

FAIR WORK COMMISSION

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

SECOND 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. I previously made a witness statement in this proceeding dated 5 September 2023 (**First Crabtree Statement**). I have adopted the defined terms in the First Crabtree Statement in this statement. I rely on the First Crabtree Statement for the purposes of the hearing before the Commission on 18 and 19 December 2023.
4. 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.
5. The purpose of this witness statement is to describe the steps taken during the post-declaration negotiation period (**PDNP**) between 4 October 2023 and 18 October 2023, following the making of the intractable bargaining declaration on 4 October 2023.
6. At the time of making this statement, a tabbed and paginated bundle of documents was shown to me marked '**Exhibit JC-2**'. I refer to documents from Exhibit JC-2 by their attachment number in this statement. To avoid confusion, I have continued the attachment numbering from the First Crabtree Statement.

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

POST-DECLARATION NEGOTIATING PERIOD

7. On 5 October 2023, FRV sent the UFU a letter regarding the cessation of protected industrial action. In this letter, FRV enquired about the UFU's views regarding participating in conferences with the assistance of Commissioner Wilson during the PDNP as raised as a possibility in the Full Bench's decision granting the intractable bargaining declaration (enclosed as **Attachment 26**).
8. On 6 October 2023, the UFU sent FRV a letter stating that the UFU would prefer to meet in person on 11 October 2023 without the assistance of Commissioner Wilson (enclosed as **Attachment 27**).
9. FRV agreed to the UFU's request to meet on 11 October 2023 without the assistance of Commissioner Wilson.
10. On 10 October 2023, FRV received a letter from the UFU stating that its position during the PDNP was that all matters were agreed other than in respect of wages and allowances (**10 October Letter**). The 10 October Letter also stated that the UFU's position that all matters were agreed other than in respect of wages and allowances was *'the position which UFU will advance to the Full Bench in the forthcoming arbitration. The UFU seeks to preserve that position and will not, in bargaining, derogate from that position'* (enclosed as **Attachment 28**).
11. Following receipt of the 10 October Letter, FRV and the UFU exchanged letters and emails about arrangements for the meeting on 11 October 2023. In an email sent on 10 October 2023, FRV proposed to the UFU that an observer from the Department of Justice and Community Services (**DJCS**) attend the meeting to observe discussions (enclosed as **Attachment 29**).
12. Also on 10 October 2023, by way of reply email, the UFU objected to an observer from DJCS attending the meeting on 11 October 2023 on the basis that the DJCS is not a party to the negotiations (enclosed as **Attachment 30**).
13. On 11 October 2023, FRV and the UFU participated in a meeting from around 10.15am until 2.15pm. I attended this meeting with a number of other representatives from FRV. During the meeting, FRV articulated its position as follows:
 - (a) it accepted that version 14 was the most up-to-date version of the proposed New Operational EA, however FRV reaffirmed that Government had not approved the non-wage related matters that were agreed in-principle between FRV and the UFU. As such, FRV sought to focus on the 7 August Offer on the terms previously offered to the UFU (i.e. on the basis that the offer is a package and the package needs to be accepted by the UFU as a whole, and endorsed by Government, consistent with the 2023 Wages Policy);

- (b) it accepted that, consistent with its submissions in this proceeding, there are matters which were agreed “in-principle” between FRV and the UFU during the bargaining process but which were subject to an overall agreement being reached and were not ultimately approved by Government for inclusion in the package; and
- (c) in respect of staffing numbers and additional firefighters:
 - (i) while there was in principle agreement in relation to the addition of 583 new firefighter positions, FRV’s capacity to add these new positions was subject to funding which had not yet been approved;
 - (ii) the necessary funding for the additional positions required the approval of the Government’s Expenditure Review Committee, which had not yet been obtained, and the proposed New Operational EA could not pre-empt such approval; and
 - (iii) even if the funding was approved, FRV reiterated that it did not have authority to include the additional positions in the proposed New Operational EA. Instead, FRV had authority only to maintain the staffing numbers in Schedule 1 of the current agreement in any New Operational EA;
- (d) in respect of the firefighters’ registration board (**FRB**), FRV informed the UFU that Government had expressed concerns about the costs of the FRB, in addition to their view that the work of the clause was complete and concerns about the potential overlap and duplication between the FRB and the proposed statutory registration board; and
- (e) in respect of the removal of the power of the FWC to arbitrate extra claims, FRV explained that the reason Government required the removal of these clauses was Government’s position that the clauses could result in additional unbudgeted costs to the State during the life of the proposed New Operational EA, which would be contrary to the 2023 Wages Policy and bargaining framework.

14. On 13 October 2023 FRV sent the UFU a letter further explaining the terms of the 7 August Offer and asked the UFU to clarify whether it intended to put a counter-offer to the 7 August Offer to FRV to consider (enclosed as **Attachment 31**) (**13 October Letter**). In this letter, FRV noted, amongst other things, that:

- (a) it was committed to reaching an acceptable outcome in relation to an enterprise agreement to replace the current operational enterprise agreement;
- (b) its view was that the PDNP provides an opportunity to reach agreement on the terms of a replacement enterprise agreement with the necessary degree of finality (including obtaining the required governmental approval) to satisfy the definition of 'agreed terms' for

the purpose of inclusion in a workplace determination and otherwise endeavour to identify matters that are in issue; and

- (c) given the legal framework within which workplace determinations are made, if the parties are able to progress negotiations to the point at which relevant matters meet the definition of 'agreed terms' by the end of the post-declaration negotiating period, this will reduce the risk of there being certain matters within both the current enterprise agreement and proposed enterprise agreement that cannot be included in any workplace determination as a result of constitutional limitations.

