

FAIR WORK COMMISSION

Matter No.: B2023/771
Applicant: United Firefighters' Union of Australia
Respondent: Fire Rescue Victoria

WITNESS STATEMENT OF JO CRABTREE

I, Jo Crabtree, Executive Director – People & Culture of Fire Rescue Victoria (**FRV**) of 215 Spring Street, Melbourne, Victoria say as follows:

1. I am employed by FRV as Executive Director – People & Culture.
2. I have been employed in my role as Executive Director with FRV since July 2022.
3. In my role, I am responsible for HR Systems and Services, Workplace Relations and Ethical Standards, Media and Communications, and Organisational Development and Business Partnering.
4. Prior to my appointment to this role, I was Director – Organisational Development and Business Partnering from January 2021 to July 2022. Between February 2020 and January 2021, I was Executive Manager People Services at the Country Fire Authority (**CFA**).
5. I have a Bachelor Degree of Business (Majoring in Human Resource Management) from Swinburne University of Technology and have worked in employee relations roles at various organisations for over 20 years. My experience within the private sector includes nine years with Boeing and nine years with Cummins Inc – where I successfully led the bargaining process for multiple major workplace agreements with multiple unions across Australia, South Pacific, North East and South East Asia.
6. Cummins Inc has approximately 70,000 employees across 64 countries and is a Fortune 500 Company with Revenue and Sales of approximately \$19 Billion. Whilst working for Cummins Inc, I was part of the Global Industrial Relations Leadership team and developed their Global Bargaining Framework. These negotiations between FRV and the United Firefighters' Union of Australia (**UFU**) are the first negotiations I have been involved in within the Victorian Public Sector.

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7. I set out below an overview and summary of matters relating to the industrial framework in which FRV has been operating whilst bargaining for a replacement enterprise agreement with the UFU.
8. I have read the following materials relied on by the UFU in these proceedings:
 - (a) Applicant's Submissions;
 - (b) Statement of Peter James Marshall;
 - (c) Statement of James Kefalas; and
 - (d) Statement of Laura Campanaro,(collectively, the **UFU materials**).
9. Unless otherwise stated, I make this statement based on my own knowledge and belief. Where I give evidence of any matter based on information provided to me, I identify the source of that information and I believe that information to be true.
10. At the time of making this statement, a tabbed and paginated bundle of documents was shown to me marked '**Exhibit JC-1**'. I refer to documents from Exhibit JC-1 by their attachment number in this statement.

MY INVOLVEMENT WITH ENTERPRISE BARGAINING

11. Since I began in my current role in July 2022, I have had strategic oversight of industrial relations matters at FRV whilst working with FRV's external legal advisors. I had no direct involvement in industrial relations matters at FRV prior to July 2022. A number of the persons who were directly involved in the enterprise bargaining process with the UFU from 2020 onwards on behalf of FRV are no longer employed or engaged by FRV.

FIRE RESCUE VICTORIA

12. On 1 July 2020, the organisation of fire services in Victoria underwent a significant restructure. This restructure was part of reforms implemented by the Victorian Government to modernise Victoria's fire services.
13. As part of the restructure, FRV was created. As an integrated fire service, FRV assumed all the functions of the Metropolitan Fire and Emergency Services Board (**MFB**) and some of the functions of the Country Fire Authority (**CFA**), bringing together the career firefighters from both organisations. Amongst other things, this resulted in:
 - (a) all MFB employees being transferred to FRV;
 - (b) various CFA employees being transferred to FRV, including:

- (i) all career firefighters; and
- (ii) some corporate, technical and administrative employees; and
- (c) establishing CFA as a community-based volunteer firefighter agency.

FRV EMPLOYEES

- 14. There are currently approximately 4600 people employed by FRV.
- 15. These employees can be broadly separated into the following cohorts:
 - (a) operational employees, namely firefighters;
 - (b) corporate and technical employees;
 - (c) mechanical and workshop employees; and
 - (d) executives.

FUNDING OF FRV

- 16. The majority of FRV's funding is sourced through statutory contributions, as provided for in the *Fire Rescue Victoria Act 1958 (Vic)* (**FRV Act**).
- 17. Section 37 of the FRV Act provides that contributions towards FRV's annual expenditure are as follows:
 - (a) one-eighth from the Consolidated Fund (being the Victorian Government's primary financial account); and
 - (b) seven-eighths funded by the fire service property levy, which is a levy paid by Victorian property owners as part of the property rates collected by local councils (**Levy**).
- 18. The quantum of the above contributions each year are determined as follows:
 - (a) FRV must provide the Minister responsible for administering the Levy with an estimate of:
 - (i) the expenditure which may be incurred by FRV in the execution of the FRV Act during the next financial year (including any amounts payable into any fund under the FRV Act); and
 - (ii) the revenue of FRV during the next financial year (including the amounts payable into any fund under the FRV Act); and
 - (b) the Minister then determines the total amount of contributions payable under section 37 having regard to the estimates referred to above and to any other matters the Minister thinks fit.

19. The funding FRV receives from the Victorian Government, as broadly described in paragraph 17 above, is passed through to FRV by the Department of Justice and Community Safety (**DJCS**) and is provided to FRV on a quarterly basis.
20. In making the statements in paragraphs 21 to 23 of this statement I have relied on information I have received from the FRV Chief Financial Officer, Marina Perri.
21. For the financial year ending 30 June 2022, FRV received Victorian Government funding of approximately \$848,944,000 (as recorded in the FRV 2021/2022 Annual Report).
22. For the financial year ending 30 June 2023, FRV received Victorian Government funding of approximately \$870,380,000.
23. For the financial year ending 30 June 2024, FRV will receive Victorian Government funding of approximately \$845,990,000.

FRV OPERATIONAL EA

24. All operational firefighter employees, as well as some non-operational employees, of FRV are covered by the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020* (**FRV Operational EA**). Approximately 3942 employees at FRV are covered by the FRV Operational EA.
25. The FRV Operational EA is a transferable instrument, varied by the Fair Work Commission pursuant to section 320(2) of the *Fair Work Act 2009* (Cth) (**FW Act**), and commenced operation on 26 August 2020. Applications for orders under section 320(2) of the FW Act were made in connection with the creation of FRV, with the resulting FRV Operational EA having the effect of continuing the terms and conditions of employment in place with the CFA and MFB immediately prior to the creation of FRV on 1 July 2020.
26. For relevant purposes, the FRV Operational EA is broadly separated into two parts, with employees either covered by:
 - (a) Division A, which applies to employees who:
 - (i) were previously covered by the *Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement 2016* (**MFB 2016 Agreement**) until their employment was transferred from the MFB to FRV; or
 - (ii) are non-transferring employees who perform, or are likely to perform, work for FRV which is covered by a classification of the MFB 2016 Agreement; or
 - (b) Division B, which applies to employees who:

- (i) in respect of the *Country Fire Authority/United Firefighters' Union of Australia Operational Staff Enterprise Agreement 2010 (CFA 2010 Agreement)*:
 - (A) were employees previously covered by the CFA 2010 Agreement until their employment was transferred from the CFA to FRV; or
 - (B) are non-transferring employees who perform, or are likely to perform, work for FRV which is covered by a classification of the CFA 2010 Agreement; and
- (ii) in respect of the *Country Fire Authority/United Firefighters Union Managers Community Safety Enterprise Agreement 2005 (2009 Extended and Varied Version) (CFA MCS Agreement)*:
 - (A) were employees previously covered by the CFA MCS Agreement until their employment was transferred from the CFA to FRV; or
 - (B) are non-transferring employees who perform, or are likely to perform, work for FRV which is covered by a classification of the CFA MCS Agreement.

27. Each of the instruments preserved in Division A and Division B of the FRV Operational EA have passed their nominal expiry dates, with:
- (a) the MFB 2016 Agreement providing for a nominal expiry date of 1 July 2019;
 - (b) the CFA 2010 Agreement providing for a nominal expiry date of 30 September 2013; and
 - (c) the CFA MCS Agreement providing for a nominal expiry date of 1 October 2010.

BARGAINING FOR A REPLACEMENT ENTERPRISE AGREEMENT

28. FRV and the UFU commenced informal discussions about a new enterprise agreement for operational firefighters to replace the FRV Operational EA (**New Operational EA**) in or around July 2020. However, FRV did not seek approval to formally commence bargaining for the New Operational EA until in or around August 2021.

Overlay of the Wages Policy

29. In addition to the requirements for making an enterprise agreement under the FW Act, FRV is required to comply with the bargaining framework that the Victorian Government sets for bodies

within the Victorian public sector. Amongst other things, this requires FRV to comply with the applicable wages policy and enterprise bargaining framework as in place from time to time.

30. When bargaining for the New Operational EA commenced, the wages policy and enterprise bargaining framework that applied to bargaining was contained in the 2019 wages policy and enterprise bargaining framework (**2019 Wages Policy**) (Enclosed as **Attachment 1**).
31. Amongst other things, the 2019 Wages Policy provided that agencies are required to seek Government approval for enterprise agreements at various stages including as follows:
 - (a) *'Prior to commencing bargaining, public sector agencies are required to seek approval from Government, and for those bargaining under the primary pathway, submit their proposed Best Practice Employment Commitment for approval'*;
 - (b) *'Public sector agencies cannot make offers during bargaining outside approved parameters without the offer (and expected financial implications) being approved at the appropriate level of Government for the agreement concerned'*;
 - (c) *'All offers should be made on an in-principle basis, with the public sector agency communicating that the offer is subject to government approval and may be subject to change to ensure compliance with Wages Policy, the Industrial Relations Policy, the Fair Work Act or other relevant legislation'*; and
 - (d) *'All proposed enterprise agreements require the approval of Government prior to the commencement of any of the formal approval requirements outlined in the Fair Work Act'*.
32. On 1 January 2022, the Victorian Government published a revised wages policy and enterprise bargaining framework (**2022 Wages Policy**) (Enclosed as **Attachment 2**). Relevantly, the 2022 Wages Policy revoked and replaced the 2019 Wages Policy and applied to bargaining for and making enterprise agreements that reached their nominal expiry date before 1 January 2022 where the parties had not reached agreement on a replacement enterprise agreement consistent with transitional provisions included in the policy.
33. Despite the commencement of the 2022 Wages Policy, FRV was permitted by the Victorian Government to continue bargaining under the 2019 Wages Policy which provided for more generous increases to wages and allowances, on the basis that:
 - (a) approval to commence bargaining for the New Operational EA had been given under the 2019 Wages Policy; and
 - (b) the parties were hoping to reach an in-principle agreement on the New Operational EA not long after the commencement of the 2022 Wages Policy.

34. In April 2023, the Victorian Government published a revised wages policy and enterprise bargaining framework (**2023 Wages Policy**) (Enclosed as **Attachment 3**).
35. The 2023 Wages Policy provides amongst other things that:
- (a) *'Parties to enterprise agreements that have not finalised new agreements under previous Wages Policy are eligible to bargain under the new Wages Policy parameters. All parties currently bargaining will be required to seek Government approval before any offer is made under the new Wages Policy parameters (emphasis added)';*
 - (b) consistent with the 2019 Wages Policy – *'Public sector agencies cannot make offers during bargaining outside approved parameters without the offer (and expected financial implications) being approved at the appropriate level of Government for the agreement concerned'*; and
 - (c) consistent with the 2019 Wages Policy – *'All offers should be made on an in-principle basis, with the public sector agency communicating that the offer is subject to government approval and may be subject to change to ensure compliance with Wages Policy, the Industrial Relations Policy, the Fair Work Act or other relevant legislation'*.

Process of bargaining

Initial discussions

36. On 30 November 2020, the UFU presented FRV with its log of claims in relation to the New Operational EA.
37. On 8 December 2020, FRV provided an initial response to the UFU's claims.
38. On 14 January 2021, a meeting was held between UFU and the FRV to discuss the New Operational EA.

Government approval

39. On 29 July 2021, FRV informed the UFU that it was required to seek approval from the Victorian Government in order to commence negotiations in accordance with the 2019 Wages Policy.
40. In August 2021, FRV sought the Victorian Government's approval to commence bargaining for the New Operational EA. In doing so, FRV acknowledged the requirement to reach agreement with the UFU in accordance with the Victorian Government's wages policy and that any proposed final agreement would be subject to approval by the Victorian Government.
41. At this time, FRV identified its key objectives for the bargaining process as being:
- (a) maintaining current conditions unless otherwise agreed;

- (b) harmonising the terms and conditions of former MFB and CFA operational employees;
 - (c) fostering a constructive relationship with the UFU and promoting community and firefighter safety;
 - (d) seeking to reach agreement on the implementation of certain strategic measures and / or efficiencies; and
 - (e) clarifying the status / effect of certain legacy matters to avoid significant cost exposure to the Victorian Government.
42. The Victorian Government approved FRV to commence bargaining on the basis of its proposed bargaining strategy and objectives.
43. Throughout bargaining, FRV has maintained its focus on these key objectives and operated within the parameters approved by the Victorian Government, including making it clear to all bargaining representatives that any proposed final agreement would be subject to approval by the Victorian Government.
44. On 30 November 2021, the UFU filed an application under section 240 of the FW Act seeking the FWC's assistance to deal with bargaining dispute on the basis that FRV had failed to, amongst other things, *'formalise the bargaining process by taking necessary action to obtain Victorian Government approval'* (Enclosed as **Attachment 4**) (**UFU 240 Proceeding**).
45. Around 6 December 2021, the Victorian Government approved FRV's bargaining strategy and provided formal approval to commence bargaining.
46. Around March 2022, the UFU discontinued the UFU 240 Proceeding.

Formal commencement of bargaining

47. On 26 April 2022, FRV issued a Notice of Employee Representational Rights to employees who would be covered by the New Operational EA (Enclosed as **Attachment 5**).
48. On 4 November 2022, FRV filed a section 240 application with the FWC (**FRV 240 Proceeding**) (Enclosed as **Attachment 6**). As set out in the Form F11 filed with the FWC, FRV had formed the view that the FWC's involvement was necessary to resolve a number of disputed matters between the parties including:
- (a) wages;
 - (b) allowances;
 - (c) minimum staffing numbers;
 - (d) health insurance;

- (e) public transport;
 - (f) fire safety officers;
 - (g) fire safety inspectors;
 - (h) wages and percentage relativities; and
 - (i) proper characterisation of the alleged efficiencies
49. On 29 November 2022, FRV sent the UFU its response to version 12 of the UFU's revised log of claims (Enclosed as **Attachment 7**). The document sent by FRV states that:
- 'All clauses as set out in the UFU revised Log V12 unless otherwise commented upon below, are agreed in principle by FRV subject to final agreement on an overall package of provisions for the proposed EA and subject to proceedings in C2022/5683 (Efficiencies Allowance matter)' (emphasis added).*
50. On 3 February 2023, a statement was issued by Commissioner Wilson in the FRV 240 Proceeding (**First Wilson Statement**) (Enclosed as **Attachment 8**). In the Commissioner's statement, the Commissioner noted that the principal parties (namely FRV and the UFU) had reached agreement 'on all but 10 issues'. These issues related to:
- (a) *'Wages and Allowances'*;
 - (b) *'Fire Safety Officers'*;
 - (c) *'Firefighters Registration Board'*, in respect of which Commissioner Wilson noted *'there has been no discussion on this subject with both parties looking to further proceedings in the Commission on the subject'*;
 - (d) *'Health Insurance'*;
 - (e) *'Public Transport Fares'*;
 - (f) *'Fire Safety Inspectors'*;
 - (g) *'Emergency Medical Response Allowance'*;
 - (h) *'Allowances Schedule'*;
 - (i) *'Wages and Classification Relativities'*;

- (j) *'Minimum staffing', in respect of which Commissioner Wilson noted 'FRV and UFU have agreed to the safe staffing claim numbers and funding for the UFU safe staffing claims remain under consideration by the Minister for Emergency Services. Further discussions are required between the UFU and the FRV in respect of staffing numbers indicated in Schedules 16 of the draft agreement'.*
51. To the extent that FRV indicated to Commissioner Wilson that the principal parties had *'reached agreement'* on matters other than those identified in the First Wilson Statement, this indication reflected the fact that the parties had reached in-principle agreement as contemplated by the 2019 Wages Policy.
52. During the conference on 24 February 2023, FRV received a letter from DJCS setting out the Victorian Government's position in relation to the New Operational EA (Enclosed as **Attachment 9**) (**24 February Letter**). The letter provided authority to put a *'provisional settlement'* offer to the UFU and other bargaining representatives and also provided the following requirements:
- (a) *'That due to the UFU efficiency allowance arbitration commencing 27 February, any additional payment under Pillar 3 under existing Wages Policy will not to be considered by Government at this point';*
- (b) *'Pillar 3 of the 2019 Wages Policy provides for additional changes to allowances and other conditions (not general wages) and will only be allowed if Government agrees that the changes will address key operational or strategic priorities for the agency. Government is still in the process of considering which if any of the matters which have been identified by the parties properly sit under Pillar 3'; and*
- (c) *'In addition to above, the offer should specify that:*
- any increases to the minimum staffing charts should not be included in the Operational Agreement and*
 - there will be no reference to a firefighters' registration scheme in the Operational Agreement. Also note, funding of salary adjustments outside of Wages Policy will not be approved.'*
53. The 24 February Letter specifically requested that FRV confirm by no later 3 March 2023 that FRV would act in accordance with the State's position and that FRV understood the funding implications of any departure from that position.
54. Also on 24 February 2023, at a conference before Commissioner Wilson, FRV reported its understanding as to the current status of bargaining in a *'report back document'* (Enclosed as **Attachment 10**). The *'report back'* summarised the status of bargaining from FRV's perspective as follows:

Item	Status
Wages	Not resolved
FSOs	Partially resolved
Registration board	Not resolved
Health insurance	Not resolved
Public transport	Partially resolved
EMR	Resolved
FSIs	Resolved
Relativities	Not resolved
Allowance schedules	Partially resolved
Minimum staffing	Not resolved
Public holidays	Partially resolved

55. On 3 March 2023, FRV sent the Minister its response to the 24 February Letter (Enclosed as **Attachment 11**). In its letter, FRV sought authorisation to make a revised provisional offer to the UFU.
56. On 8 March 2023, DJCS instructed FRV to make a revised offer to the UFU.

Exchange of offers

57. On 10 March 2023, FRV sent the UFU an offer approved by DJCS (**10 March Offer**) (Enclosed as **Attachment 12**). This letter specifically noted to the UFU that:
- (a) the offer was a monetary offer only which was made in accordance with the 2019 Wages Policy (and did not address matters other than wages and allowances); and
 - (b) the offer did not include any additional payment under Pillar 3 of the 2019 Wages Policy due to the uncertainty regarding the efficiency allowance matter before the Commission.
58. Also on 10 March 2023, the UFU responded to the 10 March Letter (Enclosed as **Attachment 13**) (**UFU 10 March Letter**). In its response, the UFU set out four questions in relation to which it sought FRV's position in respect of bargaining. Question 4 was as follows:
- 4. The FRV had not previously made a wages offer in B2021/1057 or in this matter as it had stated that it was waiting for a new Government Wages Policy. The new Government Wages Policy would presumably reflect the significant cost of living changes that have taken place since the present policy was formulated in 2019. What is the reason for making an offer now, and contrary to the previously stated position? Is the putative offer intended to be a genuine offer, or is it designed only to avoid further criticism of the FRV's previous "inertia" in bargaining. (footnotes excluded)*
59. On 14 March 2023, FRV sent the UFU a letter responding to the UFU 10 March Letter (Enclosed as **Attachment 14**). FRV's letter confirmed various matters, including:

- (a) *'all references to quantum for Wages and Allowances are subject to instruction and approval from Government having regard to Government Wages Policy and the treatment of efficiencies'; and*
- (b) *'all clauses as set out in the UFU revised log V12 (unless they were otherwise commented on) were agreed in principle by FRV, subject to final agreement on an overall package of provisions for the proposed enterprise agreement and subject to the efficiencies allowance dispute proceedings...'*

The letter also stated that *'FRV has maintained this position throughout bargaining and continues to maintain this position'*.

- 60. In response to the UFU's question 4, as outlined above at paragraph 58, FRV noted that *'it was incumbent on it, and through it the Victorian Government, to put forward a firm wages proposal to the UFU and other employee bargaining representatives at the earliest opportunity. The offer is a genuine offer made under applicable Wages Policy and in circumstances where the commencement date of a new Wages Policy remains unknown'*.
- 61. On 15 March 2023, FRV received a counter offer from the UFU in respect of the 10 March Offer (Enclosed as **Attachment 15**). Although the counter offer contained a number of proposals in relation to wages and allowances, it was otherwise put on the basis that *'that the parties have otherwise agreed to all non-wages terms and conditions as contained in the most recent iteration of the Draft Operational Staff Agreement'*.
- 62. On 17 March 2023, at a conference before Commissioner Wilson, FRV presented its position on various claims with a view to the position being understood in conjunction with the position set out in its response sent to the UFU on 29 November 2022 (i.e. the document enclosed as Attachment 7). As presented at the meeting, FRV's position on various matters (as summarised in a document prepared for the purposes of the meeting which is enclosed as **Attachment 16** and provided to the UFU by way of email sent on 16 March 2023) was as follows:

Item	Status
Wages	Not resolved
FSOs	Not resolved
Registration board	Not resolved
Health insurance	Resolved
Public transport	Not resolved
EMR	Resolved
FSIs	Resolved
Relativities	Resolved
Allowance schedules	Resolved – subject to drafting
Minimum staffing	Not resolved
Public holidays	Not resolved

- 63. On 27 March 2023, the UFU sent a letter to the FRV criticising the position that FRV was taking in respect of the efficiencies allowance (Enclosed as **Attachment 17**).

64. Throughout April 2023, in meetings held between FRV, DJCS and Industrial Relations Victoria on bargaining for the New Operational EA:
- (a) FRV provided the Victorian Government with updates regarding the status of bargaining (including that FRV and the UFU had reached in-principle agreement on the majority of matters); and
 - (b) the Victorian Government again raised concerns about some clauses in the New Operational EA (including clauses which, in the view of DJCS, had the potential to create further costs during the life of the New Operational EA or otherwise impeded the ability of FRV or the Victorian Government to implement its policy agenda).
65. On 27 April 2023, a further section 240 conference was held before Commissioner Wilson.
66. On 15 June 2023, DJCS wrote to FRV to *'confirm the Government's position in relation to... bargaining for a new operational firefighters' agreement'* (enclosed as **Attachment 18**). The letter provided authority from the Government to put a revised settlement offer to the UFU and other bargaining representatives. In addition to a monetary offer, the letter stated that FRV's offer should *'specify'* that the following matters would not be approved for inclusion in the New Operational EA:
- (a) *'any increases to the minimum staffing charts';*
 - (b) *'any reference to a firefighter's registration scheme, including removal of the current reference';*
 - (c) *'clauses allowing for extra claims during the life of the agreement, such as the proposed productivity clause and harmonisation clause. This includes removing the current references'.*
67. The letter also stated that:
- (a) *'the settlement offer should also specify that if the offer is rejected by the UFU and other bargaining representatives, FRV will reserve its rights to withdraw in-principle agreement to retain some or all of the restrictive clauses contained in the current Operational Agreement';* and
 - (b) *'any final in-principle agreement reached with the union and independent bargaining representatives will require final approval by Government and must be compliant with the Government's 2023 Wages Policy'.*

Statement of Commissioner Wilson

68. On 16 June 2023, Commissioner Wilson's associate provided FRV and the UFU with a draft statement relating to the FRV 240 Proceeding and requested the parties feedback on the draft statement.
69. On 19 June 2023, Ms Campanaro sent a marked-up statement to Commissioner Wilson's associate on the basis that the mark-up had been discussed with FRV (enclosed as **Attachment 19**). I understand that the statement was discussed between members of my team and the UFU before it was sent and members of my team agreed to the wording in the marked-up statement.
70. Ms Campanaro's mark-up was as follows:
- Bargaining has progressed very well to the point that the ~~United Firefighters' Union (UFU)~~ UFU and FRV now report that since the last conciliation conference held on 27 April 2023 all outstanding matters have been resolved, save for the matter of an offer for increases to wages and related monetary allowances.*
71. Again, as explained at paragraph 51 above, to the extent that FRV indicated to Commissioner Wilson that matters had been 'resolved', this indication reflected the fact that the parties had reached in-principle agreement as contemplated by the 2023 Wages Policy.
72. Commissioner Wilson's final statement was published later that day (enclosed as **Attachment 20**).
73. Throughout June and July 2023, FRV had a number of discussions with representatives of the Victorian Government in relation to the terms of a further offer to be made to the UFU. In the course of these discussions, those representatives confirmed that the Victorian Government was not prepared to approve a number of matters which had been agreed in-principle between FRV and the UFU (including in relation to references to the firefighter's registration scheme and clauses allowing for extra claims during the life of the agreement) and that the further offer to be made to the UFU would not include such matters.

