177, 179, 199, 215, 217, 223, 232, 243, 254, 256, 265, 267, Schedule 4, Schedule 8, Schedule 17, Schedule 29, Schedule 37 and Schedule 42	<ul style="list-style-type: none"> • UFU maintain are in issue • Wages and allowances rejected as part of the offer from FRV to UFU dated 7 August 2023 (7 August Offer)
2.	Establishment of Registration Board Provides that FRV endorses the establishment of a firefighters registration board and will demonstrate this by letter of endorsement to the UFU Secretary.	Clauses 54.1(b) and 55	<ul style="list-style-type: none"> • Content rejected as part of 7 August Offer • Potential constitutional limitations
3.	Clauses providing for extra claims Allows for FWC arbitration of claims for an additional allowance, new allowance, or an increase to an existing allowance, including claims for efficiencies arising from agreed harmonisation.	Clauses 22.3, 104.3, 132.3, 162.3 and 199.3	<ul style="list-style-type: none"> • Content rejected as part of the 7 August Offer
4.	Clauses providing for extra claims Provides that FRV and the UFU will seek to reach agreement on harmonising terms and conditions etc for different classifications. If agreement is reached, FRV may make an application to the FWC to vary the enterprise agreement to reflect that agreement. If no agreement is reached, either party may refer the matter to FWC for conciliation and arbitration. Unless otherwise agreed by the UFU and FRV, any agreement reached, or determination made under this clause must ensure there is no disadvantage or reduction to individual operational personnel or individual employees' terms and conditions.	Clauses 12 and 13	<ul style="list-style-type: none"> • Content rejected as part of the 7 August Offer • Potential constitutional limitations
5.	Clauses setting out minimum staffing numbers and/or incorporating Schedule 1 which sets out the Minimum Staffing Charts.	Various (including clauses 80.3.3, 150.3, 156.9.18, 158, 180.2.1, 192.2.7, 192.2.8, 192.4, 193, 197.5 - 197.7, 218.2.1, Schedule 1, Schedule 16, Schedule 27, Schedule 28)	<ul style="list-style-type: none"> • Content rejected as part of the 7 August Offer • Potential constitutional limitations
6.	Infrastructure agreement	Clauses 15.5.13, 73.6, 95 and Schedule 19	<ul style="list-style-type: none"> • Potential constitutional limitations

No.	Matters at issue (contested)	Clauses affected from UFU draft EA	Primary reasons why these clauses are in issue, beyond any merit arguments
	Require FRV and CFA (at locations where FRV secondees are based) to abide by the applicable Infrastructure Agreement, which can only be varied with UFU agreement.		<ul style="list-style-type: none"> • Not about a permitted matter • The operation of the FW Act (including the operation of s 273(5))
7.	Mandating FRV districts and regions Mandating that the FRV Fire District be organised into specified districts and regions	Clause 50 and Schedule 2	<ul style="list-style-type: none"> • Potential constitutional limitations • Not about a permitted matter
8.	Operational and management support to the CFA That the Service Level Deed and Secondment Agreement being incorporated into the enterprise agreement and only be varied with the UFU's agreement. The Minister is not opposed to these documents or seeking to alter their content, but they are not part of the current enterprise agreement and do not need to be incorporated into the determination or be the subject of UFU agreement.	Clauses 15.1 - 15.3, 15.9, Schedules 10 and 11	<ul style="list-style-type: none"> • Potential constitutional limitations • May extend to matters that are not permitted matters
9.	Third Party Volunteer Support Programs/Officers Restricting third party volunteer support programs/officers: <ul style="list-style-type: none"> • FRV must consult and reach agreement with the UFU via clause 18 on the structure of any Support Programs to third party volunteers impacting on employees and/or any implementation of Volunteer Support Officers impacting on employees • there must be a Division 3 Firefighter in each Division 3 Catchment (or broader area where agreed), reporting to the Division 3 Commander of the catchment, to assist the Division 3 Commander in providing support to third party volunteers. The role of such positions will be determined via clause 18. • all brigade groups will report to the Division 3 Commanders responsible for each Division 3 Catchment 	Clause 31	<ul style="list-style-type: none"> • Potential constitutional limitations • The operation of the FW Act (including the operation of s 273(5))
10.	Disputes Panel Requirement to abide by Dispute Panel determinations to resolve disputes in respect of the matters of future staffing levels and future fire station staffing requirements, and any other dispute by agreement with the UFU and FRV. For the purposes of enabling both parties to submit relevant materials to the Dispute Panel, FRV must provide the UFU with complete access to FRV documents and data required for analysis of FRV response activities.	Clauses 25, 26.2 and 193.24.3	<ul style="list-style-type: none"> • Potential constitutional limitations