15. In response to the 13 October Letter, the UFU sent FRV an email stating that it did not accept the *'account of events'* set out in the 13 October Letter and that it would provide a more detailed response on 16 October 2023 (enclosed as **Attachment 32**).
16. On 16 October 2023, the UFU provided its substantive response to the 13 October Letter (**16 October Letter**). This letter was largely a summary of the UFU's recollection of the meeting that took place on 11 October 2023 (enclosed as **Attachment 33**). This letter also stated that the UFU was available to meet with FRV on 17 October 2023.
17. On 17 October 2023, the UFU emailed FRV two documents that it sought to discuss with FRV (enclosed as **Attachment 34**) at a bargaining meeting (**17 October Proposal**). This offer set out the UFU's position on:
 - (a) clause 55 of the proposed enterprise agreement, dealing with the FRB; and
 - (b) wages and allowances, which provided for:
 - (i) a 3% per annum increase per employee under Pillar 1 of the 2023 Wages Policy;
 - (ii) a 20.36% wage increase for each employee under Pillar 3 of the 2023 Wages Policy; and
 - (iii) additional cost of living adjustment payments to proceed to arbitration as part of the workplace determination.
18. Ultimately, no further meeting between FRV and the UFU occurred during the PDNP. However, on 18 October 2023, FRV sent the UFU a letter (**18 October Letter**) detailing its response to the 16 October Letter, the 17 October Proposal and the UFU's rejection of the 7 August Offer (enclosed as **Attachment 35**). In addition to responding to the correspondence from the UFU, this letter stated that:

- (a) in circumstances where FRV has made it clear that the 7 August Offer was put as a package, the UFU's rejection of this package meant that there were currently no matters that meet the definition of 'agreed terms' for the purpose of inclusion in a workplace determination; and
- (b) whilst it was not FRV's preference, given the UFU's intractable bargaining declaration and the status of bargaining, the matter would need to proceed to the FWC for the making of a workplace determination.

FRV'S POSITION ON AGREED TERMS AND MATTERS AT ISSUE

- 19. During bargaining, the parties were able to work productively together to build opportunities for future harmonisation and, from FRV's perspective, it is regrettable that the productive effort that the parties put into bargaining has not resulted in an enterprise agreement.
- 20. Through that lens, FRV's position is that which it set out in the 18 October Letter, namely that at the end of the PDNP there were no terms between the parties that met the definition of 'agreed terms' for the purposes of the FW Act. Because there are no 'agreed terms', FRV's position must be that each of the terms pressed by any of the parties for inclusion in the Proposed Operational EA are matters at issue for the purposes of the FW Act.
- 21. Despite each of the terms of the Proposed Operational EA being matters at issue, the Government has informed FRV that it is now authorised to adopt a position that, other than the specific provisions which the Government maintains FRV is not authorised to agree to or support, the terms included in version 14 of the draft proposed enterprise agreement (which appears as exhibit LC-3 to the witness statement of Laura Campanaro dated 11 August 2023) are not contested.
- 22. The provisions that FRV is not authorised to agree to or support were summarised in Attachment A to a position document prepared by the Government which I understand will be filed with its submissions in this matter. In addition, FRV has been informed that it is not authorised to agree to or support terms that conflict with the operation of the Act (including ss 275(4) and 273(5)). Collectively these matters are referred to as the "Substantive Workplace Determination Matters". A copy of the Government's position document provided to FRV on 17 November 2023 is **Attachment 36**.
- 23. FRV will act consistently with the authorisations provided by Government and accordingly, the Substantive Workplace Determination Matters are matters that need to be determined by the Commission. In relation to the matters that FRV has now been authorised to treat as being uncontested, FRV will treat each of these matters as being uncontested.

24. Notwithstanding all of the factors that have prevented an enterprise agreement from being made, in considering what is 'at issue', FRV's perspective is that the focus should remain on:
- (a) implementing the harmonisation and other efficiencies canvassed during bargaining for the benefit of FRV, its workforce and Victorian communities; and
 - (b) ensuring the bargaining parties, with the oversight of the Victorian Government, are able to work together to achieve FRV's purpose of keeping Victorian communities safe.

JO CRABTREE

17 November 2023

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 26, TO THE SECOND 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

Thursday, 5 October 2023

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

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

Copy: Laura Campanaro (UFU) org1@ufuvic.asn.au

Dear Peter

Re: Intractable Bargaining Declaration

As you are aware, on 4 October 2023, a Full Bench of the Fair Work Commission granted the United Firefighters Union's (**UFU's**) application for an intractable bargaining declaration (**Declaration**). The Declaration commenced operation on 4 October 2023.

Cessation of protected industrial action

Fire Rescue Victoria (**FRV**) has consistently maintained – including in its letter to the UFU dated 22 September 2023 – that it supports employees' rights to take protected industrial action in accordance with the requirements of the *Fair Work Act 2009* (Cth) (**FW Act**).

However, one of the effects of the Full Bench granting the UFU's application and making the Declaration is that from 4 October 2023 employees will no longer be able to take protected industrial action in relation to negotiations for the proposed Enterprise Agreement to replace the *Fire Rescue Victoria Interim Operational Employees Enterprise Agreement 2020* (see s 413(7)(c) of the FW Act).

In this context, FRV will shortly issue communications to its employees explaining that as a result of the Declaration being made, employees can no longer take protected industrial action. If the UFU wishes to collaborate on communications in this regard, FRV would be happy to discuss this further.