Application for intractable bargaining declaration

74. On 28 July 2023, the UFU filed its application for an intractable bargaining declaration.

Further offer from FRV

75. On 7 August 2023, FRV sent the UFU and other bargaining representative a settlement proposal in accordance with the instructions it had received from Government in June and July 2023

regarding the terms of the offer (enclosed as **Attachment 21**) (**7 August Offer**). Notable features of the communication of the 7 August Offer were that it stated that:

- (a) *'While FRV and the bargaining representatives have been in direct negotiations, as a government agency, any offer made by FRV, and all matters agreed in-principle are subject to government approval and authorisation. FRV has consistently reinforced this message throughout the bargaining process';*
- (b) *'In accordance with the Victorian Government's 2023 Wages Policy and the Enterprise Bargaining Framework (the 2023 Wages Policy), FRV is pleased that they have been authorised by the Government to make a settlement offer';*
- (c) *'The settlement offer will be revised if the FWC makes a determination on the efficiency allowance matter (C2022/5683) or the application for an increase to existing allowances (C2023/2071) that affects allowances for FRV operational staff';*
- (d) *'This settlement offer is being put in the context of an overall package, provided on a "without prejudice" basis'; and*
- (e) *'FRV will be seeking a s240 conference with the FWC to enable discussion of the settlement offer'.*

76. Later that day, FRV received a letter from the UFU rejecting the 7 August Offer (enclosed as **Attachment 22**).

77. In its letter, the UFU wrote:

This offer is rejected because it is not a genuine offer, it is nothing more than a cynical, disingenuous and transparent attempt to reframe the issues that will be liable to be arbitrated in an intractable bargaining workplace determination. It is seen by the UFU as such and is rejected out of hand.

78. The 7 August Offer was in accordance with instructions that FRV received from Government on 5 July 2023.

79. On 9 August 2023, MinterEllison, lawyers acting for FRV, sent a letter to Davies Lawyers, lawyers acting for the UFU, in relation to the intractable bargaining declaration application stating, amongst other things, that it was FRV's preference to attempt to resolve the current issues in bargaining through further negotiations overseen by the Fair Work Commission and offered for FRV to provide further information about the detail of its offer (enclosed as **Attachment 23**).

80. On 17 August 2023, FRV sent the UFU a letter stating that it was its *'preference to try and resolve the outstanding matters within bargaining and to address concerns raised by the UFU regarding*

good faith bargaining with the support of further section 240 conferences before Commissioner Wilson' (enclosed as **Attachment 24**).

81. On 18 August 2023, the UFU sent a letter to the FRV which, in broad terms, rejected the offer to participate in further section 240 conferences and stated that the UFU was '*focussed*' on the intractable bargaining declaration (enclosed as **Attachment 25**).

Industrial action during bargaining process

82. Throughout bargaining, UFU members have taken various forms of protected industrial action in support of the UFU's bargaining position. The industrial action has not impacted public safety and has largely been respectful. The types of action taken include:
- (a) stoppages, except responding to fires, incidents or any accident or emergency usually attended by FRV, to communicate and display union badging and industrial campaign material in work locations and to the public and to wear industrial campaign t-shirts, badges and stickers in association with that activity;
 - (b) a ban on complying with a direction to remove union badging or industrial material displayed on, in or around work locations, appliances or UFU members;
 - (c) only attending meetings at which any of the Fire Rescue Commissioner, Deputy Fire Rescue Commissioners, Deputy Secretary, Corporate Managers or Corporate Directors attend if the purpose of the meeting is notified in advance as about operational incidents, operational de-briefing, training, securing public health or occupational health and safety, or enterprise agreement bargaining;
 - (d) a ban on creating a record of any employee's participation in protected industrial action;
 - (e) a ban on the organisation of, or participation in, drills involving public display; and
 - (f) action in the form of wearing, distributing and posting union campaign material such as t-shirts, badges, written communications and stickers (including at work locations and on appliances) in support of the proposed enterprise agreement.

FRV'S POSITION ON THE APPLICATION FOR THE INTRACTABLE BARGAINING DECLARATION

The IBD should be made

83. The intractable bargaining declaration should be made because I foresee little chance of the issues between the parties being resolved in circumstances where the parties are so far apart on the issue of wages and allowances.
84. In addition, FRV has not had the opportunity to explain fulsomely the rationale and context of its 7 August Offer to the UFU and other bargaining representatives. This is because, despite FRV's

offers to meet with the UFU, there have been no further bargaining meetings since the UFU's application for an intractable bargaining declaration was filed. Instead, the UFU has indicated that it is now focused on progressing the intractable bargaining declaration application and seeking the relevant declaration.

There is no reasonable prospect of agreement being reached

85. Having regard to the progress of bargaining, it seems clear to me that there is presently no reasonable prospect of agreement being reached. This is because:
- (a) as things currently stand, the gaps between the parties on the wage-related items of the New Operational EA are unbridgeable;
 - (b) the Victorian Government has not approved all of the non-wage related matters that were agreed in-principle between FRV and UFU; and
 - (c) given what has been exchanged in correspondence, it appears that the parties are unlikely to move from their current positions.

A post-declaration negotiating period should be ordered

86. While there is presently no reasonable prospect of agreement being reached between the parties, things may be different during a post declaration negotiating period. In this respect, the making of an intractable bargaining declaration, the impending arbitration and further support provided by the Commission would provide a different context for further discussions.
87. During bargaining, the parties were able to work productively together to build opportunities for future harmonisation. A post-declaration negotiating period will provide an opportunity for the parties to clarify and hopefully narrow the matters which remain in dispute. It would be extremely unfortunate if the effort that the parties put in bargaining was undone. From my perspective, it is in the interests of everyone for the issues between the parties to be resolved so that FRV and the UFU can focus on:
- (a) implementing the harmonisation and other efficiencies proposed in the New Operational EA for the benefit of FRV, its workforce and Victorian communities; and
 - (b) working together to achieve FRV's purpose of keeping Victorian communities safe.

JO CRABTREE

5 September 2023

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 1, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by: MinterEllison, solicitors for the Respondent	Telephone: (03) 8608 2163 / (03) 8608 2047
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Wages policy and the Enterprise Bargaining Framework

Message from the Treasurer and Minister for Industrial Relations

The Government has made significant investments in social and economic reforms. It has invested in education and skills, improved healthcare, built new schools and hospitals, invested in public transport and roads, created more jobs for Victorians and made our community safer and fairer. The Government also delivered measures to protect workers' rights and entitlements.

The Government has committed to continuing this ambitious program of reform in its current term and has revised its Wages Policy to support the continuation of this investment.

The new Wages Policy applies from **Wednesday, 17 April 2019**. It revokes and replaces the previous wages policy and guidance material.

To support the revised Wages Policy, and to improve the Government approval process, a new enterprise bargaining framework has been developed.

Both the Wages Policy and the Enterprise Bargaining Framework aim to encourage public sector agencies to take a more strategic approach to enterprise bargaining, focused on the Government's operational and public sector priorities that deliver real benefits for the public sector and for all Victorians.

The new Wages Policy and Enterprise Bargaining Framework continue and build upon the Government's collaborative approach to enterprise negotiations from its last term. Public sector employees and their unions are important and valued partners in the delivery of important services to Victorians. Further, public sector agencies play an important role in promoting best practice employment practices to the wider community.



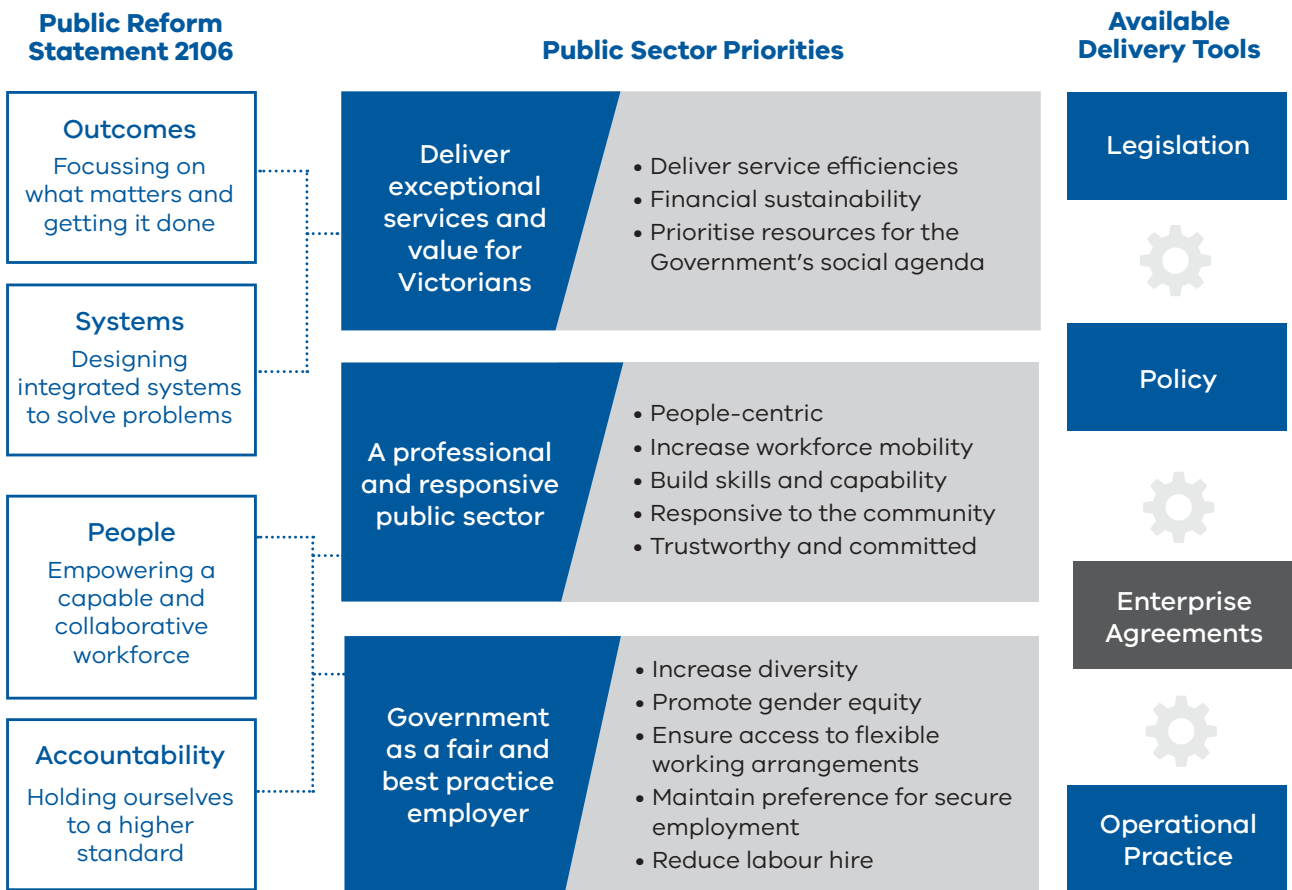
A handwritten signature in black ink, appearing to read 'T. Pallas'.

Tim Pallas MP

Treasurer of Victoria and Minister for Industrial Relations

Public Sector Priorities

Over its previous term, the Government made significant investments in public sector service delivery and the value of our public sector workforce. To reflect and build on these important initiatives the Government has identified key Public Sector Priorities for this term.



There are a range of tools available to deliver these priorities, including legislation, policy and operational practice. Enterprise bargaining is one important tool.

The Government's Wages Policy has been set to encourage public sector agencies to reflect these Public Sector Priorities in their operational practice.

Wages Policy

The primary pathway for agreement-making under Government's new Wages Policy has three pillars.



In addition, Wages Policy requires that:

- All agreements must be fiscally sustainable and fully funded from capped indexation, revenue and/or appropriate cost offsets.
- Enterprise agreements must not contain retrospective payments. This means that the first pay increase in any agreement must be forward looking and cannot be prior to the date the agreement has been submitted to the Government for approval.
- Legislated increases to the superannuation guarantee rate are excluded from the cap on wages and conditions.
- Public sector agencies should seek to achieve four-year agreements subject to operational considerations.

Public sector agencies must seek pre-approval from Government to make any offer above the capped growth rate.

Further information about Wages Policy Pillars 2 and 3 is outlined on the following page.

PILLAR 2

BEST PRACTICE EMPLOYMENT COMMITMENT

Several of the Government's key public sector reforms such as improving gender equity, ensuring secure employment and access to flexible working arrangements can be enhanced through changes to operational practices and policies.

Public sector agencies are required to identify and action reforms around public sector employment through a Best Practice Employment Commitment (BPEC) to be finalised alongside the enterprise agreement.

The BPEC must include measures for implementing best practice employment practices, to operationalise elements of the Government's Public Sector Priorities that reflect good practice elsewhere within Government and can be implemented operationally or without significant costs. These measures will need to be tailored to the public sector agency's circumstances.

Government will set the framework for what can be contained in the BPEC through the Industrial Relations Policy. This will include matters such as:

- a commitment to regular gender auditing, and reporting and efforts to identify and address gender pay gaps in the public sector organisation;
- facilitating access to flexible working arrangements;
- secure employment initiatives to reduce inappropriate use of casual, fixed term and labour hire, including workforce planning and preparations;
- skills and capability development to develop a mobile and agile public sector workforce; and
- supporting the continued development of whole of government policies by considering further measures to address anti-bullying, gender equity and diversity, mental health, occupational health and safety, and family violence.

The BPEC is not expected to contain significant cost items. These items would instead be considered under Pillar 3.

Public sector agencies should work with public sector unions and employees to develop their BPEC as bargaining progresses and to identify the actions to progress these matters.

PILLAR 3

ADDITIONAL STRATEGIC CHANGES TO ADDRESS KEY OPERATIONAL REFORMS OR THE PUBLIC SECTOR PRIORITIES

Operational or strategic priorities will differ across public sector agencies depending on the challenges they face. Higher cost outcomes linked to a key operational reform or the Public Sector Priorities could include, for example:

- addressing high instances of unscheduled absences on weekends and nights by increasing penalty rates for these shifts or amending rostering practices;
- amending opening hours to provide incentives to employees who work expanded hours to ensure services are available at times convenient to the community;
- removing or reducing restrictions which impede the efficient allocation of resources;
- addressing identified skill or capability gaps and incentivising and facilitating employees' skill development through access to specified TAFE training;
- specific measures to address gender inequity (for example, additional parental leave, payment of superannuation during periods of parental leave); and
- targeted wage increases to a specific and identifiable cohort of workforce who have historically been underpaid because of gender (for example, through reclassification of a particular feminised role).

Secondary pathway

The Government has designed Wages Policy to encourage public sector agencies to take a more strategic approach to enterprise bargaining. However, Government recognises that for various reasons, some bargaining parties may prefer to agree to a wage increase in a new enterprise agreement without disrupting any terms and conditions agreed during their previous bargaining round.

Accordingly, a limited secondary pathway is available under Wages Policy for public sector agencies and unions who agree in principle ahead of bargaining that they seek to reach agreement expeditiously on this basis.

The secondary pathway is available only to public sector agencies whose current agreement reaches its nominal expiry date on or before 30 June 2020.

The secondary pathway permits agreements to be made only on the following terms:

- One annual wage and allowance increase capped at 2.5 per cent (half-yearly increases up to the capped rate also permissible, for example 2 x 1.25 per cent increases in six-monthly instalments);
- A nominal expiry date 12 months from the nominal expiry date of the current agreement;
- All other terms and conditions as contained in the current agreement, except for where a change is required under the Industrial Relations Policy, to further mutually agreed whole-of-Government initiatives, to resolve legal issues, or minor changes to improve the clarity of the Agreement.

In addition:

- Public sector agencies must comply with *Fair Work Act 2009* (Fair Work Act) good faith bargaining requirements;
- All agreements must be fiscally sustainable and fully funded from capped indexation, revenue and/or appropriate cost offsets;
- Public sector agencies must meet the timelines prescribed in the Enterprise Bargaining Framework;
- Public sector agencies using this pathway may also produce a BPEC where agreed with employees and relevant unions, or otherwise are expected to comply with the Government's policy requirements.

Enterprise Bargaining Framework

The Enterprise Bargaining Framework (Framework) describes the Government's approval arrangements which public sector agencies must meet before commencing bargaining, during bargaining and before seeking employee approval of final enterprise agreements.

The Framework applies equally where a public sector agency seeks to vary an existing enterprise agreement under the Fair Work Act.

Major and Non-major Agreements

The Framework places different bargaining and governance expectations on different types of public sector agencies relative to the size of their workforce, wages bill, and relative industrial or financial risk profile. The Framework prescribes two categories of enterprise agreement – Major Agreements and Non-major Agreements.

Major Agreements

Major Agreements include any enterprise agreement:

1. with a large public sector workforce, with a salary base in excess of \$1 billion;
2. with significant industrial or financial risk; and/or
3. of strategic or operational importance to Government.

Major Agreements include those covering the public service, teachers, police, firefighters, paramedics and major public health sector agreements (including those covering nurses, doctors, allied health professionals, medical scientists and health and allied services, management and administrative employees) as well as other agreements as the circumstances dictate.

The Government will oversee and approve the strategy and negotiations for all Major Agreements.

Non-major Agreements

Non-major Agreements generally cover smaller components of the public sector workforce and carry fewer financial or industrial risks. Any enterprise agreement not classified as a Major Agreement will be treated as a Non-major Agreement for the purpose of this Framework.

When negotiating enterprise agreements, public sector agencies must adhere to the processes and requirements outlined in the Framework applicable to the enterprise agreement to be negotiated.

Where a public sector agency or Portfolio Department is unsure whether an enterprise agreement should be classified as a Major Agreement or Non-major Agreement they should contact Industrial Relations Victoria (IRV).

Early engagement

Negotiations between public sector agencies and bargaining representatives should commence six months prior to the nominal expiry date of the current agreement.

To ensure public sector agencies are in a position to commence bargaining in a timely fashion and without unnecessary delays, internal preparations for bargaining should commence no later than 12 months in advance of the nominal expiry date of the current agreement. This approach will ensure bargaining strategies and proposals for change can be developed with sufficient time to allow for necessary Government oversight prior to the commencement of bargaining.

An indicative timeframe for preparing for bargaining would be:

Indicative bargaining preparation timeline		
Task	Approximate timeframe	Action owner
Initial discussion between public sector agency, Portfolio Department, IRV and the Department of Treasury and Finance (DTF)	12 months prior to nominal expiry date	Public sector agency Portfolio Department IRV DTF
Draft bargaining approval documents to be submitted to Portfolio Department for approval	9 months prior to nominal expiry date	Public sector agency Portfolio Department
Review proposed bargaining approval documents	8 months prior to nominal expiry date	IRV DTF
Bargaining approval documents submitted to Government for approval	7-8 months prior to nominal expiry date	Public sector agency Portfolio Department
Authority to commence bargaining communicated to public sector agency	6 months prior to nominal expiry date	IRV
Bargaining commences	6 months prior to the nominal expiry date	Public sector agency

Authority to commence bargaining

Prior to commencing bargaining, public sector agencies are required to seek approval from Government, and for those bargaining under the primary pathway, submit their proposed Best Practice Employment Commitment for approval.

To obtain the authority to bargain the public sector agency is required to provide information about their workforce demographics, bargaining history and proposed content of a new agreement (please contact your Portfolio Department or IRV for information on the form of the approval submission). Preliminary costings may be required.

The level of detail required in completing the template will reflect the public sector agency's size, wage base and be commensurate with the financial and industrial implications of the proposed agreement.

Eligible public sector agencies seeking authority to commence bargaining under the secondary pathway must provide written confirmation to Government of in-principle support of any public sector union(s) to be covered by the proposed agreement for this course of action.

Authority to commence bargaining - Key responsibilities

Responsibility	Action owner
Preparation of submission to Government (Major Agreements)	Portfolio Department
Completion of Template (Non-major Agreements)	Public sector agency Portfolio Department
Direct Engagement with public sector agency (if needed)	Portfolio Department Public sector agency IRV and DTF (as required)
Advice on Enterprise Bargaining Framework or application of Industrial Relations Policy	IRV
Advice on proposed measures to address operational/strategic priorities or the Public Sector Priorities	IRV DTF
Advice on Wages Policy, cost modelling or financial sustainability issues	DTF
Authority, oversight and approval	Government, with appropriate authorisations for some Non-major Agreements

During bargaining

Public sector agencies must keep their Portfolio Department, IRV and DTF informed about the progress of bargaining, particularly where industrial or financial risks emerge. In some cases, this may require further consideration by Government.

Public sector agencies cannot make offers during bargaining outside approved parameters without the offer (and expected financial implications) being approved at the appropriate level of Government for the agreement concerned.

All offers should be made on an in-principle basis, with the public sector agency communicating that the offer is subject to government approval and may be subject to change to ensure compliance with Wages Policy, the Industrial Relations Policy, the Fair Work Act or other relevant legislation.

Public sector agencies pursuing the secondary pathway should ensure bargaining is undertaken in accordance with the Fair Work Act good faith bargaining requirements, in a timely and efficient manner.

Approval requirements

All proposed enterprise agreements require the approval of Government prior to the commencement of any of the formal approval requirements outlined in the Fair Work Act.

To be approved by Government, a proposed enterprise agreement (whether a Major Agreement or Non-major Agreement) must meet all the conditions specified in Wages Policy. In addition:

- The public sector agency must verify that it has conducted a comparison of the terms of the Agreement with the relevant Award, and that the Agreement provides that each employee will be Better Off Overall than the relevant Award, within the meaning of the Fair Work Act;
- Other requirements from the Public Sector Industrial Relations Policy must be met.

The process for seeking Government approval of final agreements under the Framework differs for Major Agreements and Non-major Agreements. Approval of Major Agreements at a high level of Government is required.

Eligible public sector agencies must submit proposed enterprise agreements negotiated under the secondary pathway to Government for approval no later than two months prior to the nominal expiry of the current agreement. A fast track approval process will apply for these agreements. Where Government approval is obtained, agencies must comply with Fair Work Act requirements and seek approval of their agreement from the Fair Work Commission.

Final approval - Key responsibilities

Responsibility	Action owner
Submission preparation	Portfolio Department Public sector agency
Direct engagement with public sector agency (if needed)	Portfolio Department Public sector agency IRV & DTF (as required)
Advice on Enterprise Bargaining Framework or application of Industrial Relations Policy	IRV
Advice on Wages Policy, cost modelling or financial sustainability issues	DTF
Advice on proposed measures to address operational/ strategic priorities or the Public Sector Priorities	IRV DTF
Authority, oversight and approval (Major Agreements)	Government, with appropriate authorisations for some Non-major Agreements

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 2, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
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Wages Policy

The new Wages Policy applies from 1 January 2022. It revokes and replaces the previous Wages Policy. The new Wages Policy applies to bargaining for and making enterprise agreements which will replace:

- current enterprise agreements that reach nominal expiry date on 1 January 2022 or later, and
- current enterprise agreements that reach their nominal expiry date before 1 January 2022 where the parties have not reached agreement on a replacement enterprise agreement consistent with the Transitional Provisions at the end of this policy.

Primary Pathway

The primary pathway for agreement-making under Government's new Wages Policy has three pillars.

Pillar 1: Wages

Increases in wages and conditions will be capped at a rate of growth of 1.5 per cent per annum over the life of the agreement. In practice this means employee wages and conditions will be allowed to grow at this rate.

Pillar 2: Best Practice Employment Commitment

All public sector agencies will be required to make a Best Practice Employment Commitment which will outline measures to operationalise elements of the Government's Public Sector Priorities that reflect good practice within Government and can be implemented operationally or without significant costs.

Pillar 3: Additional strategic changes

Additional changes to allowances and other conditions (not general wages) will be capped at 0.5 per cent per annum of the salary base and will only be allowed if Government agrees that the changes will address key operational or strategic priorities for the agency, and/or one or more of the Public Sector Priorities.

In addition, Wages Policy requires that:

- all agreements must be fiscally sustainable and fully funded from capped indexation, capped revenue and/or appropriate cost offsets
- revenue generating entities can only use revenue capped at the rate of indexation to fund agreement outcomes
- enterprise agreements must not contain retrospective payments. This means that the first pay increase in any agreement must be forward looking and cannot be prior to the date the agreement has been submitted to the Government for approval
- legislated increases to the superannuation guarantee rate are excluded from the cap on wages and conditions

- public sector agencies should seek to achieve four-year agreements subject to operational considerations
- public sector agencies must seek pre-approval from Government to make any offer above the capped growth rate

Further information about Wages Policy Pillars 2 and 3 is outlined below.

Best Practice Employment Commitment

Several of the Government's key public sector reforms such as improving gender equity, ensuring secure employment and access to flexible working arrangements can be enhanced through changes to operational practices and policies.

Public sector agencies are required to identify and action reforms around public sector employment through a Best Practice Employment Commitment (BPEC) to be finalised alongside the enterprise agreement.

The BPEC must include measures for implementing best practice employment practices, to operationalise elements of the Government's Public Sector Priorities that reflect good practice elsewhere within Government and can be implemented operationally or without significant costs. These measures will need to be tailored to the public sector agency's circumstances.

The measures may include matters such as:

- a commitment to regular gender auditing, and reporting and efforts to identify and address gender pay gaps in the public sector organisation
- facilitating access to flexible working arrangements
- secure employment initiatives to reduce inappropriate use of casual, fixed term and labour hire, including workforce planning and preparations
- skills and capability development to develop a mobile and agile public sector workforce
- supporting the continued development of whole of government policies by considering further measures to address anti-bullying, gender equity and diversity, mental health, occupational health and safety, and family violence

The BPEC is not expected to contain significant cost items. These items would instead be considered under Pillar 3.

Public sector agencies should work with public sector unions and employees to develop their BPEC as bargaining progresses and to identify the actions to progress these matters.

Additional strategic changes to address key operational reforms or the Public Sector Priorities

Operational or strategic priorities will differ across public sector agencies depending on the challenges they face. Higher cost outcomes linked to a key operational reform or the Public Sector Priorities could include, for example:

- addressing high instances of unscheduled absences on weekends and nights by increasing penalty rates for these shifts or amending rostering practices
- amending opening hours to provide incentives to employees who work expanded hours to ensure services are available at times convenient to the community
- removing or reducing restrictions which impede the efficient allocation of resources
- addressing identified skill or capability gaps and incentivising and facilitating employees' skill development through access to specified TAFE training
- specific measures to address gender inequity (for example, additional parental leave, payment of superannuation during periods of parental leave)
- targeted wage increases to a specific and identifiable cohort of workforce who have historically been underpaid because of gender (for example, through reclassification of a particular feminised role)

Secondary Pathway

The Government has designed Wages Policy to encourage public sector agencies to take a more strategic approach to enterprise bargaining. However, Government recognises that for various reasons, some bargaining parties may prefer to agree to a wage increase in a new enterprise agreement without disrupting any terms and conditions agreed during their previous bargaining round.

Accordingly, a limited secondary pathway is available under Wages Policy for public sector agencies and unions who agree in principle ahead of bargaining that they seek to reach agreement expeditiously on this basis.

The secondary pathway is available only to public sector agencies whose current enterprise agreement reaches its nominal expiry date between 1 January 2022 and 31 December 2022.

The secondary pathway permits agreements to be made only on the following terms:

- one annual wage and allowance increase capped at 2 per cent (half-yearly increases up to the capped rate also permissible, for example 2 x 1 per cent increases in six-monthly instalments)
- a nominal expiry date 12 months from the nominal expiry date of the current agreement
- all other terms and conditions as contained in the current agreement, except for where a change is required under the Industrial Relations Policy, to further mutually agreed whole-of-Government initiatives, to resolve legal issues, or minor changes to improve the clarity of the Agreement

In addition:

- public sector agencies must comply with *Fair Work Act 2009* (Fair Work Act) good faith bargaining requirements
- all agreements must be fiscally sustainable and fully funded from capped indexation, capped revenue and/or appropriate cost offsets
- public sector agencies must meet the timelines prescribed in the Enterprise Bargaining Framework
- public sector agencies using this pathway may also produce a BPEC where agreed with employees and relevant unions, or otherwise are expected to comply with the Government's policy requirements

Transitional Arrangements

Parties to enterprise agreements that have or will nominally expire before 1 January 2022 have the opportunity to finalise new agreements under the current wages policy, before the new Wages Policy comes into effect on that date.

To finalise new agreements under the current wages policy, ensuring adequate time for government approvals, parties and employers must meet the following timeframes:

Where bargaining has already been approved	<p>Government approval of final agreement required by 31 December 2021.</p> <p>To meet this timeframe, in-principle agreement must be reached, and final agreement submitted to government for approval by no later than 30 September 2021.</p> <p>Employers are required to inform unions/bargaining representatives/employees that any offer made under current wages policy requires agreement to be reached within these timeframes.</p>
Where bargaining is yet to be approved	<p>Approval to bargain request must be received by 1 August 2021.</p> <p>In-principle agreement that Industrial Relations Victoria (IRV) and the Department of Treasury and Finance (DTF) consider will be capable of approval by Government must be reached by 1 December 2021. Government approval for these agreements may occur after 1 January 2022.</p> <p>Employers are required to inform unions/bargaining representatives/employees that any offer made under current wages policy requires agreement to be reached within these timeframes.</p>

Enterprise Bargaining Framework

The Enterprise Bargaining Framework (Framework) describes the Government's approval arrangements which public sector agencies must meet before commencing bargaining, during bargaining and before seeking employee approval of final enterprise agreements.

The Framework applies equally where a public sector agency seeks to vary an existing enterprise agreement under the Fair Work Act.

Major and Non-major Agreements

The Framework places different bargaining and governance expectations on different types of public sector agencies relative to the size of their workforce, wages bill, and relative industrial or financial risk profile. The Framework prescribes two categories of enterprise agreement – Major Agreements and Non-major Agreements.

Major Agreements

Major Agreements include any enterprise agreement:

- with a large public sector workforce, with a salary base in excess of \$1 billion
- with significant industrial or financial risk
- of strategic or operational importance to Government

Major Agreements include those covering the public service, teachers, police, firefighters, paramedics and major public health sector agreements (including those covering nurses, doctors, allied health professionals, medical scientists and health and allied services, management and administrative employees) as well as other agreements as the circumstances dictate.

The Government will oversee and approve the strategy and negotiations for all Major Agreements.

Non-major Agreements

Non-major Agreements generally cover smaller components of the public sector workforce and carry fewer financial or industrial risks. Any enterprise agreement not classified as a Major Agreement will be treated as a Non-major Agreement for the purpose of this Framework.

When negotiating enterprise agreements, public sector agencies must adhere to the processes and requirements outlined in the Framework applicable to the enterprise agreement to be negotiated.

Where a public sector agency or Portfolio Department is unsure whether an enterprise agreement should be classified as a Major Agreement or Non-major Agreement they should contact IRV.

Early engagement

Negotiations between public sector agencies and bargaining representatives should commence six months prior to the nominal expiry date of the current agreement.

To ensure public sector agencies are in a position to commence bargaining in a timely fashion and without unnecessary delays, internal preparations for bargaining should commence no later than 12 months in advance of the nominal expiry date of the current agreement. This approach will ensure bargaining strategies and proposals for change can be developed with sufficient time to allow for necessary Government oversight prior to the commencement of bargaining.

Table 1: Indicative bargaining preparation timeline

Task	Approximate timeframe	Action owner
Initial discussion between public sector agency, Portfolio Department, IRV and the DTF	12 months prior to nominal expiry date	Public sector agency Portfolio Department IRV DTF
Draft bargaining approval documents to be submitted to Portfolio Department for approval	9 months prior to nominal expiry date	Public sector agency Portfolio Department
Review proposed bargaining approval documents	8 months prior to nominal expiry date	IRV DTF
Bargaining approval documents submitted to Government for approval	7–8 months prior to nominal expiry date	Public sector agency Portfolio Department
Authority to commence bargaining communicated to public sector agency	6 months prior to nominal expiry date	IRV
Bargaining commences	6 months prior to nominal expiry date	Public sector agency

Authority to commence bargaining

Prior to commencing bargaining, public sector agencies are required to seek approval from Government and, and for those bargaining under the primary pathway, submit their proposed Best Practice Employment Commitment for approval.

To obtain the authority to bargain the public sector agency is required to provide information about their workforce demographics, bargaining history and proposed content of a new agreement (please contact your Portfolio Department or IRV for information on the form of the approval submission). Preliminary costings may be required.

The level of detail required in completing the template will reflect the public sector agency's size, wage base and be commensurate with the financial and industrial implications of the proposed agreement.

Eligible public sector agencies seeking authority to commence bargaining under the secondary pathway must provide written confirmation to Government of in-principle support of any public sector union(s) to be covered by the proposed agreement for this course of action.

Table 2: Authority to commence bargaining – Key responsibilities

Responsibility	Action owner
Preparation of submission to Government (Major Agreements)	Portfolio Department
Completion of Template (Non-major Agreements)	Public sector agency Portfolio Department
Direct Engagement with public sector agency (if needed)	Portfolio Department Public sector agency IRV and DTF (as required)
Advice on Enterprise Bargaining Framework or application of Industrial Relations Policy	IRV
Advice on proposed measures to address operational/strategic priorities or the Public Sector Priorities	DTF
Advice on Wages Policy, cost modelling or financial sustainability issues	DTF
Authority, oversight and approval	Government, with appropriate authorisations for some Non-major Agreements

During bargaining

Public sector agencies must keep their Portfolio Department, IRV and DTF informed about the progress of bargaining, particularly where industrial or financial risks emerge. In some cases, this may require further consideration by Government.

Public sector agencies cannot make offers during bargaining outside approved parameters without the offer (and expected financial implications) being approved at the appropriate level of Government for the agreement concerned.

All offers should be made on an in-principle basis, with the public sector agency communicating that the offer is subject to government approval and may be subject to change to ensure compliance with Wages Policy, the Industrial Relations Policy, the Fair Work Act or other relevant legislation.

Public sector agencies pursuing the secondary pathway should ensure bargaining is undertaken in accordance with the Fair Work Act good faith bargaining requirements, in a timely and efficient manner.

Approval requirements

All proposed enterprise agreements require the approval of Government prior to the commencement of any of the formal approval requirements outlined in the Fair Work Act.

To be approved by Government, a proposed enterprise agreement (whether a Major Agreement or Non-major Agreement) must meet all the conditions specified in Wages Policy. In addition:

- the public sector agency must verify that it has conducted a comparison of the terms of the Agreement with the relevant Award, and that the Agreement provides that each employee will be Better Off Overall than the relevant Award, within the meaning of the Fair Work Act
- other requirements from the Public Sector Industrial Relations Policy must be met

The process for seeking Government approval of final agreements under the Framework differs for Major Agreements and Non-major Agreements. Approval of Major Agreements at a high level of Government is required.

Eligible public sector agencies must submit proposed enterprise agreements negotiated under the secondary pathway to Government for approval no later than two months prior to the nominal expiry of the current agreement. A fast track approval process will apply for these agreements. Where Government approval is obtained, agencies must comply with Fair Work Act requirements and seek approval of their agreement from the Fair Work Commission.

Table 3: Final approval - Key responsibilities

Responsibility	Action owner
Submission preparation	Portfolio Department Public sector agency
Direct engagement with public sector agency (if needed)	Portfolio Department Public sector agency IRV and DTF (as required)
Advice on Enterprise Bargaining Framework or application of Industrial Relations Policy	IRV
Advice on Wages Policy, cost modelling or financial sustainability issues	DTF
Advice on proposed measures to address operational/strategic priorities or the Public Sector Priorities	IRV DTF
Authority, oversight and approval (Major Agreements)	Government, with appropriate authorisations for some Non-major Agreements

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 3, TO THE WITNESS STATEMENT
OF JO CRABTREE**

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Wages Policy and the Enterprise Bargaining Framework

For Victorian Government departments and agencies

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Primary pathway

The primary pathway for agreement-making under the Government's Wages Policy has three pillars. While there is no cap on overall agreement outcomes, Pillar 1 increases to wages and conditions cannot exceed the funded allocation and Pillar 3 improvements must be funded from appropriate cash offsets and/or a government approved funding strategy.

Pillar 1: Wages

Increases in wages and conditions will be funded at a rate of growth of 3.0 per cent per annum over the life of the agreement. In practice this means employee wages and conditions will be allowed to grow at this rate.

In addition to annual wage increases, a separate lump sum, cash payment will be available equivalent to an additional 0.5 per cent of overall agreement costs which for the purposes of this policy means a per annum amount calculated on wages and wage-related conditions.

When approved to commence bargaining, agencies will be advised what the 0.5 per cent equates to as an annual lump sum payment, over the life of the agreement. The amount will vary depending upon the length of the agreement and the phasing of the lump sum payment.

Pillar 2: Best Practice Employment Commitment

Public sector agencies may make a Best Practice Employment Commitment (BPEC) which outlines measures to operationalise elements of the Government's Public Sector Priorities that reflect good practice within Government and can be implemented operationally or without significant costs.

Pillar 3: Additional strategic changes

Additional changes to allowances and other conditions (not general wages) will only be allowed if Government agrees that the changes will address key operational or strategic priorities for the agency, and/or one or more of the Public Sector Priorities and provided the associated costs are funded through appropriate cash offsets or a government approved funding strategy.

In addition, Wages Policy requires that:

- all agreements must be fiscally sustainable and funded from indexation, revenue, appropriate cost offsets or a Government approved funding strategy
- revenue generating entities can only use revenue at the rate of growth of wages and conditions as stipulated under Wages Policy Pillar 1, and/or appropriate cash offsets in the case of Pillar 3 changes, to fund agreement outcomes

- enterprise agreements must not contain retrospective payments. This means that the first pay increase in any agreement must be forward looking and cannot be prior to the date the agreement has been submitted to the portfolio department for approval
- legislated increases to the superannuation guarantee rate are excluded from the increases in wages and conditions under the Wages Policy
- public sector agencies should seek to achieve four-year agreements subject to operational considerations.

Further information about Wages Policy Pillars 2 and 3 and the Public Sector Priorities is outlined below.

Best Practice Employment Commitment

Several of the Government's key public sector reforms such as improving gender equity, ensuring secure employment and access to flexible working arrangements can be enhanced through changes to operational practices and policies.

Public sector agencies may identify and action reforms around public sector employment through a BPEC to be finalised alongside the enterprise agreement.

The BPEC includes measures for implementing best practice employment practices, to operationalise elements of the Government's Public Sector Priorities that reflect good practice elsewhere within Government and can be implemented operationally or without significant costs.

These measures should be tailored to the public sector agency's circumstances.

The measures may include matters such as:

- a commitment to regular gender auditing, and reporting and efforts to identify and address gender pay gaps in the public sector organisation
- facilitating access to flexible working arrangements
- secure employment initiatives to reduce inappropriate use of casual, fixed term and labour hire, including workforce planning and preparations
- skills and capability development to develop a mobile and agile public sector workforce
- supporting the continued development of whole of government policies by considering further measures to address anti-bullying, gender equity and diversity, mental health, occupational health and safety, and family violence.

The BPEC is not expected to contain significant cost items. These items would instead be considered under Pillar 3.

Public sector agencies should work with public sector unions and employees to develop their BPEC as bargaining progresses and to identify the actions to progress these matters.

Additional strategic changes to address key operational reforms or the Public Sector Priorities

Operational or strategic priorities will differ across public sector agencies depending on the challenges they face. Higher cost outcomes linked to a key operational reform, or the Public Sector Priorities could include, for example:

- addressing high instances of unscheduled absences on weekends and nights by increasing penalty rates for these shifts or amending rostering practices
- amending opening hours to provide incentives to employees who work expanded hours to ensure services are available at times convenient to the community
- removing or reducing restrictions which impede the efficient allocation of resources
- addressing identified skill or capability gaps and incentivising and facilitating employees' skill development through access to specified TAFE training
- specific measures to address gender inequity (for example, additional parental leave, payment of superannuation during periods of parental leave)
- targeted wage increases to a specific and identifiable cohort of workforce who have historically been underpaid because of gender (for example, through reclassification of a particular feminised role)
- measures to address specific workforce challenges (for example, workforce attraction and retention payments).

The Public Sector Priorities are as follows:

Deliver exceptional services and value for Victorians	A professional and responsive public sector	Government as a fair and best practice employer
<ul style="list-style-type: none"> • deliver service efficiencies • financial sustainability • prioritise resources for the Government's social agenda 	<ul style="list-style-type: none"> • people-centric • increase workforce mobility • build skills and capability • responsive to the community • trustworthy and committed 	<ul style="list-style-type: none"> • increase diversity • promote gender equity • ensure access to flexible working arrangements • maintain preference for secure employment • reduce labour hire

A range of tools are available to deliver these priorities, including legislation, policy and operational practice. Enterprise bargaining is one important tool.

The Government's Wages Policy has been set to encourage public sector agencies to reflect these Public Sector Priorities in their operational practice.

Secondary pathway

Government recognises that for various reasons, some bargaining parties may prefer to agree to a wage increase in a new enterprise agreement without disrupting any terms and conditions agreed during their previous bargaining round.

Accordingly, a limited secondary pathway is available under Wages Policy for public sector agencies and unions who agree in principle ahead of bargaining that they seek to reach agreement expeditiously on this basis.

The secondary pathway is available only to public sector agencies whose current enterprise agreement reaches its nominal expiry date before 1 January 2024.

The secondary pathway permits agreements to be made only on the following terms:

- wage and allowance increase funded at a rate of growth of 3.5 per cent per year, pro-rated
- a nominal expiry date of between 12 to 18 months from the nominal expiry date of the current agreement
- all other terms and conditions as contained in the current agreement, except for where a change is required under the Public Sector Industrial Relations Policies (Industrial Relations Policies), to further mutually agreed whole-of-Government initiatives, to resolve legal issues, or minor changes to improve the clarity of the Agreement.

In addition:

- public sector agencies must comply with *Fair Work Act 2009* (Fair Work Act) good faith bargaining requirements
- all agreements must be fiscally sustainable and fully funded from indexation, revenue, appropriate cost offsets and/or Government approved funding strategy
- public sector agencies must meet the timelines prescribed in the Enterprise Bargaining Framework
- public sector agencies using this pathway may also produce a BPEC where agreed with employees and relevant unions, or otherwise are expected to comply with the Government's policy requirements.

Transitional arrangements

Parties to enterprise agreements that have not finalised new agreements under previous Wages Policy are eligible to bargain under the new Wages Policy parameters. All parties currently bargaining will be required to seek Government approval before any offer is made under the new Wages Policy parameters.

Enterprise Bargaining Framework

The Government's Wages Policy establishes the parameters within which public sector employers are required to bargain and make enterprise agreements. The Government ensures public sector bargaining and agreement making occurs within Wages Policy through the Enterprise Bargaining Framework (Framework) which sets out the approval requirements that public sector agencies must meet before commencing bargaining, during bargaining and before seeking employee approval of final enterprise agreements.

Industrial Relations Victoria (IRV) administers the Framework in conjunction with the Department of Treasury and Finance (DTF), which is responsible for ensuring public sector enterprise agreements are fiscally sustainable and comply with Wages Policy. The Framework applies to all stages of public sector enterprise bargaining and agreement making, including:

- before bargaining, where a public sector agency must obtain government approval to commence bargaining
- during bargaining, where a public sector agency must obtain government approval of proposed agreement costings and funding strategy before reaching in-principle agreement
- where a final proposed enterprise agreement is settled between the parties, a public sector agency must obtain government approval of the proposed enterprise agreement, costings and funding strategy before commencing the Fair Work Act pre-approval steps
- where a public sector agency seeks to vary an existing enterprise agreement under the Fair Work Act
- where there is a proposal to move from bargaining for a multi-employer enterprise agreement to bargaining for a single-interest enterprise agreement, or to alter the coverage of an existing multi-employer or single-interest enterprise agreement

- where there is a proposal to move from bargaining for single enterprise agreements to bargaining for a new multi-employer or single-interest enterprise agreement.

Major and non-major agreements

The Government will approve management logs and the commencement of bargaining, settlement position costings and final agreements and costings for all public sector enterprise agreements, noting the Framework places different governance expectations on different types of public sector agencies relative to the size of their workforce, wages bill, and relative industrial or financial risk profile. It categorises enterprise agreements as Major Agreements and Non-major Agreements.

Major Agreements include any enterprise agreement:

- with a large public sector workforce, with a salary base in excess of \$1 billion
- with significant industrial or financial risk
- of strategic or operational importance to Government.

Major Agreements include those covering the public service, teachers, police, firefighters, paramedics and major public health sector agreements (including those covering nurses, doctors, allied health professionals, medical scientists, health and allied services, and mental health practitioners) as well as other agreements as the circumstances dictate.

The Government will oversee and approve the strategy and negotiations for all Major Agreements.


Non-major Agreements generally cover smaller components of the public sector workforce and carry fewer financial or industrial risks. Any enterprise agreement not classified as a Major Agreement will be treated as a Non-major Agreement for the purpose of this Framework.

When preparing to bargain, during bargaining and once a final agreement is reached between the parties, public sector agencies and departments must adhere to the processes and requirements outlined in the Framework applicable to the enterprise agreement to be negotiated.

Where a public sector agency or portfolio department is unsure whether an enterprise agreement should be classified as a Major Agreement or Non-major Agreement, they should contact IRV.

Preparing to bargain

Negotiations between public sector agencies and bargaining representatives should commence at least six months prior to the nominal expiry date of the current agreement.



To ensure public sector agencies are in a position to commence bargaining in a timely fashion and without unnecessary delays, internal preparations for bargaining should commence no later than 12 months in advance of the nominal expiry date of the current agreement. This approach will ensure bargaining strategies and proposals for change can be developed with sufficient time to allow for necessary Government oversight and decision prior to the commencement of bargaining.

IRV will provide public sector agencies preparing to bargain with template documents that outline the information that will need to be provided when seeking Government approval to commence bargaining, including information about workforce demographics, FTE, proposed agreement coverage, and a list of all the claims the agency proposes to make in bargaining.

DTF will liaise with portfolio departments and will provide costing templates to assist with the preparation of preliminary costings if required.

Authority to commence bargaining

Prior to commencing bargaining, public sector agencies are required to seek approval from Government and, where applicable, submit their proposed BPEC for approval.

To obtain the authority to bargain, the public sector agency is required to provide information about their workforce demographics, bargaining history and proposed content of a new agreement. Preliminary costings of the proposed conditions, accompanied by a proposed funding strategy, will be required.

The level of detail required in completing the template will reflect the public sector agency's size, wage base and be commensurate with the financial and industrial implications of the proposed agreement.


Eligible public sector agencies seeking authority to commence bargaining under the secondary pathway must provide written confirmation to Government of in-principle support of any public sector union(s) to be covered by the proposed agreement for this course of action.

During bargaining

Public sector agencies must keep their portfolio department, IRV and DTF informed about the progress of bargaining, particularly where industrial or financial risks emerge. In some cases, this may require further consideration by Government.

Public sector agencies cannot make offers during bargaining outside approved parameters without the offer (and expected financial implications) being approved at the appropriate level of Government for the agreement concerned.