Assistance of Commissioner Wilson

In granting the Declaration, the Full Bench has also ordered a post declaration negotiating period from 4 October 2023 to 18 October 2023. The Full Bench has also noted that Commissioner Wilson will be available, on request, to assist the parties during this period.

FRV's position is that the involvement of Commissioner Wilson is likely to assist the parties in the post declaration negotiating period. Accordingly, can you please confirm by no later than 2.00 pm on Friday, 6 October 2023:

- a) whether the UFU consents to FRV approaching Commissioner Wilson on a consent basis to assist the parties in the post declaration negotiating period; and
- b) if so, the availability of the UFU to participate in negotiations facilitated by Commissioner Wilson on Wednesday, 11 October 2023.

If the UFU would like to discuss this matter, please contact Executive Director People and Culture, Jo Crabtree.

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-2', ATTACHMENT 27, TO THE SECOND 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



6 October 2023

Gavin Freeman AFSM
Commissioner
Fire Rescue Victoria
Sent by email only

Dear Commissioner Freeman,

United Firefighters' Union of Australia v Fire Rescue Victoria: B2023/771

We refer to your letter of 5 October 2023 in respect of the post declaration negotiating period from 4 October 2023 to 18 October 2023 ordered by the Full Bench on 4 October 2023.

In answer to the questions you posit:

1. The UFU prefers in the first instance to meet with the FRV representatives in person. The UFU is open to seek assistance from Commissioner Wilson after that, if both parties agree it would be helpful at some point in the negotiating period.
2. The UFU's representatives will be available to meet with FRV on Wednesday 11 October, 9:30AM – 12:00PM at the Fair Work Commission (if a suitable room can be made available), or otherwise at Zagame's House, 66 Lygon St, Carlton.

We await your response.

Yours sincerely,

Peter Marshall

Branch Secretary

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 28, TO THE SECOND 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



10 October 2023

Gavin Freeman AFSM
Fire Rescue Commissioner
Fire Rescue Victoria

Sent by email only

Dear Commissioner Freeman,

As you are aware, the UFU is meeting with FRV tomorrow, 11 October 2023.

The UFU's position in relation to the bargaining which is to take place, is that which accords with the consent position put by the UFU and FRV to Fair Work Commissioner Wilson in Matter B2022/1676 on 19 June 2023 and which is reflected in paragraph 2 of the Statement of Commissioner Wilson of the same date:

[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.

That is the position which UFU will advance to the Full Bench in the forthcoming arbitration. The UFU seeks to preserve that position and will not, in bargaining, derogate from that position.

We look forward to bargaining with FRV tomorrow on the two unresolved matters referred to by Commissioner Wilson.

The UFU will continue to conduct itself in good faith in this matter.

Yours sincerely,

Peter Marshall

Branch Secretary

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 29, TO THE SECOND 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: CRABTREE, Jo
Sent: Thursday 19 October 2023 06:51:02 PM
To: David Woodman;Tom Molan;Adam Gleeson
Subject: FW: UFU correspondence
Attachments: 23-10-10 UFU to FRV .pdf

FW: UFU correspondence

Tuesday, 10 October 2023
12:29 PM

Subject	FW: UFU correspondence
From	WALKER, Stacey
To	'Laura Campanaro'; MARSHALL, Peter (UFU Office)
Cc	CRABTREE, Jo; chris; YOUNG, Michelle
Sent	Tuesday, 10 October 2023 12:24 PM
Attachments	<<23-10-10 UFU to FRV .pdf>>

Dear Laura & Peter,

Acknowledge receipt of the attached letter and revised meeting time of 10am-12pm.

We have confirmed with the Fair Work Commission and the room booked is Conference room E on level 6. They have also confirmed that room has the required facilities but that they are only set up for Teams meetings and have offered to establish a link and meeting invite for us – if you could please confirm the UFU attendees, I can pass that on to the contact at FWC and they will establish a meeting.

I also confirm that in addition to the attendees that we were confirmed last week Deputy Commissioner Michelle Young will also be attending as an FRV representative.

At the request of the Department of Justice and Community Services (DJCS), there will also be an officer from DJCS attending as an observer, individual's name to be confirmed.

Kind regards,
Stacey.

Stacey Walker (she/her)
Director Workplace Relations and Ethical Standards



Fire Rescue Victoria

People and Culture

215 Spring Street, Melbourne VIC 3000

M. 0448 570 410

E. stacey.walker@frv.vic.gov.au

We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land, and pay our respects to their cultures and their Elders past, present and emerging.

From: Laura Campanaro <org1@ufuvic.asn.au>
Sent: Tuesday, October 10, 2023 10:16:51 AM
To: FREEMAN, Gavin <Gavin.Freeman@frv.vic.gov.au>
Cc: MARSHALL, Peter (UFU Office) <p.marshall@ufuvic.asn.au>
Subject: UFU correspondence

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

Dear Mr Freeman,

Further to the email sent on 6 October, see **attached** UFU correspondence.

Regards,

Laura Campanaro

United Firefighters Union

Victorian Branch

408-410 Brunswick Street, Fitzroy 3065

Victoria Australia

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10 October 2023

Gavin Freeman AFSM
Commissioner
Fire Rescue Victoria
Sent by email only

Dear Commissioner Freeman,

United Firefighters' Union of Australia v Fire Rescue Victoria: B2023/771

Further to my letter to you of 6 October 2023, please see as follows:

1. The UFU is available from 10:00AM to 12:00PM (not 9:30AM).
2. The UFU will organise a virtual meeting link to enable participation of a meeting attendee. Please ensure the meeting room has appropriate facilities for the virtual meeting link.