All offers should be made on an in-principle basis, with the public sector agency communicating that the offer is subject to government approval and may be subject to change to ensure compliance with Wages Policy, the Industrial Relations Policies, the Fair Work Act or other relevant legislation.



Public sector agencies pursuing the secondary pathway should ensure bargaining is undertaken in accordance with the Fair Work Act good faith bargaining requirements, in a timely and efficient manner.

Approval requirements

All proposed enterprise agreements require the approval of Government prior to the commencement of any of the formal approval requirements outlined in the Fair Work Act.

To be approved by Government, a proposed enterprise agreement (whether a Major Agreement or Non-major Agreement) must meet all the conditions specified in Wages Policy. In addition:

- the public sector agency must verify that it has conducted a comparison of the terms of the Agreement with the relevant Award, and that the Agreement provides that each employee will be Better Off Overall than the relevant Award, within the meaning of the Fair Work Act
- other requirements from the Industrial Relations Policies must be met

The process for seeking Government approval of final agreements under the Framework differs for Major Agreements and Non-major Agreements. Approval of Major Agreements at a high level of Government is required.

Eligible public sector agencies must submit proposed enterprise agreements negotiated under the secondary pathway to Government for approval as soon as possible once bargaining has commenced. A fast track approval process will apply for these agreements. Where Government approval is obtained, agencies must comply with Fair Work Act requirements and seek approval of their agreement from the Fair Work Commission.

FAIR WORK COMMISSION

Matter No.: B2023/771
Applicant: United Firefighters' Union of Australia
Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 4, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by: MinterEllison, solicitors for the Respondent	Telephone: (03) 8608 2163 / (03) 8608 2047
Address for Service: Level 20, Collins Arch, 447 Collins Street, Melbourne VIC 3000	Fax: - Email: tom.molan@minterellison.com / david.woodman@minterellison.com

Form F11 – Application for the Commission to deal with a bargaining dispute

Fair Work Act 2009, s. 240

This is an application to the Fair Work Commission to deal with a bargaining dispute in accordance with Part 2-4 of the [Fair Work Act 2009](#).

The Applicant

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	410 Brunswick Street		
Suburb	Fitzroy		
State or territory	VIC	Postcode	3065
Phone number	(03) 9419 8811	Fax number	(03) 9419 9258
Email address			

If the Applicant is a company or organisation please also provide the following details

Legal name of business	United Firefighters' Union of Australia, Victoria Branch
Trading name of business	UFU
ABN/ACN	74 030 569 265
Contact person	LAURA CAMPANARO

Do you need an interpreter?

Yes – Specify language

No

Do you require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes – Please specify the assistance required

No

Do you have a representative?

Yes – Provide representative's details below

No

Your representative

Name of person	Tonia Sakkas		
Firm, organisation, company	Davies Lawyers		
Postal address	Suite 1/249 Hampton Street		
Suburb	Hampton		
State or territory	VIC	Postcode	3188
Phone number	(03) 9597 0921	Fax number	
Email address	tonia@davieslawyers.com.au		

Is your representative a lawyer or paid agent?

Yes

No

The Respondent

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	456 Albert Street		
Suburb	East Melbourne		
State or territory	VIC	Postcode	3002
Phone number	(03) 9662 2311	Fax number	(03) 9665 4244
Email address	Daniel.Sleeman@frv.vic.gov.au		

If the respondent is a company or organisation please also provide the following details

Legal name of business	Fire Rescue Victoria
Trading name of business	FRV
ABN/ACN	28 598 558 561
Contact person	Daniel Sleeman

Please attach additional pages for any further bargaining representatives

1. Preliminary

1.1 What industry is the employer in?

Firefighting

1.2 Is the proposed enterprise agreement a single-enterprise agreement?

Yes – go to Q2

No

1.3 Is the proposed enterprise agreement a multi-enterprise agreement to which a low paid authorisation is in operation?

Yes – go to Q2

No

1.4 If you have answered No to questions 1.2 and 1.3, have all of the bargaining representatives agreed to the making of this application?

Yes

No

2. About the bargaining dispute

2.1 Describe the course of bargaining to date, including when bargaining commenced.

1. On 1 July 2020, Fire Rescue Victoria (**FRV**) commenced operation. On this date, all MFB staff transferred to FRV as did operational and other specified staff of the CFA.
2. The *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020 (FRV Agreement)* is a transferrable instrument, varied by the Commission pursuant to s 320(2) of the FW Act on 26 August 2020.
3. In accordance with the FRV Agreement:
 - a. Division A applies to former MFB operational employees and new employees of FRV employed to perform work that is or may be performed by an employee engaged in a classification or occupation referred to in Division A; and
 - b. Division B applies to former CFA operational employees and new employees of FRV employed to perform work that is or may be performed by an employee engaged in a classification or occupation referred to in Division B.
4. The nominal expiry date of Division A was 1 July 2019.
5. The nominal expiry date of Division B was 30 September 2013.
6. Clause 5 of Division A and Clause 5 of Division B state:

RENEGOTIATION

The employer shall commence negotiations on a new agreement nine months prior to the nominal expiry date of this agreement.

Negotiations will commence on a new agreement of the same scope as this Agreement. Any variations to the scope of bargaining or the proposed agreement will only be by agreement.

7. The UFU is an employee organisation for the purpose of the FW Act. Members of the UFU will be covered by the proposed Operational Staff Agreement to replace the FRV Agreement.
8. After the commencement of the FRV Agreement (as varied), the UFU and FRV have met to discuss a proposed Operational Staff Agreement to replace the FRV Agreement. The parties conducted these meeting on 29 July 2020, 30 July 2020, 6 August 2020, 7 August 2020, 10 August 2020, 12 August 2020, 20 August 2020, 26 August 2020, 31 August 2020, , 17 September 2020, 22 September 2020, 25 September.
9. On 30 November 2020, the UFU presented to the FRV its log of claims in relation to a proposed Operational Staff Agreement.
10. The UFU log of claims included proposed amendments to clauses in the FRV Agreement on the basis that those amendments gave rise to efficiencies. This included proposed amendments to clauses pertaining to:
 - a. Special Rosters and Rest Periods at cl 139 of Division A and cl 151 of Division B to the FRV Agreement;
 - b. Change of Residence at 92.16 of Division B to the FRV Agreement; and
 - c. Emergency Response or Training Outside Metropolitan Fire District at cl 130 of Division A and Emergency Response or Training on Long Distance Deployments at cl 139 of Division B (together, the **UFU Efficiency Clauses**)
11. On 8 December 2020, FRV responded to the UFU's claims.
12. On 14 January 2021, the UFU met with some members of the FRV Executive Leadership Team to discuss the proposed Operational Staff Agreement.
13. On 29 July 2021, FRV informed the UFU that to bargain under the applicable wages policy, FRV needed to make a request to the Victorian Government to commence bargaining by 1 August 2021. FRV informed the UFU that it would make its submission with respect to a new enterprise agreement within this timeframe to ensure that when the parties were ready to commence negotiations for the operations staff agreement, they would be in a position to do so having already obtained Government approval.
14. To date, FRV have failed to:
 - a. provide costings of the monetary value for efficiencies arising from the UFU Efficiency Clauses; and/or
 - b. formalise the bargaining process by taking the necessary action to obtain Victorian Government approval.

2.2 What are the main matters in dispute?

Using numbered paragraphs, describe the matters in dispute. Attach additional pages if necessary.

<p>1. The matters in dispute are the failure by FRV to:</p> <ul style="list-style-type: none">a. provide costings of the monetary value for efficiencies arising from the UFU Efficiency Clauses; and/orb. formalise the bargaining process by taking the necessary action to obtain Victorian Government approval. <p>2. As a result of the matters identified in (1) above, the parties are in dispute, and are unable to resolve the dispute without the involvement of the Commission.</p>

3. Other proceedings before the Commission

3.1 List the Commission matter number of any proceedings that have already been before the Commission in relation to the present bargaining.

N/A

Signature

Signature	
Name	Tonia Sakkas, Davies Lawyers
Date	1 November 2021
Capacity/Position	Lawyers for the Applicant

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 5, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Telephone: (03) 8608 2163 / (03) 8608 2047

Address for Service:

Level 20, Collins Arch, 447 Collins
Street, Melbourne VIC 3000

Fax: -

Email: tom.molan@minterellison.com /
david.woodman@minterellison.com

Schedule 2.1—Notice of employee representational rights

(regulation 2.05)

Fair Work Act 2009, subsection 174(1A)

Fire Rescue Victoria (ABN 28 598 558 561) gives notice that it is bargaining in relation to an enterprise agreement (*Fire Rescue Victoria United Firefighters Union Operational Staff Agreement 2022*) which is proposed to cover employees that are currently covered by the Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020 and Fire Safety Officers inclusive of the following classifications and positions:

1. Recruit Firefighter;
2. Firefighter Level 1;
3. Firefighter Level 2;
4. Firefighter Level 3;
5. Qualified Firefighter;
6. Senior Firefighter;
7. Leading Firefighter;
8. Senior Leading Firefighter;
9. Station Officer;
10. Senior Station Officer;
11. Fire Services Communication Controller;
12. Senior Fire Services Communication Controller;
13. Commander;
14. Assistant Chief Fire Officer;
15. Instructor;
16. Senior Instructor;
17. Communications Technical Services Officer;
18. Protective Equipment Technician;
19. Senior Protective Equipment Technician;
20. PAD Operator;
21. PAD Supervisor;
22. Manager Community Safety;
23. Fire Safety Officer.

What is an enterprise agreement?

An enterprise agreement is an agreement between an employer and its employees that will be covered by the agreement that sets the wages and conditions of those employees for a period of up to 4 years. To come into operation, the agreement must be supported by a majority of the employees who cast a vote to approve the agreement and it must be approved by an independent authority, Fair Work Commission.

If you are an employee who would be covered by the proposed agreement:

You have the right to appoint a bargaining representative to represent you in bargaining for the agreement or in a matter before Fair Work Commission about bargaining for the agreement.

You can do this by notifying the person in writing that you appoint that person as your bargaining representative. You can also appoint yourself as a bargaining representative. In either case you must give a copy of the appointment to your employer.

If you are a member of a union that is entitled to represent your industrial interests in relation to the work to be performed under the agreement, your union will be your bargaining representative for the

agreement unless you appoint another person as your representative or you revoke the union's status as your representative.

Questions?

If you have any questions about this notice or about enterprise bargaining, please speak to your employer or bargaining representative, or contact the Fair Work Ombudsman or the Fair Work Commission.

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 6, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Telephone: (03) 8608 2163 / (03) 8608 2047

Address for Service:

Level 20, Collins Arch, 447 Collins
Street, Melbourne VIC 3000

Fax: -

Email: tom.molan@minterellison.com /
david.woodman@minterellison.com

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

Form F11 – Application for the Commission to deal with a bargaining dispute

Fair Work Act 2009, s. 240

This is an application to the Fair Work Commission to deal with a bargaining dispute in accordance with Part 2-4 of the [Fair Work Act 2009](#).

FRV



These are the details of the person making the application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	PO Box 151		
Suburb	East Melbourne		
State or territory	Victoria	Postcode	3002
Phone number	(03) 9662 2311	Fax number	(03) 9665 4244
Email address	employeerelations@frv.vic.gov.au and jo.crabtree@frv.vic.gov.au		

If FRV is a company or organisation please also provide the following details

Legal name of business	Fire Rescue Victoria
Trading name of business	
ABN/ACN	28 598 558 561
Contact person	Jo Crabtree

Yes – Specify language

No

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

Do you require any special assistance at the hearing or conference (e.g. a hearing loop)?

Yes – Please specify the assistance required

No

Do you have a representative?



A representative is a person or organisation who is representing you. This might be a lawyer or paid agent, a union or employer organisation, or a family member or friend. There is no requirement to have a representative.

Yes – Provide representative’s details below

No

Your representative



These are the details of the person or organisation who is representing you (if any).

Name of person	David Catanese & Melissa Small		
Firm, organisation, company	Hall & Wilcox		
Postal address	Level 11, Rialto South Tower, 525 Collins Street		
Suburb	Melbourne		
State or territory	Victoria	Postcode	3000
Phone number	0427 659 374	Fax number	
Email address	David.Catanese@hallandwilcox.com.au ; Melissa.Small@hallandwilcox.com.au		

Is your representative a lawyer or paid agent?

Yes

No

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

The Respondent



These are the details of the bargaining representative(s) with whom you are in dispute and who will be responding to this application.

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)			
Surname			
Postal address	410 Brunswick Street		
Suburb	Fitzroy		
State or territory	Victoria	Postcode	3065
Phone number	(03) 9419 8811	Fax number	
Email address	org1@ufuvic.asn.au		

If the respondent is a company or organisation please also provide the following details

Legal name of business	United Firefighters Union of Australia - Victorian Branch
Trading name of business	
ABN/ACN	74 030 569 265
Contact person	Laura Campanaro

Please attach additional pages for any further bargaining representatives

1. Preliminary

1.1 What industry is the employer in?

Firefighting

1.2 Is the proposed enterprise agreement a single-enterprise agreement?

Yes – go to Q2

No

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

1.3 Is the proposed enterprise agreement a multi-enterprise agreement to which a low paid authorisation is in operation?

Yes – go to Q2

No

1.4 If you have answered No to questions 1.2 and 1.3, have all of the bargaining representatives agreed to the making of this application?

Yes

No

2. About the bargaining dispute

2.1 Describe the course of bargaining to date, including when bargaining commenced.

1. Formal bargaining for the enterprise agreement (**New Agreement**) to replace the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020 (FRV Interim Agreement)* commenced on 26 April 2022, via a formal meeting between FRV and UFU and nominated employee bargaining representatives.

Discussions between the Victorian Government and UFU prior to the establishment of FRV

2. In 2019, the Victorian Government approved an industrial relations strategy (**Approved Strategy**) to commence dialogue with the UFU.
3. Discussions between the Victorian Government and the UFU commenced following the approval of the Approved Strategy and continued until the establishment of FRV on 1 July 2020 at which point FRV as a new entity took over discussions.
4. During initial discussions, the Victorian Government implemented an administrative wage and allowance adjustment of 2.5% effective from 1 January 2020, to all operational staff of the then Country Fire Authority (**CFA**) and Metropolitan Fire and Emergency Services Board (**MFB**) (FRV assumed all functions of MFB and a number of CFA's functions from 1 July 2020). In early 2020, the Victorian Government and the UFU also agreed to continue the terms and conditions of employment of the former CFA and MFB operational staff whose employment was to be transferred to FRV and work towards a new enterprise agreement to commence as soon as practicable after the commencement of FRV, and the Victorian Government reaffirmed a previous commitment to no diminution in conditions other than by agreement.
5. The FRV Interim Agreement is a transferable instrument, varied by the Fair Work Commission pursuant to s 320(2) of the Fair Work Act, and commenced operation on 26 August 2020. The FRV Interim Agreement had the effect of continuing the terms and conditions of employment of the former CFA and MFB Operational staff post the establishment of FRV on 1 July 2020.

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

6. The FRV Interim Agreement has a nominal expiry date of 1 July 2019 for Division A, 30 September 2013 for Division B and 1 October 2010 for Managers Community Safety (MCS Employees).

Pre-bargaining dialogue between FRV and UFU

7. Following the establishment of FRV on 1 July 2020, FRV continued discussions with the UFU to replace the FRV Interim Agreement in line with the Approved Strategy.
8. FRV participated in discussions with the UFU in accordance with the principles of the then Government Wages Policy.
9. The UFU and FRV both intended that these preliminary discussions would lead to formal bargaining following approval by the Victorian Government.
10. The initial discussions between FRV and UFU took place over an extended period of time largely due to matters outside the parties' control, including:
 - a. the Covid-19 pandemic;
 - b. the activities necessary to ensure the successful establishment of FRV; and
 - c. the UFU's Branch Elections.
11. The Government implemented a further administrative wage and allowance adjustment of 2.5% effective 1 January 2021, to all FRV operational staff.

B2021/1057

12. On 1 November 2021, the UFU made an application to the Fair Work Commission to deal with a bargaining dispute (matter number **B2021/1057**).
13. In its F11 Application, the UFU alleged FRV had failed to:
 - a. provide costings of the monetary value for efficiencies arising from FRV's efficiency clauses; and
 - b. formalise the bargaining process by obtaining the Victorian Government's approval.
14. Following a number of conferences before the Fair Work Commission, the UFU discontinued the proceedings on 26 May 2022.

Formal bargaining between FRV, UFU and nominated employee bargaining representatives

15. Formal bargaining for the New Agreement commenced on 26 April 2022, via a formal meeting between FRV, UFU and nominated employee representatives. The bargaining was informed by the dialogue and materials that had preceded in B2021/1057.

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

16. As part of bargaining, FRV:

- a. attended weekly meetings with the UFU and nominated employee representatives up to and including 11 October 2022. There have been 25 bargaining meetings in total;
- b. Minutes of all bargaining meetings and related materials have been recorded and provided to all bargaining representatives following each bargaining meeting and approved at subsequent bargaining meetings.

17. FRV attended the bargaining meetings in good faith and in its view significant progress has been made, including a range of concessions agreed in-principle (subject to reaching an overall agreement) for which FRV's stance relied upon some of the efficiency measures referenced in B2021/1057.

18. The most recent bargaining meeting occurred on 11 October 2022. At that meeting the following was noted:

- a. the UFU would provide FRV with an updated draft enterprise agreement reflecting the amendments agreed in-principle, including unresolved matters, for FRV to consider and provide a response to (that draft was referred to as 'V12'); and
- b. FRV confirmed the in-principle agreement matters were subject to what occurs with respect to the 'efficiencies' the subject of B2021/1057 and the ongoing dispute in C2022/5683 and Government instruction to FRV.

19. Since the last bargaining meeting on 11 October 2022, FRV has adjourned the weekly bargaining meetings, pending the provision by the UFU of a copy of V12 (the UFU's updated draft enterprise agreement).

20. FRV had proposed the next bargaining meeting take place on 8 November 2022, however FRV will propose that this meeting be adjourned pending the UFU's provision of V12.

C2022/5683

21. On or around 15 August 2022, the UFU made an application for a '*Fire Services Efficiency Allowance*' to be recognized and paid under the FRV Interim Agreement (C2022/5683). In support of its application in C2022/5683, the UFU relies on the 'efficiencies' that had been introduced during bargaining in response to B2021/1057 (matter number **C2022/5683**).

22. Prior to C2022/5683, FRV and UFU had made significant progress during bargaining which is reflected in the materials recorded in the minutes of bargaining. That progress is imperiled by the dispute in C2022/5683.

23. FRV contends that the alleged efficiencies relied upon by the UFU in C2022/5683 could be properly viewed as relevant to operational cost savings and/or productivity outcomes. This being so, those matters fall to be assessed in and, subject to agreement, given effect through the bargaining for the New Agreement. C2022/5683 may result in FRV revising its existing

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

bargaining position with respect to matters currently supported in principle. This effect confirms that bargaining is the appropriate forum in which to consider and assess the alleged efficiencies.

B2022/1550

24. On 12 October 2022, the UFU filed a dispute with the Fair Work Commission (matter number **B2022/1550**). The UFU discontinued the matter on 14 October 2022.
25. In the UFU's F11 Application dated 12 October 2022 in B2022/1550, the UFU asserted that, to date, the parties have failed to agree to the following matters:
- a. Wages;
 - b. Allowances;
 - c. Registration Board;
 - d. Fire Safety Inspectors (cl 77.5 only)
 - e. Health insurance claim;
 - f. Public transport claim; and
 - g. FSO claim.

Protected industrial action - B2022/1439

26. On 21 October 2022, the UFU issued FRV's Commissioner a letter which gave notice of its intention to take various forms of protected industrial action, commencing on 27 October 2022.

Other matters

27. FRV has separately been notified that the Victorian Government entered a 'caretaker period' on 1 November 2022, prior to the State election on 26 November 2022.

2.2 What are the main matters in dispute?

Using numbered paragraphs, describe the matters in dispute. Attach additional pages if necessary.

28. Subject to the UFU providing FRV with a copy of the draft enterprise agreement V12, FRV considers that the Fair Work Commission's involvement is necessary to resolve, at least, the following disputed matters between the parties:
- a. Wages;

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

- b. Allowances;
- c. Minimum Staffing Numbers;
- d. Health insurance;
- e. Public Transport;
- f. Fire Safety Officers;
- g. Fire safety Inspectors;
- h. Wage and percentage relativities; and
- i. The proper characterisation of the alleged efficiencies currently the subject of C2022/5683 as well as the intersection between them and the kind and/or level of benefit provided for by the New Agreement.

3. Other proceedings before the Commission

3.1 List the Commission matter number of any proceedings that have already been before the Commission in relation to the present bargaining.

B2021/1057 - discontinued by the UFU on 26 May 2022.

C2022/5683 - proceedings on foot.

B2022/1550 - discontinued by the UFU on 14 October 2022.

B2022/1439 - proceeding completed.

C2022/2043 - a matter concerning the Fire Registration Board is the subject of separate proceedings by the UFU before the Fair Work Commission.

Signature



If you are completing this form electronically and you do not have an electronic signature you can attach, it is sufficient to type your name in the signature field. You must still complete all the fields below.

Signature	
Name	David Catanese, Partner, Hall & Wilcox
Date	4 November 2022

FAIR WORK COMMISSION

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Capacity/ Position	Solicitors for FRV
-----------------------	--------------------



Where this form is not being completed and signed by FRV, include the name of the person who is completing the form on their behalf in the **Capacity/Position** section.

PLEASE RETAIN A COPY OF THIS FORM FOR YOUR OWN RECORDS

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

Additional Respondents

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Andrew		
Surname	O'Connell		
Postal address			
Suburb			
State or territory		Postcode	
Phone number	0418 497 106	Fax number	
Email address	andrew.oconnell@frv.vic.gov.au		

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Darren		
Surname	McQuade		
Postal address			
Suburb			
State or territory		Postcode	
Phone number	0457 408 822	Fax number	
Email address	darren.mcquade@frv.vic.gov.au		

Title	<input checked="" type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Tim		
Surname	Wells		
Postal address			

FAIR WORK COMMISSION

Form F11 – Application for the Commission to deal with a bargaining dispute

Suburb			
State or territory		Postcode	
Phone number	0437 097 932	Fax number	
Email address	t.wells@cfa.vic.gov.au		

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	David		
Surname	Harris		
Postal address			
Suburb			
State or territory		Postcode	
Phone number	0417 133 240	Fax number	
Email address	harris.david.j@protonmail.com		

Title	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Other please specify:		
First name(s)	Stephen		
Surname	Walls		
Postal address			
Suburb			
State or territory		Postcode	
Phone number	0417 342 851	Fax number	
Email address	s.walls@cfa.vic.gov.au		

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 7, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Telephone: (03) 8608 2163 / (03) 8608 2047

Address for Service:

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Street, Melbourne VIC 3000

Fax: -

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david.woodman@minterellison.com

Without Prejudice – 29 November 2022

FRV Response to UFU revised Log V12, received by FRV 23 November 2022.

The following provides FRV's response to the above revised UFU Log on a without prejudice basis, noting that a range of substantive matters are subject to State Government instruction and approval.

As a high-level summary, the following identifies the matters that remain unresolved:

1. Wages and Allowances – all references to quantum for Wages and Allowances are subject to instruction and approval from Government having regard to Government Wages policy and the treatment of efficiencies.
2. Fire Safety Officers – FRV is opposed to the UFU claim to include these employees, presently covered by the Corporate EA, in the Operational Staff EA.
3. Fire Registration Board – this claim has not been dealt with in Bargaining and has been the subject of separate FWC proceedings.
4. Health Insurance – FRV rejects the UFU claim for FRV to wholly fund a health insurance scheme for employees.
5. Public Transport – FRV rejects the UFU claim for public transport passes.
6. Fire Safety Inspector – FRV rejects the UFU claim regarding accompanying personnel to be limited to Leading Fire Fighter or above.
7. Emergency Medical Response (EMR) – FRV maintains its proposed alternate words to those proposed by UFU to ensure existing personnel retain existing entitlement.
8. Allowance Schedules – FRV has proposed to incorporate all referenced allowances in the applicable Schedules which has not been agreed by UFU.
9. Wage and Classification relativities – FRV has proposed correcting the conflict in the current EA between percentage relativities and actual wage amounts. UFU has not agreed.
10. Minimum Staffing – FRV awaits instruction and approval from Government concerning funding of prospective staffing numbers.

FRV notes that in principle agreement has been reached on a substantial number of matters including conditional concessions it has offered during bargaining, including, but not limited to the following:

- Fire Investigation - extends allowance

- Parental leave - increase secondary caregiver by 2 weeks
- Income Protection for non FF staff – agree to consult
- Long Duration Breathing Apparatus – new allowance
- Commander Qualification Allowance – new allowance
- RCR Allowance - new allowance for Div A
- Coxswain allowance – new allowance
- Incident Management Team allowance - new allowance
- Special Duties SSO Stations – agree to consult
- Ladder Platform allowance – new allowance

FRV Response to UFU Log V12:

The clause numbers referenced below are the clause or subclause numbers as set out in the UFU revised Log V12.

All clauses as set out in the UFU revised Log V12, unless otherwise commented upon below, are agreed in principle by FRV, subject to final agreement on an overall package of provisions for the proposed EA and subject to proceedings in C2022/5683 (Efficiencies Allowance matter). The qualification re C2022/5683 is necessary given FRV ELT had made in principle agreed concessions in the proposed EA of a range of measures which are estimated to cost approx. \$22m over 3 years and that this cost was intended by it to be funded by agreed efficiencies, which are now potentially affected by the Efficiencies Allowance matter, given the overlap with bargaining matters.

FRV notes that V12 includes a revised claim to increase all allowances by 25.9% as against the UFU previous claim of 16.2% in V11.

Clause/matter	FRV response
'4.2' Fire Service Harmonisation Incentive Payment	FRV notes that the UFU has withdrawn its earlier proposed claim for a one off Harmonisation Incentive Payment of \$3000 arising from Fire Service Harmonisation, previously subclause 4.2 of V8 - FRV reserves its position on this matter pending any overall outcome for the proposed EA.
7.1 Structure	FRV rejects inclusion of Division 4 (FSO's) and notes numerical error reference to '41'.
7.5 Structure	Fire Safety Officer's (FSO's) - FRV maintains its rejection of the UFU claim to include FSO's in the Operations EA. FRV maintains that it is appropriate to maintain coverage of this cohort in the Corporate EA.

Clause/matter	FRV response
55 Firefighters Registration Board	This matter has not been dealt with in Bargaining and has been the subject of separate proceedings in the FWC.
61.1 Income Protection Insurance Allowance	FRV maintains its proposal to remove reference to quantum in sub clause and refer to it in the Schedule. FRV's response on quantum is subject to instruction and approval from Government.
62 Health Insurance	FRV maintains its rejection of this UFU claim.
69 Public Transport for FRV Employees	FRV maintains its rejection of this UFU claim.
77.5 Fire Safety Inspector	<p>FRV maintains its rejection of UFU proposal to restrict accompanying personnel to the rank of LFF or above and maintains its proposal , as follows, which reflects current practice:</p> <p><i>“To ensure safe systems of work, the parties agree that inspections are to be carried out by a minimum of 2 qualified Fire Safety Inspector personnel. In the absence of 2 suitably qualified Fire Safety Inspectors the Fire Safety Inspector can be accompanied by:</i></p> <ul style="list-style-type: none"> <i>a. a firefighter with a minimum rank of LFF, or</i> <i>b. an FRV Building Surveyor, or</i> <i>c. an FRV Risk Engineer, or</i> <i>d. an FRV Fire Engineer “</i>
80.3 EMR	<p>FRV maintains its proposal to remove reference to quantum in sub clause and refer to it in the Schedule. FRV's response on quantum is subject to instruction and approval from Government. In order to ensure intention of the parties is accurately reflected in the EA, FRV has proposed a new subclause as follows: <i>“Except where agreed between UFU and FRV, the EMR allowance will be paid in lieu of any existing first aid allowance.”</i> (refer FRV email to bargaining representatives 18 November 2022). The proposed UFU clause at 80.11 in V12 is rejected as it would have the effect of extending an additional allowance to Div A employees which is not supported.</p>
99 Wages	FRV's response on quantum is subject to instruction and approval from Government. FRV also maintains its position that the percentage relativities and rates need to be aligned noting that the Interim EA relativities and \$ values do not align.

Clause/matter	FRV response
106.2 Allowances and Reimbursements General	FRV's response on quantum is subject to instruction and approval from Government.
134 Allowances	FRV's response on quantum is subject to instruction and approval from Government.
136.10 Road Crash Rescue Support (RCRS) Qualification, Training and Accreditation	FRV maintains its proposal to remove reference to quantum in sub clause and refer to it in the Schedule. FRV's response on quantum is subject to instruction and approval from Government.
160 Necessary Minimum Staffing numbers	FRV note that reference to Staff numbers throughout to be confirmed subject to instruction and approval from Government.
164 Allowances	FRV's response on quantum is subject to instruction and approval from Government.
176.4 Overtime	FRV maintains its proposal to remove reference to quantum in sub clause and refer to it in the Schedule. FRV's response on quantum is subject to instruction and approval from Government.
179 Wages	FRV's response on quantum is subject to instruction and approval from Government. FRV also maintains its position that the percentage relativities and rates need to be aligned noting that the Interim EA relativities and \$ values do not align.
181.2 Hazardous Material Technician Allowance	FRV can agree to UFU claim, subject to removing the quantum from the subclause and refer to it in the Schedule and for which FRV's response on quantum is subject to instruction and approval from Government.
201.2 Allowances	FRV's response on quantum is subject to instruction and approval from Government.
217 Wages	FRV's response on quantum is subject to instruction and approval from Government. FRV also maintains its position that the percentage relativities and rates need to be aligned noting that the Interim EA relativities and \$ values do not align

Clause/matter	FRV response
245 PE Tech - Wage rates	FRV's response on quantum is subject to instruction and approval from Government.
256.1 Wages	FRV's response on quantum is subject to instruction and approval from Government.
Div 4 FSO's	FRV rejects the Log. FRV does not agree to FSO's being brought under the Operations EA. See Subclause 7.5 above
Schedules 1, 16 and 27	FRV review pending. It is noted that FRV and UFU have reached in principle agreement on projected minimum staffing requirements (subject to clarifying some anticipated non-controversial allocations) however, for inclusion in the EA. FRV awaits instruction and approval from Government as to funding such projected requirements in order for it to respond.
Schedules 4, 17 and 29	FRV proposes that the Allowances be adjusted by a figure yet to be determined during the life of the EA, consistent with the timing of any annual wage increases, in a form similar to that provided in Bargaining on 16 August 2022 (ie. providing for indexed adjustments each year – see ATTACHMENT 1). FRV's response on quantum is subject to instruction and approval from Government.
Schedule 8 - Rank Alignment	FRV's response on quantum is subject to instruction and approval from Government in order for it to respond and FRV notes Rank Alignment numbers to be reviewed as a consequence.
Schedule 37 CSTO - Wages	FRV awaits instruction from Government as to a response on quantum. Otherwise FRV accepts inclusion of new CSTO Level 4.

Clause/matter	FRV response
Leave/Public Holidays	<p>FRV had previously sought to amend the EA to provide clarity as to entitlements to leave, but UFU was reluctant to amend existing EA, but accepted there should be no change to custom and practice. FRV proposed a set of words to be recorded in the bargaining Minutes to which UFU's confirmation is pending. In order to settle this matter, UFU and bargaining representatives to confirm agreement to FRV proposal contained in the Minutes 9 August 2022 re 65.06 and public holidays – FRV proposed words to be agreed for the Minutes:</p> <p><i>“The Parties acknowledge that, for the purpose of these Enterprise Bargaining negotiations, the 65.06 days’ Annual leave afforded to operational staff includes provision for Public Holidays in accordance with the Harry Mitchell documentation and MFB Operational Staff Working Party August 1985 previously relied upon by both FRV and UFU.”</i></p>

SCHEDULE 4 - DIVISION 1 ALLOWANCES

Clauses 105 and PART B -B1 - of the Agreement applies to the rates set out below and any other allowance not included in this Schedule. Not all allowance rates are described in SCHEDULE 4 - Division 1 Allowances.

ALLOWANCES FOR EMPLOYEES COVERED BY PART A OF DIVISION 2 AND PART A OF DIVISION 3

Allowance	Rate prior to the commencement date	Rate from the commencement date	Rate 12 months following the commencement date	Rate 24 months following the commencement date	Rate 36 months following the commencement date
Meal Allowance	\$18.74				
Spoilt Meal Allowance	\$18.74				
Motor Vehicle / Kilometre Allowance (per km travelled)	\$1.37				
First Aid Allowance (per week)	\$20.71				
Language Allowance (per year)	\$1,277.12				
Availability Allowance	5.5% of salary				
After Hours Disturbance Allowance	A minimum of one hours' pay at ordinary rates for each discrete				
Temporary Work Location Allowance	\$4.37 per day shift \$5.68 per night shift				
Income Protection Reimbursement Allowance per week in accordance with clause 61 of this Agreement	\$49.20				
Road crash rescue support qualification allowance (per week)	\$12.51				

ALLOWANCES FOR EMPLOYEES COVERED BY PART B OF DIVISION 1

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Allowance	Rate prior to the commencement date	Rate from the commencement date	Rate 12 months following the commencement	Rate 24 months following the commencement	Rate 36 months following the commencement
Fire Investigation Allowance	4.5% salary				
Fire Safety Inspector Allowance	4.5% salary				
Heavy Rescue Allowance (per week)	\$25.26				
Hydrostatic Testing of Breathing Apparatus Allowance (per shift)	\$7.95				
USAR Operator Allowance (per week)	\$25.26				
Trench Rescue Allowance (per week)	\$25.26				
Marine Response Allowance (per week)	\$25.26				
Coxswain Allowance (per week)	\$25.26				
High Angle Rescue Technicians Allowance (per week)	\$25.26				
Long Duration Breathing Apparatus Allowance (per week)	\$25.26				
Ladder Platform Operator Allowance (per week)	\$25.26				
RPAS Operator Allowance (per week)	\$25.26				
Watchroom Duties Allowance	\$10.08				

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Driving Educator Allowance (per week)	\$17.54				
Fire-CAP Allowance (per week)	\$25.26				
Commander Secondment Qualification Allowance	5 relativity points of the Qualified Firefighter rate				
Advanced Diploma of Firefighting Investigation	\$32.64 per week [Or equivalent amount to IFE Membership and Graduate/Technician Certificate Quas Allowance]				

SCHEDULE 16 - ALLOWANCES

Not all allowance rates are described in SCHEDULE 17 - ALLOWANCES.

Part A of Schedule 16:

ALLOWANCES FOR EMPLOYEES COVERED BY PART A OF DIVISION 2

Allowance	Rate prior to the commencement date	Rate from the commencement date	Rate 12 months following the commencement date	Rate 24 months following the commencement date	Rate 36 months following the commencement date
Relieving allowance	\$32.06				
Special Duties Allowance	\$76.84				
Fitness Leader Allowance (per week)	\$25.26				
Temporary Accommodation Allowance	\$4.37 per day shift \$5.68 per night shift				
Permanent relocation allowance for each instance as described in the clause	\$1,535.30				
Availability allowance	5.5% of salary				
<i>Qualifications Allowances (per week)</i>					
IFE Graduate Certificate or a Certificate of Fire Technology	\$17.31				
IFE Graduate Certificate and Certificate of Fire Technology	\$26.39				
IFE Membership and Graduate Certificate	\$32.64				
Certificate IV in Workplace Training and Assessment	\$17.31				

ALLOWANCES FOR EMPLOYEES COVERED BY PART B OF DIVISION 2

Allowance	Rate prior to the commencement date	Rate from the commencement date	Rate 12 months following the commencement date	Rate 24 months following the commencement date	Rate 36 months following the commencement date
EMR Allowance (per hour)	\$2.42				

ATTACHMENT 1 - PAGE 5 OF 9

HAZMAT Technicians Allowance (per hour)	\$2.84				
Diploma of Training and Assessment or equivalent Instructor qualification allowance (per week)	\$26.67				

ALLOWANCES FOR EMPLOYEES COVERED BY PART D OF DIVISION 2

FSCC Coordination Allowance	5% of classification rate
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Part B of Schedule 16:

Personal expenses, incidentals and accommodation allowances.

An employee who is required to attend a live in training course, conference, or to undertake duties that require the employee to remain away from home, shall be paid the following:

If the cost of accommodation and meals is not met by FRV, daily allowances of:

[Waiting for finance to confirm the \$ below]

	Capital Cities	Other places within Australia	Part day absence
Breakfast	\$27.69	\$27.69	\$22.75
Lunch	\$39.23	\$39.23	\$26.07
Dinner	\$54.97	\$54.97	\$44.98
Bed	\$228.27	\$175.58	-
Incidentals	\$28.02	\$28.02	-
Total	\$378.18	\$325.52	-

ATTACHMENT 1 - PAGE 6 OF 9

Duties that require the employee to remain away from home include but are not limited to duties where the employee remains away from their residence following a shift due to the travel between the work location and their residence being too long to reasonably travel at the conclusion of the shift.

Note:

- Breakfast allowance is not payable if departure from home is after 7.00 a.m.
- Lunch allowance is not payable if departure from the location is after 12.00 p.m.
- Dinner allowance is not payable if arrival at home is before 7.00 p.m.
- Incidental allowance is only payable for overnight accommodation.

If the cost of accommodation is met by FRV a daily incidental allowance of \$23.55 will be paid.

Where reasonable receipted expenditure exceeds the amount specified the receipted amounts will be reimbursed.

Accommodation:

It is expected that employees will stay at well-appointed establishments that provide a reasonable standard of accommodation that would generally have facilities such as heating and cooling, a clock, television set, radio, tea and coffee making facilities, shower, refrigerator and an environment consistent with the employee having reasonable and adequate rest.

Where accommodation is not directly billed to, or borne by FRV, the rates for the Standard Allowance are specified in the Schedule of Payments in the table above.

Accommodation shall be provided for employees working the 10/14 Roster for the complete tour of duty including when they are off duty. In such circumstances the tour of duty ends when the employee commences travel to his or her place of residence.

Employees working the 10/14 Roster where the travel is more than 100 Kms from his or her normal work location may elect to have accommodation for the night prior to commencing duty and/or after completion of duty.

Where the actual cost reasonably incurred by the employee is necessarily greater than the relevant Standard Allowance, the difference between the Standard Allowance paid and the expense incurred by the employee will be reimbursed where the original receipt/s are provided.

Advance allowances

Where an employee is required to sleep overnight away from home, he or she may opt to receive the Standard Allowance in advance prior to travel.

Claims that are reasonable and necessary and in excess of the advance may be submitted upon return, provided receipts are lodged with the claim. If an employee returns prior to the original anticipated date and time, any advance received in respect of that period must be adjusted and repaid to FRV.

Review of expense rates

Expense rates listed in the Schedule of Payments will be reviewed and updated no less than annually by the parties having regard to such indicators as:

- rates of reasonable accommodation and personal expense allowances issued by the Australian Taxation Office;
- significant increases in recognised commercial accommodation costs; and
- movements in the Consumer Price Index (CPI).

SCHEDULE 28 - ALLOWANCES, PERSONAL EXPENSES AND ACCOMMODATION

Clause 198 of Division 3 applies to the rates set out below and any other allowance not included in SCHEDULE 28 -. Not all allowance rates are described in SCHEDULE 28 -:

ALLOWANCES FOR EMPLOYEES COVERED BY PART A OF DIVISION 3

Allowance	Rate prior to the commencement date	Rate from the commencement date	Rate 12 months following the commencement date	Rate 24 months following the commencement date	Rate 36 months following the commencement date
69.2 Fitness Leader Allowance (per week)	\$25.26				
81.13 Permanent relocation allowance rate for each instance as described in the clause	\$1,535.30				
92.13 Relieving Allowance (per shift)	\$32.06				
Availability Allowance	5.5% of salary				
Qualification Allowances					
Commander Qualifications Allowance	5 relativity points of QFF rate				
Difficult to fill location allowance	10% superable remuneration allowance per annum or part thereof				
Qualifications Allowances (per week)					
IFE Graduate Certificate or a Certificate of Fire Technology	\$17.31				
IFE Graduate Certificate and Certificate of Fire Technology	\$26.39				
IFE Membership and Graduate Certificate	\$32.65				

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Certificate IV in Workplace Training and Assessment	\$17.31				
General PART A allowances continued					
Reliever Work Allowance (per week)	\$52.53				

ALLOWANCES FOR EMPLOYEES COVERED BY PART B - AND PART C - OF DIVISION 3

Allowance	Rate prior to the commencement date	Rate from the commencement date	Rate 12 months following the commencement date	Rate 24 months following the commencement date	Rate 36 months following the commencement date
EMR Allowance (per hour)	\$2.42				
Higher Duties Allowance	10% of substantive salary for that period				
CBR Allowance	2% of salary shall be paid to all employees				
CBR Allowance (per week)	\$25.26				
<i>Instructors Allowances</i>					
Facility Allowance (per shift)	\$32.06				
Qualification Allowance (per week)	\$26.67				
State Wide Training Allowance (per shift)	\$32.05				
Relieving Allowance (per shift)	\$32.05				

ATTACHMENT 1 - PAGE 9 OF 9

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ALLOWANCES FOR EMPLOYEES COVERED BY PART D - OF DIVISION 3

Allowance	Rate
Higher Duties Allowance	15.5% of salary inclusive of 5.5% availability allowance
On call payments	8 hours pay extra at single rates for each week they are on call

ALLOWANCES FOR EMPLOYEES COVERED BY PART F - OF THE AGREEMENT

Allowance					
PAD Supervisor Acting into a higher position	15% of salary or the salary of the higher position (whichever is higher)				
BA Training Allowance	15% of salary for all time worked				
PAD Safety Function Allowance	15% of salary for all time worked				
Forklift Allowance (per week)	\$10				

ALLOWANCES FOR FSCCS COVERED BY OF THE AGREEMENT

FSCC Special Duties Allowance	10% of salary for the duration of the duty				
Higher Duties	10%				
Delayed or interrupted meal allowance	\$18.73				

FAIR WORK COMMISSION

Matter No.: B2023/771
Applicant: United Firefighters' Union of Australia
Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 8, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by: MinterEllison, solicitors for the Respondent	Telephone: (03) 8608 2163 / (03) 8608 2047
Address for Service: Level 20, Collins Arch, 447 Collins Street, Melbourne VIC 3000	Fax: - Email: tom.molan@minterellison.com / david.woodman@minterellison.com



STATEMENT

Fair Work Act 2009

s.240 - Application to deal with a bargaining dispute

Fire Rescue Victoria

v

United Firefighters' Union of Australia

(B2022/1676)

COMMISSIONER WILSON

MELBOURNE, 3 FEBRUARY 2023

Statement

[1] The following statement is issued for the purposes of conciliation and is without prejudice to the rights of all concerned. Its circulation is limited to the representatives of Fire Rescue Victoria (FRV), Industrial Relations Victoria and the United Firefighters' Union of Australia (UFU).

[2] On 4 November 2022 the FRV commenced an application in the Fair Work Commission seeking assistance with a bargaining dispute relating to enterprise bargaining with the UFU in relation to pay and conditions for operational firefighters.

[3] There is a complex history to the formation of the currently applicable instrument, the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020* with the relevant parts of that agreement all having nominally expired no later than 1 July 2019. Administrative arrangements were put in place to safeguard employees' wages and conditions and formal bargaining for a replacement to the FRV Interim Agreement commenced on 26 April 2022.

[4] Bargaining between the FRV and the UFU and other bargaining representatives has progressed between the parties with substantial goodwill, to the point where at the time the matter was referred to me to be dealt with the principal parties, the FRV and UFU, had reached agreement on all but 10 issues, as follows:

1. Wages and Allowances – which awaits a proposal from the FRV in response to the UFU claims, with the FRV seeking to receive advice from Government about an amended or new wages policy.

2. Fire Safety Officers – resolution of this claim requires a decision from the FRV Executive Leadership Team.
3. Firefighters Registration Board – there has been no discussion on this subject with both parties looking to further proceedings in the Commission on the subject.
4. Health Insurance – the UFU most recently advised that it is exploring avenues to achieve Health Insurance and will report back.
5. Public Transport Fares – the UFU now seeks to progress this with a discussion directly with Public Transport Victoria (PTV).
6. Fire Safety Inspectors – the matter appears agreed in principle with drafting to be exchanged between the parties.
7. Emergency Medical Response Allowance – this matter appears close to agreement.
8. Allowances Schedule – this matter also appears close to agreement.
9. Wages and Classification Relativities – further discussions are required between the parties about this matter. FRV has provided the UFU with a draft clause regarding this item to which the UFU is to respond. The UFU is also seeking to reserve its position in relation to potential future examination of the relativities for Station Officers and Senior Station Officers, and will provide a draft clause regarding this matter to FRV for consideration by the FRV.
10. Minimum staffing – FRV and UFU have agreed to the safe staffing claim numbers and funding for the UFU safe staffing claims remain under consideration by the Minister for Emergency Services. Further discussions are required between the UFU and the FRV in respect of staffing numbers indicated in Schedules 16 of the draft agreement.

[5] Six conciliation conferences have been convened by me to date on 14 November, 7 and 15 December 2022 and 12, 20 and 31 January 2023. A representative from Industrial Relations Victoria, the Victorian Government agency responsible for management of industrial relations with the State’s employees, has attended four of those conferences.

[6] It is clear to me bargaining will be unlikely to meaningfully progress without the capacity of FRV to put forward a detailed monetary proposal for consideration of the UFU and other employee bargaining representatives. What is ultimately put forward by the FRV for consideration of the UFU and employees is likely to be a function of the Victorian Government wages policy which is presently under review following its re-election in November 2022. I note that the parties are currently bargaining under the 2019 wages policy.

[7] While the UFU has put forward with some clarity the monetary claim it seeks the FRV consider and agree to the FRV has been unable to respond with a firm offer for consideration by employees.

[8] The nature of the claims being made by the UFU are such that any response by the FRV would need to be with reference to the existing Wage Policy's "Pillar 3" permitting "Additional changes to allowances and other conditions (not general wages)" but conditioned with Government agreement "that the changes will address key operational or strategic priorities for the agency, and/or one or more of the Public Sector Priorities". I accept that until an updated or amended Victorian Government Wages Policy is released there is to be no presumption either that the "Pillar 3" construct will continue or will continue unaltered.

[9] The subject of bargaining is also being affected by the matters that are the subject of another application presently before me, being a claim from the UFU for an efficiencies allowance (matter number C2022/5683) which is programmed for hearing in the week commencing 27 February 2023. The Efficiencies Allowance matter is predicated on a claim by the UFU that efficiencies generated by employees for the FRV as a result of the integration of the pre-existing MFB and CFA fire services are considerable and to such a degree as to merit a gainsharing distribution to employees. That matter can and will be determined by the Commission separately to bargaining, but that is not to say that the matter ought to be separate from bargaining.

[10] I make that observation since some of the matters that might justify consideration by the Victorian Government for additional changes to allowances and other conditions by virtue of its Wages Policy's "Pillar 3" have similarity to the reasoning requiring consideration in the Efficiencies Allowance matter. Because of such situation it is likely that consideration of an employer wages proposal by either party will be affected by that party's perspective as to what may flow from the Efficiencies Allowance hearing. It is likely that both parties will use a risk assessment about the Efficiencies Allowance proceedings to determine what should be offered or accepted in bargaining.

[11] I perceive from those circumstances that both parties will try to hedge their bets in the giving and consideration of proposals, meaning that an early conclusion to bargaining will probably be unlikely. That potential of an indefinite impasse, coupled with the fact that bargaining has already been underway for a considerable period, leans toward encouraging all concerned to find ways to bring bargaining to a conclusion as quickly as they can.