Yours sincerely,

Peter Marshall

Branch Secretary

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 30, TO THE SECOND 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: CRABTREE, Jo
Sent: Thursday 19 October 2023 06:50:00 PM
To: Tom Molan;David Woodman;Adam Gleeson
Subject: RE: UFU correspondence

RE: UFU correspondence

Tuesday, 10 October 2023
1:48 PM

Subject	RE: UFU correspondence
From	Laura Campanaro
To	WALKER, Stacey; MARSHALL, Peter (UFU Office)
Cc	CRABTREE, Jo; chris; YOUNG, Michelle
Sent	Tuesday, 10 October 2023 1:46 PM

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

Dear Ms Walker,

We refer to your email below.

The UFU objects to the attendance of an officer of DJCS. DJCS is not a party to these enterprise bargaining negotiations.

Regards,

Laura Campanaro

Sent on behalf of Branch Secretary Peter Marshall

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: WALKER, Stacey <Stacey.Walker@frv.vic.gov.au>
Sent: Tuesday, October 10, 2023 12:25 PM
To: Laura Campanaro <org1@ufuvic.asn.au>; Peter Marshall <p.marshall@ufuvic.asn.au>
Cc: CRABTREE, Jo <Jo.Crabtree@frv.vic.gov.au>; chris <chris@workforceadvantage.com.au>; YOUNG, Michelle <Michelle.Young@frv.vic.gov.au>
Subject: FW: UFU correspondence

Dear Laura & Peter,

Acknowledge receipt of the attached letter and revised meeting time of 10am-12pm.

We have confirmed with the Fair Work Commission and the room booked is Conference room E on level 6. They have also confirmed that room has the required facilities but that they are only set up for Teams meetings and have offered to establish a link and meeting invite for us – if you could please confirm the UFU attendees, I can pass that on to the contact at FWC and they will establish a meeting.

I also confirm that in addition to the attendees that we were confirmed last week Deputy Commissioner Michelle Young will also be attending as an FRV representative.

At the request of the Department of Justice and Community Services (DJCS), there will also be an officer from DJCS attending as an observer, individual's name to be confirmed.

Kind regards,
Stacey.

Stacey Walker (she/her)
Director Workplace Relations and Ethical Standards



Fire Rescue Victoria

People and Culture

215 Spring Street, Melbourne VIC 3000
M. 0448 570 410
E. stacey.walker@frv.vic.gov.au

We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land, and pay our respects to their cultures and their Elders past, present and emerging.

From: Laura Campanaro <org1@ufuvic.asn.au>
Sent: Tuesday, October 10, 2023 10:16:51 AM

To: FREEMAN, Gavin <Gavin.Freeman@frv.vic.gov.au>
Cc: MARSHALL, Peter (UFU Office) <p.marshall@ufuvic.asn.au>
Subject: UFU correspondence

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

Dear Mr Freeman,

Further to the email sent on 6 October, see **attached** UFU correspondence.

Regards,
Laura Campanaro
United Firefighters Union
Victorian Branch
408-410 Brunswick Street, Fitzroy 3065
Victoria Australia
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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-2', ATTACHMENT 31, TO THE SECOND 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

13 October 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

We refer to the intractable bargaining declaration made by the Full Bench of the Fair Work Commission (**FWC**) on 4 October 2023.

We also refer to our bargaining meeting and discussions on 11 October 2023. In those discussions FRV discussed the key elements of the package that it had offered as outlined in the letter of 7 August 2023 (**7 August Offer**) and sought the UFU's position and comments in response.

While we understand that the UFU has rejected the package that has been offered and does not agree to any of the conditions matters identified in the 7 August Offer or the salary increases and lump sum payments in the 7 August Offer (and those matters are clearly in issue between the parties), we remain hopeful that you will reconsider your position in relation to the matters outlined in that offer for the purpose of progressing negotiations during the current post-declaration negotiating period.

Accordingly, this letter sets out some further detail regarding the rationale for the matters outlined in the 7 August Offer and related matters. We also seek response from the UFU, including clarity in relation to its position on wages.

FRV is committed to participating in the post-declaration negotiating period in good faith and attempting to seek agreement in relation to the terms of a new enterprise agreement.

7 August Offer

As discussed, the terms of the 7 August Offer reflect the terms that the Victorian Government has advised FRV that it is prepared to approve on an overall package basis.

For the purpose of you giving this offer genuine further consideration, we have set out below a further explanation of the key elements of this offer and the rationale for the position being adopted:

- **Financial offer** – The wages and allowances offer approved by the Victorian Government is consistent with the Victorian Government's 2023 Wages Policy and the Enterprise Bargaining Framework (**Wages Policy**).

Fire Rescue Victoria

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456 Albert Street
East Melbourne
Victoria Australia 3002

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As contemplated in the 7 August Offer, the details of the financial offer will need to be adjusted in light of the substantial increase to existing allowances under the current agreement recently awarded by Commissioner Wilson in matter C2023/2071, which followed the 7 August Offer, (in a manner which is consistent with the UFU's submission that any increase awarded by Commissioner Wilson would be absorbed into any increases being contemplated as part of bargaining for a replacement enterprise agreement). As previously explained to the UFU, it is critically important that the enterprise agreement is fiscally sustainable and fully funded.

In relation to the four proposed annual increases to wages and allowances of 3%, these increases reflect the maximum increases permitted under the Wages Policy.

In relation to additional proposed lump sum payments, FRV confirms that the:

- lump sum cash payment of approximately \$7,359 (per full-time equivalent) under Pillar 1 was calculated consistent with the Wages Policy on the basis that it is equivalent to an additional 0.5 per cent of overall agreement costs (defined as a per annum amount calculated on wages and wage-related conditions);
- four lump sum cash payments of approximately \$2,021 each under Pillar 3 was offered consistent with the Wages Policy, which provides that additional changes to allowances and other conditions (not general wages) will be allowed if the Victorian 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.

The Wages Policy also requires that the total package must be fiscally sustainable and funded from indexation, revenue, appropriate cost offsets or a government-approved funding strategy.

- **Staffing numbers** – FRV has consistently maintained that it will seek to increase staffing numbers in accordance with approved funding. However, FRV does not agree to any increases to staffing numbers being included as part of the proposed agreement. Amongst other things, this is because any increase to staffing numbers specified in the enterprise agreement would need to be fully funded as part of the agreement process and this additional funding has not yet been approved.
- **Arbitration of extra claims clauses** – The 7 August Offer excluded clauses allowing for the FWC to arbitrate extra claims during the life of the enterprise agreement on the basis that such clauses were not approved by the Victorian Government and were not part of the package offered with the wage offer in the 7 August Offer. FRV understands that the Victorian Government did not approve the inclusion of these clauses because it was concerned that such clauses could result in additional unbudgeted costs during the life of the new enterprise agreement and undermined clarity and certainty of outcome.

In practice, the effect of this condition imposed by the Victorian Government is that a small number of clauses in the UFU's version 14 of the proposed agreement would not be included in the form proposed and would not include the capacity for the FWC to arbitrate extra claims under the agreement. The clauses are: the productivity clause (at clause 22); the allowances clauses (at clauses 104.3, 132.3, 162.3, 199.3); and the harmonisation and alignment clauses (at clauses 12 and 13).

- **Firefighter's registration board** – The 7 August Offer also excluded any reference to a firefighter's registration board. These references were not approved by the Victorian Government and were not approved as part of the package with the wage offer. The practical effect of this condition is that clauses 54 and 55 of the UFU's version 14 of the proposed

agreement require amendment to remove all references to the firefighter's registration board. FRV understands that the Victorian Government did not approve the inclusion of these clauses because the matters in those clauses have already occurred and therefore have served their purpose. It also has the potential to create ambiguity and be a possible basis for disputes.

To confirm, whilst the parties had reached in-principle agreement in relation to the vast majority of conditions matters during bargaining, it was always contemplated that the position on all of the conditions matters was subject to agreeing an acceptable package, including the wages/allowances matters (which has not occurred), and was subject to the need to obtain Victorian Government approval after in-principle agreement and that this may result in changes to conditions matters.

Intractable bargaining declaration and agreed terms

FRV is committed to reaching an acceptable outcome in relation to an enterprise agreement to replace the current operational enterprise agreement.

The post-declaration negotiating period provides an opportunity to reach agreement on the terms of a replacement enterprise agreement with the necessary degree of finality (including obtaining the required governmental approval) to satisfy the definition of 'agreed terms' for the purpose of inclusion in a workplace determination and otherwise endeavour to identify matters that are in issue.

As you are aware, the 7 August Offer was expressed as a package and, in the absence of that package being accepted, there are currently no matters that meet the definition of 'agreed terms' for the purpose of being automatically included in a workplace determination. Even if certain matters are said by the UFU to be agreed for relevant purposes at some point in the past (which cannot be accepted on the basis that any 'in-principle' agreement was always subject to government approval and overall agreement on the terms of the replacement enterprise agreement), the 7 August Offer and subsequent correspondence make it clear that this is no longer the case.

Given the legal framework within which workplace determinations are made, if the parties are able to progress negotiations to the point at which relevant matters meet the definition of 'agreed terms' by the end of the post-declaration negotiating period, this will reduce the risk of there being certain matters within both the current enterprise agreement and proposed enterprise agreement that cannot be included in any workplace determination as a result of constitutional limitations.

Additionally, in circumstances where the 7 August Offer has been expressed as a package, if this offer remains unacceptable to the UFU and the UFU remains unwilling to negotiate on the basis of this offer, this is likely to impact upon the approvals from Government with respect to any future offer and / or the terms sought to be included in any workplace determination.

Within this context, FRV is participating in the current discussions with the strong desire that the parties progress to the point at which as many matters as possible meet the definition of 'agreed terms' (including obtaining the required government approval) and may be included in any workplace determination ultimately made by the FWC on that basis. However, in order for FRV to obtain the necessary approval from the Victorian Government, the UFU would need to reconsider its position in relation to the 7 August Offer. We strongly urge you to reconsider your position in relation to these matters and clearly identify the changes that would need to be made to the 7 August Offer to make that offer acceptable to the UFU.

We therefore seek UFU's response, including:

- clarification of the UFU's position on wages, having regard to the 7 August Offer (and the arbitrated increase in allowances in C2023/2071 that occurred on 15 August 2023); and
- whether it is proposing any counter proposal to the package.


Next steps

We look forward to receiving your response to the matters raised in this letter by 3pm on Monday 16 October 2023.

We anticipate that we will seek a further meeting with the UFU on Tuesday, 17 October 2023 to continue negotiations with the assistance of Commissioner Wilson.

If the UFU has any further questions about the proposed agreement, please contact me in writing. We confirm that we will provide a copy of this letter to the other bargaining representatives.