[12] I also note, pertinent to the matter of bargaining, that protected industrial action is in place in the FRV, albeit with both parties suggesting that the present action does not have great impact on the FRV generally and little or no impact at all on service delivery to the community. However, the fact that there is protected industrial action of some type with the potential for there to be escalating disputation as time goes by if the matter is not resolved also leans to the desirability of an early conclusion to bargaining.

[13] The nature of these proceedings, though, is such that an early resolution to bargaining will require a firm monetary offer to be put by the FRV to the UFU in the near future. Of course, such can only be done in the event the FRV is authorised by the Victorian Government to do so.

[14] As a result, I consider to be incumbent on the FRV, and through it the Victorian Government, to put forward a firm wages proposal to the UFU and other employee bargaining representatives for their consideration of the earliest opportunity and, preferably, one that is capable of encompassing the matters that are within the scope of the Efficiencies Allowance claim. That is not to suggest there should be an uncritical adoption of the union's position in respect of either its bargaining claim or the Efficiencies Allowance claim. However, I do suggest that such proposal as is put forward engages with and endeavours to address both matters.

[15] I note the next conference in relation to the FRV's bargaining dispute application is scheduled before me on Friday 24 February 2023 at 2 PM.

[16] I consider it desirable that before that date and time the parties endeavour to resolve to finality all of the non-wages matters that have been under discussion in the conciliation conferences to date. In particular I request that they meet on that subject before the next conference, discussing all remaining non-wages matters.

[17] I also encourage the FRV and those that it is required to consult with in order to form its instructions to have a firm wages proposal to provide to the UFU and the Commission on or before the date of the next conciliation conference.



COMMISSIONER

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FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 9, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

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Department of Justice and Community Safety

Emergency Management

Level 26
121 Exhibition Street
Melbourne Victoria 3000
justice.vic.gov.au

Ken Block
Fire Rescue Commissioner
Fire Rescue Victoria
456 Albert Street
EAST MELBOURNE VIC 3002

By email: ken.block@frv.vic.gov.au

Dear Commissioner

I write to confirm the Government's position in relation to Fire Rescue Victoria (**FRV**) bargaining for a new operational firefighters' agreement (**Operational Agreement**) with the United Firefighters' Union of Australia (**UFU**) and other bargaining representatives.

I confirm that the Government has resolved the following:

Provisional settlement offer

FRV has authority from Government to put the following provisional settlement offer to the UFU and other bargaining representatives:

- A three-year agreement with a commencement date of 1 March 2023
- Three annual wage increases of 2 per cent
- One-off sign on payment of \$1500; and
- Changes that FRV and the UFU have agreed in principle to the Interim Agreement and approved by the Department of Justice and Community Safety (**DJCS**) and Industrial Relations Victoria (**IRV**) for inclusion in the settlement offer.

FRV also has authority from Government to advise the UFU that

- Wages Policy is currently subject to review by Government, and
- That due to the UFU efficiency allowance arbitration commencing 27 February, any additional payment under Pillar 3 under existing Wages Policy will not to be considered by Government at this point, and
- Pillar 3 of the 2019 Wages Policy provides for additional changes to allowances and other conditions (not general wages) and will only be allowed if Government agrees that the changes will address key operational or strategic priorities for the agency. Government is still in the process of considering which if any of the matters which have been identified by the parties properly sit under Pillar 3.

In addition to above, the offer should specify that:

- any increases to the minimum staffing charts should not be included in the Operational Agreement and
- there will be no reference to a firefighters' registration scheme in the Operational Agreement.

Also note, funding of salary adjustments outside of Wages Policy will not be approved.

FRV is also required to formally engage and consult with the Country Fire Authority (**CFA**) on the implications of the Operational Agreement for the CFA.

I ask that your officers discuss and confirm with DJCS and IRV how and when to communicate this offer to the UFU, other bargaining representatives and the Fair Work Commission.

Please confirm via writing by no later than 3 March 2023 that FRV will act in accordance with the State's position, set out in this letter, and that you understand the funding implications of any departure from that position.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K. Fitzgerald', followed by a long, sweeping horizontal line that extends across the width of the signature area.

Kate Fitzgerald

Deputy Secretary, Emergency Management

24/02/2023

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 10, TO THE WITNESS STATEMENT
OF JO CRABTREE**

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FRV - Fair Work Commission report back - 24.02.2023 – without prejudice

Item	Comments	Status
Wages	Money item – no discussion since 31 Jan 2023 conference	Not resolved
FSOs	<p>FRV agrees to the inclusion of FSO's in the EA subject to:</p> <ol style="list-style-type: none"> 1. No material change to conditions (except for wage outcomes) 2. A clause clearly stating there will be no grandfathering of FSO positions <p>Parties working through detail of provisions</p>	Partially resolved
Registration board	Subject to litigation	Not resolved
Health insurance	<p>UFU proposed a clause on 10 February 2023 to deal with this matter.</p> <p>On 16 February 2023 FRV indicated it would agree to the UFU clause subject to certain amendments.</p> <p>On 17 February 2023 the UFU indicated it did not agree to the FRV proposed amendments.</p> <p>FRV understands the words in FRV's suggested amended clause that were of concern to the UFU were the words - "where those benefits will not result in any additional cost to FRV". FRV considered if it could re-draft the clause to omit these words. Following consideration of the matter, FRV wishes to maintain the suggested words "where those benefits will not result in any additional cost to FRV" as part of its counterproposal to resolve the matter. This is because the words provide certainty as to the cost of the proposed clause during the life of the EA.</p> <p>For clarity attached is a copy of the UFU proposed clause with FRV's suggested amendments (ATTACHMENT 1). FRV can agree to the clause subject to the amendments contained in ATTACHMENT 1 (noting for completeness that the quantum is subject to the wages outcome).</p>	Not resolved
Public transport	On 17 February 2023 the parties agreed to resolve the matter via an exchange of letters. FRV provided the UFU with a proposed letter on 21.02.2023.	Partially resolved
EMR	On 10 February the UFU agreed to the attached clause (ATTACHMENT 2).	Resolved

Item	Comments	Status
FSIs	Resolved per FRV draft clause of 15 December 2023 (ATTACHMANT 3)	Resolved
Relativities	<p>UFU provided FRV with the attached clause on 10 February for consideration (ATTACHMENT 4).</p> <p>FRV advised it does not agree with the proposed clause on 16 February.</p> <p>FRV does not agree to the UFU proposal due to risk of wage claims and financial uncertainty during the life of the EA under the proposed clause.</p> <p>FRV is content to adopt clause 100 of v12 of the UFU log of claims without amendment or addition it had initially proposed to clear up misalignment between wage rates and relativities. That clause is also set out in ATTACHMENT 4.</p>	Not resolved
Allowance schedules	FRV agree this is essentially a drafting issue that can be dealt with once in-principle agreement reached on EA	Partially resolved
Minimum staffing	Schedule 16 and 1 are being reviewed by relevant FRV and UFU representatives. Staffing remains subject to Government approval/funding.	Not resolved
Public holidays	On 10 February 2023 the parties agreed to resolve the matter via an exchange of letters. FRV provided the UFU with a proposed letter on 21.02.2023.	Partially resolved

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 11, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

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03 March 2023

Hon Jaclyn Symes
Minister for Emergency Services
L26 121 Exhibition Street
Melbourne VIC 3000

Via email: jaclyn.symes@parliament.vic.gov.au

Dear Minister

RE: FRV OPERATIONAL BARGAINING

On 24 February 2023 I received a letter from Kate Fitzgerald, Chief Executive and Deputy Secretary, Emergency Management, which is stated to represent Government's position in relation to Fire Rescue Victoria (**FRV**) bargaining for a new enterprise agreement (**Replacement EA**) to replace the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020*.

As you are aware, FRV has been engaged in formal bargaining for a Replacement EA with the United Firefighters' Union of Australia (**UFU**) and other employee bargaining representatives since 26 April 2022.

FRV has been bargaining pursuant to 2019 Wages Policy. Pillar 3 of the 2019 Wages Policy (**Pillar 3**) permits changes to allowances and other conditions (not general wages).

In bargaining for the Replacement EA, FRV has represented to the UFU, other employee bargaining representatives, and the Fair Work Commission (**FWC**) that a proposed settlement offer regarding the Replacement EA made under the 2019 Wages Policy would, consistent with advice to Government, include Pillar 3 considerations.

On 4 November 2022, FRV sought the assistance of the FWC to resolve a range of outstanding matters in bargaining for the Replacement EA (matter B2022/1676). On 3 February 2023, Commissioner Wilson issued a Statement (**attached**) in that matter confirming, among other things, that:

1. Any offer by FRV with respect to the Replacement EA would need to be with reference to Pillar 3 (paragraphs [7] - [8]).
2. In his view, it is incumbent on FRV, and through it the Victorian Government, to put forward a firm wages proposal to the UFU and other employee bargaining representatives for consideration at the earliest opportunity and, preferably, one

that is capable of encompassing the matters that are within the scope of the UFU's separate claim in the FWC for an efficiencies allowance (matter C2022/5683, **efficiencies allowance dispute**). It is suggested that such a proposal engages with, and endeavours to address, both the UFU's bargaining claim and the efficiencies allowance dispute (paragraph [14]).

The February Position

The position set out in Ms Fitzgerald's 24 February letter (**February Position**) is problematic. Specifically:

1. The February Position represents a significant change to FRV's position in bargaining. FRV has said that agreed efficiencies could be used to fund additional employee benefits in the Replacement Agreement consistent with 2019 Wages Policy. The February Position is significantly less beneficial to employees than 2019 Wages Policy because it excludes additional Pillar 3 measures. This exposes FRV to allegations of capricious or unfair conduct contrary to good faith bargaining requirements of the *Fair Work Act 2009* (Cth).
2. The February Position undermines and is contrary to FRV's position in the efficiencies allowance dispute. FRV's position in that matter is that bargaining and Pillar 3 (or equivalent) are the appropriate mechanisms by which monetary savings arising from agreed efficiencies can be shared with operational employees. The February Position does not provide for any additional payment under Pillar 3 or otherwise engage with or address the matters the subject of the efficiencies allowance dispute. Consequently, removal of those matters from bargaining would legitimise the UFU's agitation for an efficiencies allowance, and would undermine the basis of FRV's objection to that outcome.
3. I understand that the exclusion of an additional Pillar 3 measure in the February Position is premised on the risk associated with the UFU's current application for an efficiencies allowance. Subsequent to FRV receiving the February Position, in discussions between the UFU, FRV and your legal representatives in private conference at the FWC, the UFU indicated that it would consider bargaining for outcomes to realise its claimed efficiencies in lieu of pursuing its application for the creation of a new allowance. In these circumstances, communication of the February Position to the UFU, which does not provide for any additional payment under Pillar 3 or otherwise recognise agreed efficiencies, may significantly reduce the likelihood of the UFU's application being deferred to allow bargaining to progress, which I understand to be your preferred outcome (as well as FRV's).
4. Enterprise agreements filed with the FWC for approval in the fortnight ending January 2023 recorded an average pay rise of 4.4% per year. The February

Proposal of 2% in the current economic climate with no additional Pillar 3 payment will be poorly received by the UFU and its membership, which may give rise to unintended consequences including deterioration in employee engagement, increased employee support for protected industrial action, an impediment to bargaining and an increased likelihood that the UFU will access other industrial levers, for example applications for bargaining orders, disputes under the enterprise agreement, applications for the insertion of new allowances or similar. However, we consider that inclusion of a Pillar 3 element in the February Proposal would substantially reduce the degree of fair criticism that could be levelled at FRV, including from employees.

FRV's Proposal

FRV seeks for you to authorise it to make the following provisional offer under the 2019 Wages Policy. You will note that alternative proposal includes a Pillar 3 element but makes this conditional upon there being no allowance made pursuant to the efficiencies allowance dispute.

This offer can be funded by cash offsets and indexation under the 2019 Wages Policy consistent with costings previously approved by the Department of Justice and Community Safety.

Provisional offer under 2019 Wages Policy

- A three-year agreement with a commencement date of 1 March 2023
- Three annual wage increases of 2 per cent
- Subject to there being no allowance ordered in the efficiencies allowance dispute, three annual 2 per cent 'FRV transition allowance' payments
- A 6 per cent up-front increase to allowances
- One-off sign on payment of up to \$3000
- Changes that FRV and the UFU have agreed in principle to date
- No increases to minimum staffing in the Agreement. FRV notes it has made Government aware of capability gaps and will continue to make submissions to Government seeking increased staffing such that it can fulfill its service delivery obligations.
- No change to the current enterprise agreement clause regarding a firefighters' registration scheme

Given there is a FWC conference scheduled for the efficiencies allowance dispute on 8 March 2023, and a further FWC conference for bargaining on 10 March 2023, could you please advise on or before 7 March 2023 if FRV is authorised to proceed with its alternative proposal.

In the absence of approval to put the alternative proposal to the UFU and other bargaining representatives, FRV requests an urgent discussion prior to 9 March 2023 regarding the February Position, so an offer can be communicated to the UFU and other bargaining representatives at or before the 10 March 2023 FWC conference at 10 am.

Sincerely,



Ken Block
Commissioner
Fire Rescue Victoria

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 12, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by: MinterEllison, solicitors for the Respondent	Telephone: (03) 8608 2163 / (03) 8608 2047
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Friday 10 March 2023

Peter Marshall
Branch Secretary
United Firefighters Union
410 Brunswick Street
Fitzroy VIC 3065

By Email: p.marshall@ufuvic.asn.au

Dear Peter,

RE: BARGAINING – OPERATIONAL AGREEMENT

In accordance with the Victorian Government's 2019 Wages Policy, Fire Rescue Victoria (**FRV**) is authorised to, and makes the following monetary offer to the UFU and other bargaining representatives in relation to bargaining for a new operational agreement.

- A three-year Agreement;
- Three annual wage increases of 2 per cent effective from the commencement of the Agreement; and
- One-off sign on payment of \$1500.

Any additional payment under Pillar 3 of the 2019 Wages Policy, is not included in this monetary offer due to the uncertainty regarding the efficiency allowance matter currently before the Fair Work Commission (C2022/5683).

Government is currently reviewing the wages policy and we hope to be in a position to be able to provide a revised offer under the new wages policy in the near future.

Yours sincerely



Gavin Freeman AFSM
Acting Fire Rescue Commissioner
Fire Rescue Victoria

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 13, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

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10 March 2023

Gavin Freeman AFSM

Fire Rescue Commissioner (Acting)

Fire Rescue Victoria

By email only: Gavin.Freeman@frv.vic.gov.au

Dear Acting Commissioner Freeman,

FWC Proceedings B2022/1676

I write to you in relation to the above matter, which was the subject of a conference in the Commission today, and your letter of today's date.

FRV has purported to make a wages offer of 2%, which represents the amount available under Pillar 1 of the 2019 Government Wages Policy.

The FRV has not included any component for efficiencies under Pillar 3 of the 2019 Government Wages Policy. The reason advanced in your letter for the FRV's stance is that:

Any additional payment under Pillar 3 of the 2019 Wages Policy, is not included in this monetary offer due to the uncertainty regarding the efficiency allowance matter currently before the Fair Work Commission (C2022/5683).

Today is the first time that the efficiencies allowance matter C2022/5683 has been identified as somehow precluding the FRV from fully engaging in bargaining.

The UFU sought an explanation from your representatives in the Commission today as to why this issue has been belatedly raised. Your representatives indicated that the FRV would respond in writing, when confirming its offer, and explain why the efficiencies allowance matter is now preventing the FRV from making an offer with a Pillar 3 efficiencies component.

Your letter contained no such explanation.

The FRV's bargaining representative had stated in earlier conferences in this matter that the Pillar 3 efficiencies were the only realistic pathway towards resolving the bargaining dispute and reaching a concluded agreement on wages. Quantum figures were provided by the FRV in respect of many efficiency items in the course of bargaining.¹ Those statements were made and those figures were provided whilst the UFU's efficiencies application was on foot.

That is, the fact of the efficiency proceedings being on foot had not prevented the FRV from engaging in bargaining over Pillar 3 efficiencies. This was so notwithstanding that the efficiencies matter was proceeding to a hearing.

¹ Referred to in the witness statement of Alex Sands filed in the efficiencies matter at [11]-[17], and annexure AS-8 which was described as "updated Pillar 3 Costings ... provided to the UFU on 20 January 2023" at [39].



On 20 February 2023, the FRV's confirmed the position it had adopted in bargaining as follows:

In FRV's view, it is through bargaining for a replacement agreement that agreed savings and efficiencies can be reflected in agreed improvements in employee conditions, including remuneration. To that end, FRV is committed to continuing bargaining.²

In the Minister's Outline of Submissions filed in Matter C2022/5683 on 27 February 2023, the Minister's primary submission was that the efficiencies application was an "abuse of process" because "*the matters that are said to justify the "efficiency allowance" are the subject of bargaining for a Replacement Agreement*".³ The Minister submitted in the alternative that:

If the Commission determines it has jurisdiction, which the Minister contends it does not, the Application ought be adjourned until bargaining is completed.⁴

That is, less than two weeks ago, the Minister had accepted without qualification that bargaining could and should take place while the C2022/5683 proceedings were on foot, even in circumstances where jurisdiction was decided in favour of the UFU.

The Minister, in her letter of 3 March 2023 to parties' lawyers, did not mention that the proceedings in C2022/5683 were considered to be an obstacle to bargaining. To the contrary, it was stated that:

"the Minister agrees to:

- the Efficiency Allowance Dispute being adjourned in order to enable all parties to focus their efforts into enterprise bargaining negotiations currently being conducted with the assistance of the Fair Work Commission in Matter No. B2022/1676; and*
- the UFU having liberty to apply to have the Efficiency Allowance Dispute re-listed in the event that enterprise bargaining negotiations do not progress within a reasonable time".*

At the Mention before Commissioner Wilson in C2022/5683 yesterday, the UFU's Counsel proposed that the matter be adjourned until a date in April to allow the parties to concentrate their efforts in bargaining in Matter No. B2022/1676. Senior Counsel for both the Minister and FRV were present and did not cavil with that proposition. Neither of the parties raised any possibility of there being an impediment to bargaining if the efficiencies matter were to be adjourned, as had been proposed.

The FRV's position adopted at today's conference is therefore entirely inconsistent with the Minister's stated position that the parties should "focus their efforts into enterprise bargaining negotiations" whilst the proceedings in C2022/5683 are "adjourned", and the FRV's position that Pillar 3 efficiencies were critical to achieving any agreed outcome in bargaining, notwithstanding that the efficiencies matter was being programmed for hearing.

² FRV's Replacement Outline of Submissions dated 20 February 2023 at [4].

³ Minister's outline of submissions at [5]; see also [11]-[12], [48].

⁴ Minister's outline of submissions at [47]; see also [49].



In light of these matters, please clarify the FRV's position with respect to the following questions that were put to your representatives today:-

1. What is the reason for the fundamental change in the FRV's position with respect to bargaining over the Pillar 3 efficiencies in light of the matters set out above?
2. If the UFU were to discontinue Matter C2022/5683, would the FRV thereafter fully engage in bargaining with respect to the Pillar 3 efficiencies? If not, why not?
3. If the answer to question 2 above is that impediments to bargaining would remain notwithstanding discontinuance of Matter C2022/5683, and given that the FRV had identified Pillar 3 efficiencies as the only realistic pathway to achieving an agreement, what is the status of matter B2022/1676? That is, what assistance could the Commission provide in bargaining if the FRV now refuses to engage in the appropriate pathway to reaching agreement?

The UFU also seeks clarification on the following:

4. The FRV had not previously made a wages offer in B2021/1057 or in this matter as it had stated that it was waiting for a new Government Wages Policy.⁵ The new Government Wages Policy would presumably reflect the significant cost of living changes that have taken place since the present policy was formulated in 2019. What is the reason for making an offer now, and contrary to the previously stated position? Is the putative offer intended to be a genuine offer, or is it designed only to avoid further criticism of the FRV's previous "inertia" in bargaining⁶?

Subject to clarification of these important matters, the UFU presently considers that the FRV's fundamental change of position from that which it had expressly adopted as recently as 20 February 2023 is capricious, and is undermining the UFU's ability to bargain.⁷

Please respond by 12pm on Tuesday, 14 March 2023.

Yours Sincerely,

Peter Marshall

Branch Secretary

⁵ Statement by the Commission in B2022/1676 dated 3 February 2023 at [4(1)], [6]; *UFU v FRV* [2023] FWC 512 (7 March 2023) at [9], [37] (Wilson C).

⁶ *UFU v FRV* [2023] FWC 512 (7 March 2023) at [38] (Wilson C).

⁷ Section 228(1)(e) of the *Fair Work Act 2009* (Cth).

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 14, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

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Tuesday 14 March 2023

Peter Marshall
Branch Secretary
United Firefighters Union
410 Brunswick Street
Fitzroy VIC 3065

By Email: p.marshall@ufuvic.asn.au

Dear Peter,

Application by Fire Rescue Victoria (B2022/1676)

We refer to your letter dated 10 March 2023, in which the United Firefighters Union (UFU) asks Fire Rescue Victoria (FRV) to clarify its position with respect to four questions arising from the above matter.

FRV's position in relation to the questions raised is set out below.

1 What is the reason for the fundamental change in the FRV's position with respect to bargaining over the Pillar 3 efficiencies?

On 29 November 2022, FRV provided a without prejudice response to the UFU's revised log V12 in this matter. That response confirmed:

- all references to quantum for Wages and Allowances are subject to instruction and approval from Government having regard to Government Wages Policy and the treatment of efficiencies; and
- all clauses as set out in the UFU revised log V12 (unless they were otherwise commented on) were agreed in principle by FRV, subject to final agreement on an overall package of provisions for the proposed enterprise agreement and subject to the efficiencies allowance dispute proceedings in C2022/5683.

FRV has maintained this position throughout bargaining and continues to maintain this position.

On 24 February 2023, FRV was instructed by Government, among other things, that:

- (a) FRV has authority from Government to put a wages offer to the UFU and other bargaining representatives providing for, a three year agreement, three annual wage increases of 2 per cent and a one-off sign on payment of \$1,500.
- (b) Wages Policy is currently subject to review by Government.
- (c) Due to the efficiencies allowance dispute, any payment under Pillar 3 of the existing Wages Policy will not to be considered by Government at this point.

- (d) Pillar 3 of the 2019 Wages Policy provides for additional changes to allowances and other conditions (not general wages) and will only be allowed if Government agrees that the changes will address key operational or strategic priorities for the agency. Government is still in the process of considering which if any of the matters which have been identified by the parties properly sit under Pillar 3.
- (e) Funding of salary adjustments outside of Wages Policy will not be approved by Government, unless specifically authorised by Government.
- (f) There are unspecified funding implications for FRV if it departs from Government's position.

On 3 March 2023, FRV sought Government authorisation to make an alternate wages proposal which included a Pillar 3 element, contrary to the instruction from Government set out above. On 8 March 2023, Government reaffirmed its instruction as set out above, confirming that FRV had no authorisation to put forward FRV's alternate wages proposal.

In these circumstances, FRV will not make an offer which includes the Pillar 3 efficiencies because it does not have Government authority to do so or Government funding for those items.

FRV's position regarding the inclusion of the Pillar 3 efficiency items has changed as a result of Government's instruction set out above. However, it should be noted that throughout bargaining, FRV has consistently maintained the position that wages and allowances are subject to Government Wages Policy and approval.

2 If the UFU were to discontinue Matter C2022/5683, would the FRV thereafter fully engage in bargaining with respect to the Pillar 3 efficiencies? If not, why not?

FRV confirms its commitment to continue bargaining in line with Government Wages Policy. If matter C2022/5683 is discontinued, Government instruction at paragraph 1.1(c) above is no longer relevant. Therefore, FRV would not be prevented from consideration of Pillar 3 efficiencies.


3 If the answer to question 2 above is that impediments to bargaining would remain notwithstanding discontinuance of Matter C2022/5683, and given that the FRV had identified Pillar 3 efficiencies as the only realistic pathway to achieving an agreement, what is the status of matter B2022/1676? That is, what assistance could the Commission provide in bargaining if the FRV now refuses to engage in the appropriate pathway to reaching agreement?

Not applicable, noting FRV's response to question 2 above.

- 4 **The FRV had not previously made a wages offer in B2021/1057 or in this matter as it had stated that it was waiting for a new Government Wages Policy. The new Government Wages Policy would presumably reflect the significant cost of living changes that have taken place since the present policy was formulated in 2019. What is the reason for making an offer now, and contrary to the previously stated position? Is the putative offer intended to be a genuine offer, or is it designed only to avoid further criticism of the FRV's previous "inertia" in bargaining?**

As set out in Commissioner Wilson's Statement to the parties on 3 February 2023 in this matter, FRV considered it was incumbent on it, and through it the Victorian Government, to put forward a firm wages proposal to the UFU and other employee bargaining representatives at the earliest opportunity. The offer is a genuine offer made under applicable Wages Policy and in circumstances where the commencement date of a new Wages Policy remains unknown.

Yours sincerely



**Gavin Freeman AFSM
Acting Commissioner
Fire Rescue Victoria**

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 15, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Telephone: (03) 8608 2163 / (03) 8608 2047

Address for Service:

Level 20, Collins Arch, 447 Collins
Street, Melbourne VIC 3000

Fax: -

Email: tom.molan@minterellison.com /
david.woodman@minterellison.com



15 March 2023

Gavin Freeman

Fire Rescue Commissioner (Acting)

Fire Rescue Victoria

By email only: Gavin.Freeman@frv.vic.gov.au

Dear Acting Commissioner Freeman,

Wages claim for FRV Operational Staff

I write to you in response to your letter dated 10 March 2023 containing the FRV's wages offer.

The UFU accepts your offer of a 2% base wage increase plus a sign-on bonus of \$1500, subject to the conditions set out in this letter.

The FRV's offer is, without more, grossly inadequate, and fails to consider several important economic and industrial factors affecting FRV operational employees.

The last pay increase FRV firefighters received was 1 January 2021, over 2 years ago.

The FRV wages offer fails to take into consideration the soaring cost of living which has caused the real wages of FRV operational members to go backwards. This has placed immense financial pressure on employees and their families.

The FRV wages offer follows the highest year-ending inflation recorded since 1990. In the December 2022 quarter, the headline inflation rate reached 7.8%. This is the highest rate in more than three decades. The change in the Consumer Price Index from December 2021 to December 2022 was 8.4%.¹ Interest rates have been the subject of 10 separate increases, and the Reserve Bank cash rate has now increased by a factor of 36 in the past year.²

As detailed in my letter to you on 10 March 2023, the FRV wages offer also fails to take into consideration the work of operational employees in fire services reform and harmonisation. These areas of reform and harmonisation have seen, and will continue to see, significant efficiency savings realised by the FRV. As I have stated to you in my letter of 7 March 2023, the UFU's participation in the processes of reform and harmonisation was on the basis that FRV employees would be paid from the efficiencies realised by such changes.

The conditions attached to the acceptance of the FRV's offer are designed to address these factors.

¹ Australian Bureau of Statistics [Monthly Consumer Price Index Indicator](#).

² Reserve Bank of Australia [Cash Rate Target](#).



The UFU's conditions attached to the acceptance of the FRV's offer

1. A mechanism to protect against cost-of-living changes and inflation. If CPI is above 2% at the commencement date of the Agreement and upon each yearly anniversary thereafter until the Agreement is terminated or replaced, then a cost-of-living adjustment payment will be made each year of the Agreement, capped at 5%, if CPI is higher than the 2% base wage increase.³
2. Additional strategic changes. The 19 efficiencies identified in Appendix A (**Efficiencies**) will be the subject of separate agreement between the Parties and, if unable to be agreed, an arbitration in the Commission to be listed by consent within 6 months after the Agreement comes into operation in order to determine the quantum of each Efficiency item only.⁴ The total quantum of Efficiencies agreed or determined by the Commission will be, by agreement, no less than \$117 million.⁵ The quantum of Efficiencies agreed or determined will thereafter be payable as an allowance backdated to the start of the Agreement.⁶ The agreement concerning, or arbitration of, Efficiencies will be an exception to the no extra claims clauses of the Agreement.
3. Employees to benefit from any changes to wages policy. Employees covered by this Agreement will be no worse off under any new wages policy determined by the Victorian Government. If the Pillar 1 headline wage rate is increased beyond 2% in any new or varied government wages policy, that amount shall become payable upon commencement of the new or varied wages policy, but shall not affect the operation of paragraph 1 above.
4. New Agreement to settle liabilities. An additional bonus payment of \$1500 shall be made to each employee covered by the Agreement upon commencement and on each yearly anniversary date thereafter that the Agreement is in operation and until it is terminated or replaced, on account of the UFU's forbearance in not commencing or becoming involved in any proceedings against the FRV for contraventions of the Interim Agreement relating to the processes of merger and harmonisation.

These conditions are put forward on the basis that the parties have otherwise agreed to all non-wages terms and conditions as contained in the most recent iteration of the Draft Operational Staff Agreement.⁷

³ Example: if CPI at the start of the Agreement or any yearly anniversary date is 8%, then the total increase payable for that year is 7% based on the cap (that is, 2% base wage rate plus the cost-of-living allowance capped at 5%).

⁴ That is, the parties will consent to the Commission having jurisdiction and power to determine the quantum of the Efficiencies.

⁵ This figure is derived from the total \$117,661,476 of "Benefits to staff (funded by Pillar 3 considerations)" identified by FRV and tabled by it in Matter B2022/1676 on 20 January 2023.

⁶ Payment as an allowance is consistent with Pillar 3 of the Government Wages Policy.

⁷ Currently at Version 12.



UNITED FIREFIGHTERS UNION

- VICTORIAN BRANCH

ABN 74 030 569 265

408-410 Brunswick Street Fitzroy VIC 3065

Email: reception@ufuvic.asn.au

Phone: (03) 9419 8811 Fax (03) 9419 9258

Branch Secretary: Peter Marshall

Yours sincerely,

Peter Marshall
Branch Secretary

Appendix A

EFFICIENCY ITEM	UFU CLAIM
Item 1: Harmonisation of Committees	\$1,865,989
Item 2: Uniforms	\$11,960,587
Item 3: Interdivisional Firefighting Program	\$15,611,428
Item 4: Step Ups/Move Ups	\$989,853
Item 5: Single Enterprise Agreement and Commitment to Positive Industrial Relations	\$12,000,000
Item 6: Fleet Technology	\$1,522,960
Item 7: Hose Rationalisation	\$418,000
Item 8: Replacement of Hose	\$100,000
Item 9: Breathing Apparatus Harmonisation	\$388,660
Item 10: FRV Station Design	\$30,870,000
Item 11: Harmonisation of FRV Training Delivery (Emergency Medical Response)	\$8,460,070
Item 12: Attendance at Training	\$67,692,871
Item 13: Relocation Assistance	\$4,199,222

Item 14: Special Rosters	\$23,309,279
Item 15: Emergency Response or Training on Long Distance Deployments [Strike Team]	\$12,078,051
Item 16: Introduction of Senior Station Officer cap	\$633,402
Item 17: CTSO Availability Allowance	\$441,138
Item 18: Former CFA Commander Qualifications Allowance	\$50,183
Item 19: Introduction of trigger figures for Division B Firefighter/Officers	\$11,177,255
TOTAL	\$ 203,768,949

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 16, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Address for Service:

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Telephone: (03) 8608 2163 / (03) 8608 2047

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Email: tom.molan@minterellison.com /
david.woodman@minterellison.com

Matter: B2022/1676

FRV status of outstanding items at 16.03.2023 – without prejudice

To be read in conjunction with FRV detailed response to v12 UFU log of claims dated 28.11.2022

Item	Comments	Status
Wages	<p>V12 of UFU log of claims includes the following proposal:</p> <ul style="list-style-type: none">- Increases to wages as follows: 12.1% 01.10.2022, 3.1% 01.04.2023, 2.6% 01.10.2023, 2% 01.04.2024, 1.6% 01.10.2024, 3% 01.04.2025, 1.5% 01.10.2025- 25.9% increase to allowances at the commencement of EA <p>On 10.03.2023 FRV proposed:</p> <ul style="list-style-type: none">- Three annual wage increases of 2 per cent effective from the commencement of the EA- On-off sign on payment of \$1500 <p>UFU made a counterproposal on 15.03.2023. FRV is considering this proposal and will respond in due course.</p>	Not resolved
FSOs	<p>FRV agrees to the inclusion of FSO's in the EA subject to:</p> <ol style="list-style-type: none">1. No material change to conditions (except for wage outcomes)2. A clause clearly stating there will be no grandfathering of FSO positions <p>Parties working through detail of provisions</p> <p>Matters outstanding as at 16.03.2023</p> <ol style="list-style-type: none">1. Annual leave – UFU seeks 5 weeks – FRV seeks to maintain 4 with 5th for shift worker2. Gym membership – FRV has proposed alternative wording3. IMS –awaiting UFU draft4. Uniforms – potentially resolved per email exchange yesterday evening5. Wages/classification review – FRV agree in principle to exchange of letters – response letter subject to further consideration <p>NB: AS and LC meeting to discuss afternoon of 16.03.2023</p>	Not resolved
Registration board	This matter has not been dealt with in bargaining and remains subject of separate proceedings in the FWC.	Not resolved

Item	Comments	Status
Health insurance	UFU and FRV have dealt with this matter by an exchange of letters. FRV understand this means cl 62 to v12 of the UFU's log of claims will be removed on this basis.	Resolved
Public transport	On 17 February 2023 the parties agreed to resolve the matter via an exchange of letters. FRV has provided initiation letter to UFU on 09.03.2023. FRV is yet to receive response letter to close the matter off.	Not resolved
EMR	On 10 February the UFU agreed to a revised clause (tabled at 24.02.2023 conference)	Resolved
FSIs	Resolved per FRV draft clause of 15 December 2023 (tabled at 24.02.2023 conference)	Resolved
Relativities	UFU and FRV have dealt with this matter by an exchange of letters. FRV understand this means cl 100 will remain as set out in v12 of UFU log of claims.	Resolved
Allowance schedules	FRV agree this is essentially a drafting issue that can be dealt with once in-principle agreement reached on EA	Resolved – subject to drafting
Minimum staffing	<p>Schedule 16 has been resolved per email from LC to MK 09/03/2023 8:31 PM, subject to the number cited in para 3(c) which reflects staffing uplift.</p> <p>FRV has no commitment from Government to fund increases to the minimum staffing requirements in the proposed EA. Without such funding FRV does not agree to increases to the minimum staffing requirements in the proposed EA.</p> <p>While Government has advised that any increases to the minimum staffing charts should not be included in the proposed EA, FRV will continue to make submissions to Government with respect to funding for increased staffing.</p> <p>FRV proposes maintaining the current minimum staffing charts in the proposed EA.</p>	Not resolved
Public holidays	On 10 February 2023 the parties agreed to resolve the matter via an exchange of letters. FRV provided the UFU with a proposed letter on 09.03.2023. FRV is yet to receive response letter to close the matter off.	Not resolved

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 17, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Telephone: (03) 8608 2163 / (03) 8608 2047

Address for Service:

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Fax: -

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david.woodman@minterellison.com



27 March 2023

Gavin Freeman AFSM
Fire Rescue Commissioner (Acting)
Fire Rescue Victoria

By email only: Gavin.Freeman@frv.vic.gov.au

Dear Commissioner Freeman,

Bargaining for a Replacement Operational Staff Agreement.

I write to you in relation to the above matter and to our discussions today.

The UFU indicated it was prepared to accept the FRV's offer dated 10 March 2023 subject to the conditions set out in its correspondence of 15 March 2023. One of the conditions identified involved the recognition of the savings that have been realised as a result of the processes of harmonisation and merger of the fire services (**Efficiencies**).

Despite the position originally taken by the FRV as set out in the UFU correspondence dated 10 March 2023 (that is, to bargain in respect of Efficiencies under Pillar 3 of the Government Wages Policy), the FRV has more recently confirmed that Government has prevented the FRV from pursuing such a course.¹

The FRV's position with respect to Efficiencies has now been further clarified. **Enclosed** is an FRV document which contains the following three tables:

Table 1: "Benefits to staff (funded by Pillar 3 considerations)" in the amount of \$17,748,903.

Table 2: "3rd Pillar contributions – wages policy compliant" in the amount of \$26,643,718.

Table 3: "Other measures" in the amount of \$117,661,476.

The FRV's position in respect of each Table is as follows:

- (a) Table 1 items are allowance and entitlement items that have been agreed to and costed, and will appear in the new Agreement.
- (b) Table 2 items are recognised by Government and the FRV as Pillar 3 amounts. However:
 - (i) the Table 2 total available for any wage increase is to be reduced by the Table 1 total as the Table 2 amount funds the Table 1 items; and
 - (ii) the FRV will not bargain with the UFU in respect of the balance (that is, Table 2 amount less Table 1 amount of \$8,894,815) for reasons that have not been articulated.
- (c) Table 3 items are accepted by the FRV to be Efficiency items, however, whilst these items have all resulted in savings to the FRV, they are not recognised as Pillar 3 items by Government as the savings have already been achieved. That is, if a new Agreement were to be struck, the items in Table 3 would not result in a spending reduction for the FRV because the spending reduction occurred some time ago when the Efficiencies were realised.

In Matter C2022/5683 (in which the UFU sought that the Efficiencies be paid by way of an allowance as contemplated under Pillar 3), the FRV and the Minister made submissions to the FWC that Efficiencies should be dealt with in bargaining. It is for this reason that, in good faith, the UFU proposed that the Efficiencies matter be adjourned to allow bargaining to proceed. The FRV and the Minister consented to that adjournment without qualification.

Despite the position of both the FRV and the Minister that Efficiencies should be the subject of bargaining, the FRV and Government have refused to engage in any discussions about the payment of realised Efficiencies in the course of discussions over wages, and have actively sought to prevent any of the Efficiencies identified in Tables 2 and 3 of the enclosed FRV document from being the subject of any bargaining for an increase in the wages of operational firefighters.

¹ See FRV letter to UFU dated 14 March 2023.



UNITED FIREFIGHTERS UNION

- VICTORIAN BRANCH

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Phone: (03) 9419 8811 Fax (03) 9419 9258

Branch Secretary: Peter Marshall

For three years, the UFU has facilitated FRV's harmonisation and progression of changes to key entitlements including Relocation Assistance and Special Rosters, as well as other items such as introducing the IFP program, harmonising appliances and harmonising consultation. The UFU's participation in these processes was on the basis that operational members would be paid from the Efficiencies realised by such changes.

The FRV has previously confirmed that the processes of harmonisation and achievement of efficiencies could not have been achieved without the participation and co-operation of the UFU. It does not appear in issue that these efficiencies have led to very significant savings for the FRV to date, as the Table 3 total confirms.

However, the position of the Government and the FRV is to take the full benefit of the UFU's participation, but to refuse to recognise it in bargaining because those Efficiencies have already been realised (and so will not lead to any spending changes in the new Agreement).

The position of the FRV in this matter is untenable. To highlight how industrially unsound its position is, it is apparent that, if the UFU had sought to prevent the processes of harmonisation and merger and instead insisted on the maintenance of its strict legal rights under the Interim Agreement, it would be in a far better position in bargaining today. That is because the Government and FRV would recognise any efficiencies to be achieved under the new Agreement (but not prior) under Pillar 3.

The FRV's untenable stance on Efficiencies has now placed the UFU in an invidious position where, in order to achieve what it was promised², it is in its best interests to immediately unwind the work from the last three years to put its members in the place where they should be in bargaining.

Please confirm by 5pm Tuesday, 28 March 2023 that the Government and the FRV will refuse to bargain in respect of the Efficiencies identified in the enclosed document for the reasons identified in this correspondence.

Yours Sincerely,

Peter Marshall
Branch Secretary

² See correspondence from UFU to FRV dated 7 March 2023.

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 18, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Address for Service:

Level 20, Collins Arch, 447 Collins
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Telephone: (03) 8608 2163 / (03) 8608 2047

Fax: -

Email: tom.molan@minterellison.com /
david.woodman@minterellison.com



Department of Justice and Community Safety

Emergency Management

Level 26
121 Exhibition Street
Melbourne Victoria Postcode
justice.vic.gov.au

Gavin Freeman AFSM
Fire Rescue Commissioner
Fire Rescue Victoria
456 Albert Street
EAST MELBOURNE VIC 3002

By email: gavin.freeman@frv.vic.gov.au

Dear Commissioner Freeman

I write to confirm the Government's position in relation to Fire Rescue Victoria (FRV) bargaining for a new operational firefighters' agreement (**Operational Agreement**) with the United Firefighters' Union of Australia (**UFU**) and other bargaining representatives.

I confirm that the Government has resolved the following:

Revised settlement offer

FRV has authority from Government to put the following revised settlement offer to the UFU and other bargaining representatives:

- a) A four-year agreement with a first increase of 1 July 2023. Consistent with Wages Policy, there will be no back pay
- b) Four annual wage increases of 3 per cent
- c) A separate lump sum cash payment under Pillar 1 of the new 2023 Wages Policy, which as a one single payment to each firefighter amounts to approximately \$7,359 per FTE, based on 3,800 FTE.
- d) Four lump sum cash payments over the life of the agreement in line with Pillar 3 (details to be confirmed separately)
- e) The offer should specify that the following will not be approved for inclusion in the new Operational Agreement:
 - any increases to the minimum staffing charts
 - any reference to a firefighter's registration scheme, including removal of the current reference
 - clauses allowing for extra claims during the life of the agreement, such as the proposed productivity clause and harmonisation clause. This includes removing the current references.

Personal and health information received by the Department of Justice and Community Safety is managed in accordance with the Victorian privacy legislation. A copy of the Department's privacy policy is available at www.justice.vic.gov.au. For Privacy enquiries, please telephone (03) 8684 0071.



In addition to above, the settlement offer should also specify that if the offer is rejected by the UFU and other bargaining representatives, FRV will reserve its rights to withdraw in-principle agreement to retain some or all of the restrictive clauses contained in the current Operational Agreement.

Please note, any final in-principle agreement reached with the union and independent bargaining representatives will require final approval by Government and must be compliant with the Government's 2023 Wages Policy.

I ask that your officers discuss and confirm with Industrial Relations Victoria and the Department of Justice and Community Safety on how and when to communicate this offer to the UFU, other bargaining representatives and the Fair Work Commission.

Yours sincerely

A handwritten signature in grey ink, appearing to read 'K. Fitzgerald', followed by a long, sweeping horizontal line that extends to the right.

Kate Fitzgerald
Deputy Secretary
Emergency Management

15/06/2023

FAIR WORK COMMISSION

Matter No.: B2023/771
Applicant: United Firefighters' Union of Australia
Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 19, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by: MinterEllison, solicitors for the Respondent	Telephone: (03) 8608 2163 / (03) 8608 2047
Address for Service: Level 20, Collins Arch, 447 Collins Street, Melbourne VIC 3000	Fax: - Email: tom.molan@minterellison.com / david.woodman@minterellison.com

From: Laura Campanaro <org1@ufuvic.asn.au>
Sent: Monday 19 June 2023 03:19 PM
To: Chambers - Wilson C; CRABTREE, Jo; Koletsis, Nicholas; WALKER, Stacey
Subject: RE: B2022/1676 - Application by Fire Rescue Victoria
Attachments: 23-06-19 Edit - Application by Fire Rescue Victoria DRAFT Statement 16 June 2023.docx

Caution: This email came from outside FRV. Do not open attachments or click on links if you do not recognize the sender.

Dear Associate,

Please find **attached** edit (using track changes) to [2] only.

Please note that UFU has discussed and agreed this change with FRV. I have copied the FRV representatives into this email.

Regards,

Laura Campanaro

United Firefighters Union

Victorian Branch

408-410 Brunswick Street, Fitzroy 3065

Victoria Australia

M 0427 734 064 | T (03) 9419 8811 | F (03) 9419 9258 | W www.ufuvic.asn.au



From: Chambers - Wilson C <Chambers.Wilson.C@fvc.gov.au>

Sent: Friday, June 16, 2023 10:16 AM

To: Laura Campanaro <org1@ufuvic.asn.au>; CRABTREE, Jo <Jo.Crabtree@frv.vic.gov.au>; KOLETISIS, Nick <Nick.Koletsis@frv.vic.gov.au>; WALKER, Stacey <Stacey.Walker@frv.vic.gov.au>

Subject: B2022/1676 - Application by Fire Rescue Victoria

Dear Parties,

RE: B2022/1676 - Application by Fire Rescue Victoria

The Commissioner provides the attached draft Statement to parties for review and comment and asks that should the parties wish to seek any amendments to the Statement that they do so by making tracked changes and returning the document to Chambers and the other side for review.

If parties could kindly provide any proposed amendments at their soonest convenience but not later than **4.00PM Monday 19 June 2023**.

Kind regards,

Emily Mahoney
Associate to Commissioner Wilson

Fair Work Commission

Tel: 03 8656 4538

Fax: 03 9655 0401

Chambers.Wilson.C@fwc.gov.au

Level 4, 11 Exhibition Street, Melbourne, VIC, 3000
PO Box 1994, Melbourne, Vic, 3001



Fair Work Commission

Australia's national workplace relations tribunal

The Fair Work Commission acknowledges that our business is conducted on the traditional lands of Aboriginal and Torres Strait Islander people. We acknowledge their continuing connection to country and pay our respects to their Elders past, present and emerging.

This email was sent from Wurundjeri Woi Wurrung Country.



STATEMENT

Fair Work Act 2009
s.240—Bargaining dispute

Fire Rescue Victoria

v

United Firefighters' Union of Australia
(B2022/1676)

COMMISSIONER WILSON

MELBOURNE, 16 JUNE 2023

Statement

[1] Bargaining for a replacement to the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020* (the 2020 Agreement) has been underway for some time now. Bargaining has mainly taken place outside of the Fair Work Commission with claims and responses being discussed and resolved between the parties in an orderly and constructive manner. There have also been 11 conferences chaired by the Commission since an application for assistance with a bargaining dispute was lodged by Fire Rescue Victoria on 4 November 2022.

[2] Bargaining has progressed very well to the point that the ~~United Firefighters' Union (UFU)~~ UFU and FRV now reports that since the last conciliation conference held on 27 April 2023 all outstanding matters have been resolved, save for the matter of an offer for increases to wages and related monetary allowances.

[3] The constructive flow of bargaining has been assisted by mutual commitments between the main actors in the negotiations, Fire Rescue Victoria (FRV) and the UFU to constructively facilitate the formation of the FRV in July 2020 after the merger of the Metropolitan Fire and Emergency Services with the professional firefighting operations of the Country Fire Authority. The constructive industrial relations climate since 2020 has allowed, so I have been informed in the conciliation conferences held, for significant organisational and operational changes to be made faster than otherwise may be the case and with potentially greater effect, including financial effect. The UFU points to these matters as not only a justification for its wages and allowance claims but also as a reminder that continued constructive cooperation cannot be taken for granted. The UFU also points to the fact that cooperation in negotiations has taken place against the fact that the relevant parts of the 2020 Agreement all passed their nominal expiry date no later than 1 July 2019.

[4] Shortly before the last conciliation conference, held on 27 April 2023, the Victorian Government announced details of its updated Wages Policy and Enterprise Agreement Framework. Until the new policy was announced in April 2023 and then later documented

bargaining on the matter of the union's monetary claims had been unable to progress as there was both a lack of clarity about the quantum of increase that could be considered by FRV as well as that FRV had no authority to put forward a wages proposal for the UFU's consideration.

[5] It is no understatement to record that the whole 8-month life of this file has been featured by statements throughout that a comprehensive wages and allowance offer from FRV to the UFU is "imminent". The file started that way, and it remains so now.