Yours sincerely,



Gavin Freeman AFSM
Fire Rescue Commissioner

FAIR WORK COMMISSION

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

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 32, TO THE SECOND 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>
Date: 13 October 2023 at 21:20:07 AEDT
To: "CRABTREE, Jo" <Jo.Crabtree@frv.vic.gov.au>
Cc: "MARSHALL, Peter (UFU Office)" <p.marshall@ufuvic.asn.au>, "FREEMAN, Gavin" <Gavin.Freeman@frv.vic.gov.au>
Subject: Re: Important Correspondence - Operational Agreement

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

Dear Ms Crabtree,

On behalf of Branch Secretary Peter Marshall, I provide the following short response:

Your correspondence is extremely disappointing.

The UFU does not accept your account of events.

We have bargained in good faith and will continue to do so in accordance with the requirements of the Fair Work Act. Any assertion to the contrary is totally rejected.

The UFU will be responding more fully to your correspondence on Monday 16 October.

Regards,

Laura Campanaro

United Firefighters Union

Victorian Branch

[410 Brunswick Street, Fitzroy 3065](#)

[Victoria Australia](#)

M [0427 734 064](tel:0427734064) | T [\(03\) 9419 8811](tel:0394198811) | F [\(03\) 9419 9258](tel:0394199258) | W www.ufuvic.asn.au

On 13 Oct 2023, at 4:00 pm, CRABTREE, Jo <Jo.Crabtree@frv.vic.gov.au> wrote:

Dear UFU Secretary Peter Marshal,

Please find attached correspondence on behalf of Fire Rescue Commissioner Freeman re. Operational Agreement.

Kind regards

Jo Crabtree

Executive Director People and Culture



Fire Rescue Victoria

People and Culture

456 Albert Street, Melbourne VIC 3002

M. 0459 818 798

E. jo.crabtree@frv.vic.gov.au

frv.vic.gov.au

Our Values



We acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Custodians of the land, and pay our respects to their cultures and their Elders past, present and emerging.

<231013 Letter from FRV to UFU.pdf>

FAIR WORK COMMISSION

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

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 33, TO THE SECOND 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



16 October 2023

Gavin Freeman AFSM
Commissioner
Fire Rescue Victoria
Sent by email only

Dear Commissioner Freeman,

We refer to the discussions held on Wednesday 11 October from 10.15am, being the first session held in the post declaration negotiating period (**PDNP**).

The correspondence sent by you on the afternoon of Friday, 13 October 2023 does not reflect an accurate account of events.

The UFU confirms the following took place at the first session of the PDNP:

1. At the outset of the session, the UFU's representatives identified that the UFU was commencing bargaining in this session on the basis that the parties had agreed to all of the clauses set out in Version 14 of the draft Agreement, and as confirmed in Commissioner Wilson's Statement of 19 June 2023. The UFU's representatives stated that they understood that the Government now took a different view in this respect, and that the purpose of the negotiations was to try to reach agreement on matters in issue.
2. The UFU then sought and received confirmation that the Parties were content to work off Version 14 of the proposed Operational Staff Agreement for the purposes of the discussions.
3. The UFU then sought and received confirmation that the FRV did not seek to re-open and renegotiate all of the clauses in Version 14. To the contrary, the FRV's position was that it only sought to engage in negotiations in respect of quantum of wages, and the three matters identified in the FRV's offer of 7 August 2023 namely: minimum staffing; registration board; and clauses allowing for extra claims to be arbitrated in the Fair Work Commission.
4. The Parties then commenced negotiating in respect of minimum staffing in Schedule 1 of Version 14:
 - (a) At the outset, the UFU sought to understand the FRV position on minimum staffing numbers given that the FRV's offer of 7 August made clear that the issue was funding



only and that the issue “would not result in a change to the replacement Operational Agreement”.

- (b) The FRV’s representatives confirmed that, whilst there was no dispute that there is agreement on the number of the additional firefighters (namely, 583 new firefighter positions over the life of the new Agreement), the Government did not want any increases in staffing numbers (ie, the numbers themselves) to appear in the Agreement.
 - (c) When the UFU sought to understand the reason why, if numbers were not in dispute, the staffing numbers should not be included in the Agreement as they had been in past agreements – the FRV representatives were not able to answer the question. The FRV representatives said that it is what Government had told them.
 - (d) The UFU also sought to understand why these matters could not be the subject of an agreement on funding now. Once again, the representatives of FRV indicated that funding was a matter for government, and that the FRV was in no position to address this or reach agreement on the issue.
 - (e) The UFU proposed that funding for minimum staffing could be negotiated by using a portion of the quantum of Efficiencies being claimed by the UFU (namely the \$203 million identified in the UFU’s counter-offer dated 15 March 2023). However, FRV representatives stated that they did not have any authority to negotiate this.
 - (f) The UFU then asked whether – leaving funding and government’s views aside - the FRV, as the bargaining representative, would approve Schedule 1 in the current form including the staffing numbers in the new agreement. The FRV answered ‘yes’, but that this would also need to be confirmed by more senior people at the FRV.
5. The UFU then stated that the FRV’s position was entirely unsatisfactory as both the FRV and the Government made submissions to the Full Bench on the basis that the clauses as identified in the FRV’s offer of 7 August 2023 could be narrowed through negotiation. The Full Bench declared a PDNP based on those submissions. The Government also submitted that it had a significant interest in the proceedings, including because of the funding issues involved.
6. As a result of this situation, the UFU stated that it would listen to what the FRV representatives had been instructed to say by way of clarification of the matters in the FRV offer of 7 August 2023, but that it would be pointless to engage in negotiations over those matters because of the absence of any person authorised to negotiate and finalise such negotiations. The FRV representatives agreed that this was the situation necessitated by the absence of such instructors or instructions.



7. On that basis, the UFU proceeded to listen to the FRV's position on the remaining clauses.
8. The next clause that was dealt with was the registration board. It was stated by the FRV representatives that the Government wanted any and all references to the registration board removed from the agreement. When asked the reason why, the principal reason put forward was funding.
9. The UFU representatives asked what the funding cost of the registration board was. The FRV representatives stated that they did not know the cost was, and that, save as to speculate what other reasons the government may have had to reject the registration board clause, they could not engage in further discussions on this issue.
10. The UFU notes that FRV's correspondence of 13 October 2023 does not refer to funding of the registration board as being an issue. Rather, two additional reasons are advanced based on what FRV "understands" the Government's position to be in rejecting the clause. Such reasons were not identified in the FRV's 7 August 2023 offer. The UFU will address this matter at the next PDNP session.
11. After a break, the FRV then explained its position indicating that "government" sought removal of all references to arbitration in clauses 12.2.3-4; 13.6-7; 22.3; 104.3; 132.3; 162.3 and 199.3 so as to achieve financial certainty (no claims).
12. The FRV also explained its wages offer as set out in the letter of 7 August 2023, and sought some indication on what the UFU's response on wages will be. The UFU indicated that it would seek an agreement based on the components identified in its counter-offer of 15 March 2023 including the \$203 million in Efficiencies identified in the annexure to that counter-offer, and cost of living factors. As mentioned above, the UFU made clear that it had hoped the parties could negotiate all funding issues in these negotiations based on the Efficiencies achieved, including for minimum staffing.
13. The FRV concluded the meeting on the basis that it understood the UFU's position about the absence of any authority or any person with authority to be able to meaningfully engage in negotiations.

The UFU, despite its stated position that all matters have been agreed, is attending the PDNP sessions on the basis of the orders of the Full Bench. It intends to do so in good faith as it indicated at the outset of the first session.

However, the first session proved almost entirely futile because of the lack of preparation on the part of the FRV.



This situation is completely unsatisfactory. Please ensure that, before the next session, the FRV representatives have obtained the necessary authority to negotiate and agree to all of the matters that they say are in issue. The UFU's representatives comprise of, in part, the UFU Industrial Officer Coordinator and myself, as the Union's Branch Secretary. Accordingly, we respectfully request that at the next PDNP session you make yourself available to attend as the most senior representative at Fire Rescue Victoria.

The UFU will make itself available to meet with FRV representatives only tomorrow, Tuesday 17 October between 11.00AM and 1.00PM. As previously stated, the UFU is open to seek assistance from Commissioner Wilson if both parties agree it would be helpful.

Yours sincerely,

Peter Marshall

Branch Secretary

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 34, TO THE SECOND 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: Tuesday, 17 October 2023 12:27 PM
To: FREEMAN, Gavin <Gavin.Freeman@frv.vic.gov.au>
Cc: CRABTREE, Jo <Jo.Crabtree@frv.vic.gov.au>; MARSHALL, Peter (UFU Office) <p.marshall@ufuvic.asn.au>
Subject: UFU Documentation to FRV

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

Dear Mr Freeman,

The UFU has not received a response from FRV regarding FRV's proposed PDNP session for today.

As such, we send to you the two documents that UFU was intending to table at the session.

Please respond to the **attached** documents by 2PM, tomorrow 18 October.

Regards,

Laura Campanaro

Sent on behalf of Branch Secretary Peter Marshall

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



17 October 2023

UFU Document provided to FRV

Clause 55 – Firefighters Registration Board

In FRV's letter of 7 August 2023 it is advised that there is no agreement on the UFU's claim for the establishment of a Firefighters' Registration Board.

It is the UFU's position that the UFU's claim for the establishment of a Firefighters' Registration Board has been agreed in the form of a clause similar to the one in the current 2020 Enterprise Agreement.

Without in any way derogating from the UFU's position on this issue, but noting FRV's correspondence, we propose a revised claim for the inclusion of the following clause in a replacement Operational Agreement:

55. FIREFIGHTERS' REGISTRATION BOARD

The FRV will continue and maintain the firefighters' registration board established under the Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020 and provide all necessary funding, resources, facilities and personnel to enable its continued operation.

Please respond by 2PM, Wednesday 18 October 2023.

17 October 2023

UFU Document provided to FRV

Wages & Allowances (based on a 3 year Enterprise Agreement)

In the UFU's correspondence to FRV dated 16 October 2023 at paragraph 12, we wrote the following:

12. The FRV also explained its wages offer as set out in the letter of 7 August 2023, and sought some indication on what the UFU's response on wages will be. The UFU indicated that it would seek an agreement based on the components identified in its counter-offer of 15 March 2023 including the \$203 million in Efficiencies identified in the annexure to that counter-offer, and cost of living factors. As mentioned above, the UFU made clear that it had hoped the parties could negotiate all funding issues in these negotiations based on the Efficiencies achieved, including for minimum staffing.

The UFU's Position (on Pillars 1 and 3 in the context of a 3-year Enterprise Agreement) is further explained as follows:

1. Pillar 1 provides for **3%** per annum per Operational Employee.
2. Pillar 3 provides a mechanism to pay efficiencies.
 - a. The efficiencies as identified by FRV and UFU since 2020 =
\$203,768,949

Number of Operational Employees = 3690*

**Total Wage Increase per Operational Employee from Efficiencies =
20.36% per annum.**
3. Additional Cost of Living Adjustment ("COLA") Payments can proceed to arbitration.

Please respond by 2PM, Wednesday 18 October 2023.