[6] There is a need for FRV and those who instruct them to take the imminence of a wages proposal beyond rhetoric and make a proposal to the UFU and other employee bargaining representatives in the near future which properly responds to their claims. The publication of the Victorian Government's Wages Policy and Enterprise Agreement Framework clears the way for such an offer to be made and it behoves FRV to ensure an offer is communicated in the very near future.

COMMISSIONER

Printed by authority of the Commonwealth Government Printer

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 20, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Address for Service:

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Fax: -

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STATEMENT

Fair Work Act 2009
s.240—Bargaining dispute

Fire Rescue Victoria

v

United Firefighters' Union of Australia
(B2022/1676)

COMMISSIONER WILSON

MELBOURNE, 19 JUNE 2023

Statement

[1] Bargaining for a replacement to the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020* (the 2020 Agreement) has been underway for some time now. Bargaining has mainly taken place outside of the Fair Work Commission with claims and responses being discussed and resolved between the parties in an orderly and constructive manner. There have also been 11 conferences chaired by the Commission since an application for assistance with a bargaining dispute was lodged by Fire Rescue Victoria on 4 November 2022.

[2] Bargaining has progressed very well to the point that the UFU and FRV now report that since the last conciliation conference held on 27 April 2023 all outstanding matters have been resolved, save for the matter of an offer for increases to wages and related monetary allowances.

[3] The constructive flow of bargaining has been assisted by mutual commitments between the main actors in the negotiations, Fire Rescue Victoria (FRV) and the UFU to constructively facilitate the formation of the FRV in July 2020 after the merger of the Metropolitan Fire and Emergency Services with the professional firefighting operations of the Country Fire Authority. The constructive industrial relations climate since 2020 has allowed, so I have been informed in the conciliation conferences held, for significant organisational and operational changes to be made faster than otherwise may be the case and with potentially greater effect, including financial effect. The UFU points to these matters as not only a justification for its wages and allowance claims but also as a reminder that continued constructive cooperation cannot be taken for granted. The UFU also points to the fact that cooperation in negotiations has taken place against the fact that the relevant parts of the 2020 Agreement all passed their nominal expiry date no later than 1 July 2019.

[4] Shortly before the last conciliation conference, held on 27 April 2023, the Victorian Government announced details of its updated Wages Policy and Enterprise Agreement Framework. Until the new policy was announced in April 2023 and then later documented bargaining on the matter of the union's monetary claims had been unable to progress as there

was both a lack of clarity about the quantum of increase that could be considered by FRV as well as that FRV had no authority to put forward a wages proposal for the UFU's consideration.

[5] It is no understatement to record that the whole 8-month life of this file has been featured by statements throughout that a comprehensive wages and allowance offer from FRV to the UFU is "imminent". The file started that way, and it remains so now.

[6] There is a need for FRV and those who instruct them to take the imminence of a wages proposal beyond rhetoric and make a proposal to the UFU and other employee bargaining representatives in the near future which properly responds to their claims. The publication of the Victorian Government's Wages Policy and Enterprise Agreement Framework clears the way for such an offer to be made and it behoves FRV to ensure an offer is communicated in the very near future.



COMMISSIONER

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FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 21, TO THE WITNESS STATEMENT
OF JO CRABTREE**

Lodged by: MinterEllison, solicitors for the Respondent	Telephone: (03) 8608 2163 / (03) 8608 2047
Address for Service: Level 20, Collins Arch, 447 Collins Street, Melbourne VIC 3000	Fax: - Email: tom.molan@minterellison.com / david.woodman@minterellison.com

7 August 2023

Peter Marshall
Branch Secretary
United Firefighters Union
410 Brunswick Street
FITZROY VIC 3065

Via email: p.marshall@ufuvic.asn.au

Dear Peter,

RE: BARGAINING – OPERATIONAL AGREEMENT

As you are aware, formal bargaining for the replacement Operational Agreement has been underway for a number of years, with informal bargaining in place since July 2020 and formal bargaining commencing in April 2022. Much progress has been made between the bargaining parties in establishing a framework for the replacement Operational Agreement that will support future harmonisation of Fire Rescue Victoria's (FRV's) workforce.

While FRV and the bargaining representatives have been in direct negotiations, as a government agency, any offer made by FRV, and all matters agreed in-principle are subject to government approval and authorisation. FRV has consistently reinforced this message throughout the bargaining process.

In accordance with the Victorian Government's 2023 *Wages Policy and the Enterprise Bargaining Framework* (the 2023 Wages Policy), FRV is pleased that they have been authorised by the Government to make a settlement offer.

On this basis, FRV provides the following settlement offer to the United Firefighters Union (UFU) and other bargaining representatives in relation to a replacement Operational Agreement:

- a) A four-year agreement with a first increase of 1 July 2023, consistent with the Wages Policy, no back payments beyond 1 July 2023 will be made;
- b) Four annual wage increases to wages and allowances of 3 per cent as of 1 July of each year;
- c) A separate lump sum cash payment under Pillar 1 of the Wages Policy, which is a one-off single payment to each person amounting to approximately \$7,359 per Full-Time Equivalent (FTE);
- d) Four lump sum cash payments to each person over the life of the Agreement as a "Pillar 3" payment of approximately \$2,021 per year, with the first payment payable on 1 July 2023.

The above accords with the 2023 Wages Policy, which, amongst other things, requires that all agreements be fiscally sustainable and fully funded. This is particularly important in the economic environment in which the state of Victoria finds itself. In that respect, there are some elements that FRV has not been authorised by the government to include in the replacement Operational Agreement as they could result in additional unbudgeted costs, namely:

- any reference to a firefighter's registration board, including the inclusion, in the replacement Operational Agreement, of the current reference in clauses 49 (Division A) and 42 (Division B) of the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020* (The Interim Agreement).
- clauses allowing for extra claims to be arbitrated by the Fair Work Commission (FWC) during the life of the agreement; where this is currently provided for, it is proposed that the role of FWC will be one of conciliation rather than arbitration. This does not preclude the ability for extra claims to be agreed upon for changes to work practices.

The government has highlighted the need to deliver on their broader responsibilities to manage any industrial implications for all Victorian Public Sector Employment Agreements and it is in this context that these exceptions form part of the settlement offer.

Additionally, as we have consistently stated through bargaining, increases to the minimum staffing charts contained within the agreement are dependent on funding, which has not been approved at this time. It is noted that FRV still intends to seek funding for new positions as necessary to address capability gaps or emerging needs and will seek to increase staffing numbers in accordance with approved funding. However, this would not result in a change to the replacement Operational Agreement.

The settlement offer will be revised if the FWC makes a determination on the efficiency allowance matter (C2022/5683) or the application for an increase to existing allowances (C2023/2071) that affects allowances for FRV operational staff.

This settlement offer is being put in the context of an overall package, provided on a "without prejudice" basis.

FRV will be seeking a s240 conference with the FWC to enable discussion of the settlement offer.

Yours sincerely,



**Gavin Freeman AFSM
Commissioner
Fire Rescue Victoria**

FAIR WORK COMMISSION

Matter No.: B2023/771
Applicant: United Firefighters' Union of Australia
Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 22, TO THE WITNESS STATEMENT
OF JO CRABTREE**

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UNITED FIREFIGHTERS' UNION - Victorian Branch

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7 August 2023

Dear Commissioner Freeman,

CC: FRV ELT

I refer to your letter dated 7 August 2023 setting out a purported offer on behalf of Fire Rescue Victoria.

The UFU has serious concerns regarding FRV's conduct. Given the long history of bargaining for a proposed FRV/UFU Operational Staff Enterprise Agreement and the agreement reached between the bargaining representatives on all but two matters, this offer is rejected outright. Moreover, the offer is clearly incompatible with the good faith bargaining obligations under s.228 of the *Fair Work Act 2009* (**FW Act**).

This open letter is a concerns notice under s.229 of the FW Act.

Chronology of events

1. On 4 November 2022, FRV filed a s.240 application (**B2022/1676**) seeking the assistance of the Commission to resolve a bargaining dispute and listed 9 items:

28. Subject to the UFU providing FRV with a copy of the draft enterprise agreement V12, FRV considers that the Fair Work Commission's involvement is necessary to resolve, at least, the following disputed matters between the parties:

- a. *Wages;*
- b. *Allowances;*
- c. *Minimum Staffing Numbers;*
- d. *Health insurance;*
- e. *Public Transport;*
- f. *Fire Safety Officers;*
- g. *Fire safety Inspectors;*
- h. *Wage and percentage relativities; and*
- i. *The proper characterisation of the alleged efficiencies currently the subject of C2022/5683 as well as the intersection between them and the kind and/or level of benefit provided for by the New Agreement.*

2. On 3 February 2023, Commissioner Wilson issued a Statement setting out the following:

[4] Bargaining between the FRV and the UFU and other bargaining representatives has progressed between the parties with substantial goodwill, to the point where at the time the matter was referred to me to be dealt with the principal parties, the FRV and UFU, had reached agreement on all but 10 issues, as follows:

1. *Wages and Allowances – which awaits a proposal from the FRV in response to the UFU claims, with the FRV seeking to receive advice from Government about an amended or new wages policy.*

2. *Fire Safety Officers – resolution of this claim requires a decision from the FRV Executive Leadership Team.*
3. *Firefighters Registration Board – there has been no discussion on this subject with both parties looking to further proceedings in the Commission on the subject.*
4. *Health Insurance – the UFU most recently advised that it is exploring avenues to achieve Health Insurance and will report back.*
5. *Public Transport Fares – the UFU now seeks to progress this with a discussion directly with Public Transport Victoria (PTV).*
6. *Fire Safety Inspectors – the matter appears agreed in principle with drafting to be exchanged between the parties.*
7. *Emergency Medical Response Allowance – this matter appears close to agreement.*
8. *Allowances Schedule – this matter also appears close to agreement.*
9. *Wages and Classification Relativities – further discussions are required between the parties about this matter. FRV has provided the UFU with a draft clause regarding this item to which the UFU is to respond. The UFU is also seeking to reserve its position in relation to potential future examination of the relativities for Station Officers and Senior Station Officers, and will provide a draft clause regarding this matter to FRV for consideration by the FRV.*
10. *Minimum staffing – FRV and UFU have agreed to the safe staffing claim numbers and funding for the UFU safe staffing claims remain under consideration by the Minister for Emergency Services. Further discussions are required between the UFU and the FRV in respect of staffing numbers indicated in Schedules 16 of the draft agreement.*

...

[6] *It is clear to me bargaining will be unlikely to meaningfully progress without the capacity of FRV to put forward a detailed monetary proposal for consideration of the UFU and other employee bargaining representatives. What is ultimately put forward by the FRV for consideration of the UFU and employees is likely to be a function of the Victorian Government wages policy which is presently under review following its re-election in November 2022. I note that the parties are currently bargaining under the 2019 wages policy.*

...

[16] *I consider it desirable that before that date and time the parties endeavour to resolve to finality all of the non-wages matters that have been under discussion in the conciliation conferences to date. In particular I request that they meet on that subject before the next conference, discussing all remaining non-wages matters.*

3. UFU and FRV representatives met a further 12 times between 3 February and 26 April 2023, and all outstanding items were agreed and/or settled between UFU and FRV except for the quantum increase of wages and allowances.
4. On 10 March 2023, the FRV made an offer to the UFU. No reference was made to any clauses other than the matter of the quantum of wages and allowances. The FRV's offer was not made contingent on the trading off on any matters already agreed between the parties, and there was no reference to any putative concerns about "some elements" in the agreed clauses that "could result in additional unbudgeted costs".
5. On 15 March 2023, the UFU wrote to the FRV and accepted the FRV's offer subject to certain conditions that pertained to the quantum of wages and allowances. It was stipulated by the UFU that:

These conditions are put forward on the basis that the parties have otherwise agreed to all non-wages terms and conditions as contained in the most recent iteration of the Draft Operational Staff Agreement.

6. The progress between UFU and FRV in 2023 in achieving agreement on all matters other than the quantum of wages and allowances is evidenced in both correspondence and communications to operational members by both UFU and FRV. For example:
- (a) On 20 March 2023, UFU wrote to FRV and provided Version 13 of the proposed Enterprise Agreement. In its correspondence, the UFU noted that “277 out of 281 clauses and all schedules have been agreed between UFU and FRV, with many clauses already implemented”. The UFU acknowledged further work to do on the quantum of wages and allowances. The Fire Rescue Commissioner Gavin Freeman verbally, positively acknowledged the correspondence the following day.
 - (b) On 21 March 2023, UFU published a Bulletin to all members titled *OPS BARGAINING: Version 13 of proposed Ops Agreement including further items agreed between UFU and FRV*. In this Bulletin, the UFU relevantly wrote:

“Version 13 is an update from Version 12 and encompasses further clauses that have been agreed between UFU and FRV in recent months.

As members may by now be familiar with, Version 13 builds upon Version 12 (and prior versions) and has been updated following around 7 further meetings between UFU and FRV in recent months and further agreement on specific items and clauses. The UFU is pleased with the level of agreed progress between UFU and FRV bargaining representatives”.
 - (c) On 29 March 2023, FRV published a video to all FRV Staff. In the video, Fire Rescue Commissioner Gavin Freeman said that “significant progress has been made with these negotiations, for the Operational Agreement for example all matters have been agreed other than the Firefighters Registration Board clause, the funding to increase minimum staffing requirements, and Annual Leave for Fire Safety Officers and the Incident Management Support clause for those Fire Safety Officers. The quantum of wages and allowances increases of course is yet to be agreed as well”.
 - (d) On 27 April 2023, FRV and UFU attended a s.240 conference and both parties reported to Commissioner Wilson that, with the exception of the Firefighter Registration Board clause, there was no outstanding item other than quantum increase to wages and allowances. FRV attributed the delay in negotiating quantum increase to wages and allowances to the imminent, new Government Wages Policy.
 - (e) On 25 May 2023, UFU published a Bulletin to all FRV operational members, *Operational Members: Wages & Allowances*. In this Bulletin, the UFU wrote:

*“All conditions of employment/clauses, as has been articulated by the Union as well as Commissioner Freeman, have been **agreed**. The **only** outstanding matter is the quantum increase to wages and allowances”.*
7. On 19 June 2023, Commissioner Wilson issued a further Statement setting out the following (at [2]):
- Bargaining has progressed very well to the point that the UFU and FRV now report that since the last conciliation conference held on 27 April 2023 all outstanding matters have been resolved, **save** for the matter of an offer for increases to wages and related monetary allowances.*
8. On 27 June 2023, UFU provided Version 14 of the proposed Enterprise Agreement to FRV. The document reflected all agreed terms which is, in essence, everything except for the quantum increase in wages and allowances.
9. On 11 July 2023, UFU published UFU Bulletin #100 to all members titled “OPS BARGAINING ... This affects you! Version 14 of proposed Ops Agreement on Members Intranet & UFU App Upcoming Zoom meetings scheduled + face-to-face meetings”. In this Bulletin, the UFU wrote:

“Per the discussion at UFU Station Visits in recent months, as well as the UFU Delegate Note provided to UFU Delegates in June, the only outstanding matter in bargaining is the quantum for wages and allowances.”

The UFU’s Position

Your letter of 7 August 2023 is suggestive of an intention to resile from a number of agreements already made by FRV in the proposed draft agreement. These agreed clauses are:

- (a) The withdrawal from agreement to the longstanding clause on allowances. This represents a serious diminution in the conditions of UFU members. This clause has been used, often by practical agreement between the parties, to obtain minimal increases for firefighters in circumstances where bargaining for wage increases has taken an inordinate length of time, just like the current situation. In fact, as you are no doubt aware there is a claim currently reserved by Wilson C in which FRV agreed that there should be an increase under this clause pending resolution of the current drawn-out bargaining process.
- (b) The withdrawal of agreement to the Firefighters’ Registration Board clause. It is hard to see that this relates to funding issues as opposed to political issues arising from other litigation.
- (c) While your letter does not expressly state it, it makes clear that you now wish to resile from agreement over staffing increases. These were agreed through a process in which FRV and the UFU sought to identify what was necessary for the safe operation of FRV. This is a significant betrayal of the process of co-operation which has been undertaken by the parties in these negotiations, and a betrayal of UFU members.

Additionally, your offer fails to recognise or to give effect to the agreement between FRV and the UFU that efficiencies achieved during the creation of the FRV, which were only achieved through UFU co-operation, and were intended by all parties to be utilised to fund wage increases. Those efficiencies on FRV’s figures amount to \$117m. The increases in your offer come nowhere near that figure. The bad faith involved in this about face, which was detailed in my letters to you of 7 March 2023 and 27 March 2023, has prevented any prospect of genuine agreement being reached in bargaining.

Your offer is made on the eve of the first hearing of the UFU’s intractable bargaining application (listed on 9 August 2023). Aside from matters related to the increase in quantum of wages and allowances everything else was agreed, and you have gone on record to that effect. This offer is rejected because it is not a genuine offer, it is nothing more than a cynical, disingenuous and transparent attempt to reframe the issues that will be liable to be arbitrated in an intractable bargaining workplace determination. It is seen by the UFU as such and is rejected out of hand.

Regards,



Peter J Marshall
Branch Secretary

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 23, TO THE WITNESS STATEMENT
OF JO CRABTREE**

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MinterEllison.

9 August 2023

BY EMAIL

Tonia Sakkas
Principal
Davies Lawyers
Suite 1/392 Hampton Street
HAMPTON VIC 3188

Dear Ms Sakkas

B2023/771 - Application by United Firefighters' Union of Australia

We refer to the above matter and confirm that we are instructed to act on behalf of Fire Rescue Victoria (**FRV**). Enclosed, by way of service, is a Form F53 notice.

As you are aware, FRV wrote to the UFU (and other bargaining representatives) on 7 August 2023 to set out FRV's offer for the purpose of finalising bargaining for the enterprise agreement to replace the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020* (**Proposed Agreement**).

While the UFU sent a communication at 9.21pm that same evening rejecting the settlement offer (and FRV acknowledges the UFU's capacity as a bargaining representative for its members to do so), it did not identify which parts of the offer it objected to and / or what it proposes be changed in order for the offer to be acceptable. FRV would welcome the opportunity to provide further information in relation to the details and rationale of various components of the settlement offer. FRV is hopeful that with further bargaining in relation to these matters, the parties will be able to reach a resolution that is acceptable to all parties..

In the UFU's response to the settlement offer, the UFU also raised concerns that the offer was incompatible with FRV's good faith bargaining obligations on the basis that it resiled from previously agreed matters. FRV has at all times sought to be clear that all matters the subject of bargaining could only be agreed in principle and were subject to Government approval. Bargaining for the Proposed Agreement has at all times been conducted within a framework in which it is understood that any proposed bargaining outcome is ultimately subject to Government approval and funding.

While the fact that the settlement offer that has now been approved by Government is conditional on some changes to the approach that the parties had proposed in relation to certain matters is unfortunate, it is consistent with the framework within which bargaining is taking place and is in no way incompatible with good faith bargaining.

Against that background, and for the purposes of putting the UFU on notice of FRV's position ahead of the mention listed before Justice Hatcher this afternoon, we are instructed to inform you that FRV will not oppose the UFU's application for an intractable bargaining declaration being timetabled towards hearing (including the filing of submissions / evidence).

However, FRV's preference is to attempt to resolve the current issues in bargaining through further negotiations with the assistance of the Fair Work Commission (and for the parties to be given this opportunity prior to the dates specified for any further substantive steps in relation to the application for an intractable bargaining declaration). Accordingly, FRV will also seek the UFU's agreement to

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participate in further bargaining conferences to be conducted as a continuation of the ongoing section 240 process before Commissioner Wilson (with matter number B2022/1676).

While FRV is hopeful that further section 240 conferences will be effective process for the purpose of finalising bargaining, it recognises that this will only be the case if the UFU wishes to participate. It is for that reason that FRV is seeking the UFU's agreement to this approach.

In light of the matters raised in the UFU's response to FRV's settlement offer, FRV's view is that any conference(s) before Commissioner Wilson would provide a productive forum for, amongst other things:

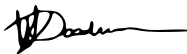
- (a) FRV to provide further information about the detail of its offer – noting that the letter sent on 7 August 2023 was necessarily a high-level summary of the offer (in particular in relation to clauses or elements in the agreement which might give rise to unbudgeted costs);
- (b) the UFU to explain its concerns about the offer and identify the alternative position it proposes should be adopted in relation to those matters;
- (c) FRV to provide a response to any alternative position identified by the UFU and other bargaining representatives; and
- (d) FRV to address the concerns that the UFU and other bargaining representatives have raised about it not complying with its good faith bargaining obligations.

If the UFU is agreeable to this approach, we propose that the parties jointly prepare correspondence to Commissioner Wilson's associate enquiring about the Commissioner's availability to conduct these further conferences as a matter of priority.

We confirm that we will also provide this letter to the Minister for Emergency Service's representatives noting the correspondence received on 8 August 2023 that the Minister intends to seek leave to intervene in the application for an intractable bargaining declaration.

If you have any queries, please do not hesitate to contact David Woodman or Tom Molan of our office.

Yours faithfully
MinterEllison



Contact: Tom Molan T: +61 3 8608 2163
tom.molan@minterellison.com
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david.woodman@minterellison.com
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FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 24, TO THE WITNESS STATEMENT
OF JO CRABTREE**

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Thursday 17 August 2023

Mr Peter Marshall
Branch Secretary
Union Firefighters Union
410 Brunswick Street
FITZROY VIC 3065

Via email: p.marshall@ufuvic.asn.au

Dear Peter

RE: BARGAINING – OPERATIONAL AGREEMENT

I refer to the correspondence FRV's lawyers sent the UFU's lawyers on Wednesday, 9 August 2023, prior to the mention before Justice Hatcher in the UFU's application for an intractable bargaining declaration.

In that letter, while accepting of the UFU's right to reject the settlement offer provided by FRV, it was observed that the UFU had not identified which parts of the offer it objected to and / or what it proposed be changed in order for the offer to be acceptable.

FRV now understands that the UFU position is that it rejects the entirety of the settlement offer FRV was authorised by the Government to provide on 7 August 2023.

It is FRV's preference to try and resolve the outstanding matters within bargaining and to address concerns raised by the UFU regarding good faith bargaining with the support of further section 240 conferences before Commissioner Wilson.

If the UFU feels there would be benefit in further section 240 conferences before Commissioner Wilson, we ask that you let us know by 5pm Friday 18 August 2023, and we will make inquiries of Commissioner Wilson's chambers to arrange for these conferences to be conducted as soon as practicable.

Yours sincerely



Gavin Freeman AFSM
Commissioner
Fire Rescue Victoria

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-1', ATTACHMENT 25, TO THE WITNESS STATEMENT
OF JO CRABTREE**

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18 August 2023

Gavin Freeman AFSM
Commissioner
Fire Rescue Victoria

Email:

CC: FRV Executive Leadership Team

Dear Commissioner Freeman

RE: BARGAINING – OPERATIONAL AGREEMENT

I refer to your letter dated 17 August 2023.

The UFU's position with respect to your "offer" was set out in the UFU's submissions dated 14 August 2023, filed in the intractable bargaining proceedings B2023/771.

The only thing the parties are bargaining about is the quantum of wages and allowances. Everything else is an agreed term: see the most recent Statement of Commissioner Wilson dated 19 June 2023 at [2].

Any offer with respect to wages and allowances must acknowledge the agreement between the parties which is the basis of the UFU's claim. The FRV has taken advantage of the UFU's participation in the processes post-merger of the Victorian fire services, and has achieved savings as a result which the FRV itself has quantified as over \$117 million.

Any attempt to make strategic offers in order to position the FRV in the current proceedings will be rejected out of hand.

These matters were all made clear in the UFU's correspondence dated 7 August 2023 and in its submissions.

The fact that the FRV has refused to engage with the UFU for nearly two years yet is suddenly making inquiries about the UFU's position (which has already been made clear) after the UFU commenced the current proceedings, confirms that this correspondence is part of a tactical ploy.

In the absence of any meaningful engagement from the FRV, the UFU is focussed on the intractable bargaining proceedings and will seek a declaration and a determination on wages and allowances.

Regards,

Peter J Marshall

Branch Secretary