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 35, TO THE SECOND WITNESS STATEMENT
OF JO CRABTREE**

Lodged by:

MinterEllison, solicitors for the
Respondent

Address for Service:

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

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

Fax: -

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

18 October 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

Fire Rescue Victoria (**FRV**) refers to the bargaining for a new operational firefighters' agreement (**Operational Agreement**) with the United Firefighters' Union of Australia (**UFU**), to the intractable bargaining declaration (**IBD**) made by the Full Bench of the Fair Work Commission (**FWC**) on 4 October 2023, and to the following which has occurred since the IBD was made:

- your letter of 10 October 2023;
- the meeting that took place between FRV and the UFU on 11 October 2023, including FRV explaining the 7 August Offer and addressing any issues and questions raised;
- our letter to you dated 13 October 2023 (**FRV 13 October Letter**), and your response dated 16 October 2023 (**UFU 16 October Letter**); and
- your correspondence dated 17 October 2023 in respect of the Firefighters Registration Board and wages and allowances (**UFU 17 October Correspondence**).

UFU 16 October Letter

FRV does not agree with most of the matters set out in the UFU 16 October Letter and, in particular, with your characterisation of what was discussed at the meeting on 11 October and FRV's purported position or response in relation to a number of matters. We do not intend to respond to each and every matter raised but confirm the following:

- As you know, prior to the meeting taking place the FRV advised the UFU that the intention was for a Government representative to attend the meeting. The UFU opposed any such attendance and as a result there was no Government representative in attendance at the meeting.
- FRV agrees that the UFU representatives made clear at the outset that the UFU's position was as set out in Commissioner Wilson's Statement of 19 June 2023, that there were only two outstanding matters (wages and allowances) and the UFU's position will not change and that will be the UFU's focus in the arbitration. We understand that this is the UFU's position, but it is not accepted by FRV.
- FRV confirmed that its position for the purposes of the negotiation was a preparedness to reoffer and resolve negotiations for a replacement Operational Agreement on the basis of the 7 August Offer, which was put as a package that the Government was prepared to approve, and explaining that position and seeking to understand if UFU was prepared to discuss and accept that package.

- In relation to the Firefighters Registration Board, FRV made the point that, in addition to the concerns about funding of the Board, FRV's authorised position was that the work of the clause in the current enterprise agreement had been done and there was a concern about the potential overlap or duplication with the statutory registration board.
- In relation to staffing numbers, FRV made it clear that its authorised position was to carry across the numbers from the current enterprise agreement into the proposed Operational Agreement (and FRV did not otherwise agree to Schedule 1 in V14 of the proposed agreement).
- In relation to paragraph 5 of the UFU 16 October Letter, FRV confirms that both FRV and the Government did make submissions about the post declaration negotiating period potentially being used to narrow the matters at issue between the parties. These submissions were made on the basis that nothing was currently agreed, which was noted by the Full Bench, because negotiations, and any previous in-principle agreement, had proceeded on the basis that they were subject to agreeing an acceptable package including wages/allowances and subject to Government approval.

For clarity, FRV reiterates its position that whilst the parties had reached in-principle agreement on a majority of conditions matters during bargaining, this was always on the basis that the position on those matters was subject to agreeing an acceptable package, including the wages and allowances matters (which has not occurred), and was subject to the need to obtain Government approval after in-principle agreement and that this may result in changes to conditions matters. FRV then made a substantive offer which reflected the package that had been authorised by Government, as set out in the 7 August Offer, overtaking the previous position.

UFU 17 October Proposals

In the FRV 13 October Letter, FRV sought the UFU's response including:

- clarification of its position on wages, having regard to the 7 August Offer (and the arbitrated increase in allowances in C2023/2071 that occurred on 15 August 2023); and
- whether it is proposing any counter proposal to the package.

The UFU 16 October Letter does not provide any response to these matters, however the UFU 17 October Correspondence sets out:

- an alternative proposed Firefighters Registration Board clause; and
- the UFU's position on wages and allowances, including a proposal that:
 - Pillar 1 provides for 3% per annum per operational employee;
 - Pillar 3 provides for increases for efficiencies of 20.36% per annum; and
 - additional cost of living adjustment payments proceed to arbitration.

You have requested that FRV provide a response to those proposals by 2pm today. I confirm that FRV does not have authority from Government to accept the proposed Firefighters Registration Board clause, nor can it agree to the wage and allowance proposal set out in the UFU Correspondence.

UFU Rejection of the Package and Government Approved FRV position

As you are aware, the 7 August Offer reflects the terms (including, amongst other things, proposed salary increases, lump sum payments and certain conditions) that the Victorian Government advised FRV it is prepared to approve on an overall package basis. FRV has not been authorised to agree to any other proposal and it is clear that UFU have rejected the 7 August Offer, including wages and conditions.

Unfortunately, in circumstances where FRV has made it clear that the 7 August Offer was put as a package, the UFU's rejection of this package means that there are currently no matters that meet the definition of 'agreed terms' for the purpose of inclusion in a workplace determination.

Therefore, whilst it is not FRV's preference, given the UFU's intractable bargaining application and the status of bargaining outlined above, the matter will need to proceed to the Commission for the making of a workplace determination.

If the UFU has any further questions, please contact me in writing. We confirm that we will provide a copy of this letter to the other bargaining representatives.

Yours sincerely,

A handwritten signature in blue ink that reads 'Gavin Freeman'.

Gavin Freeman AFSM
Fire Rescue Commissioner

FAIR WORK COMMISSION

Matter No.: B2023/771

Applicant: United Firefighters' Union of Australia

Respondent: Fire Rescue Victoria

**THIS IS EXHIBIT 'JC-2', ATTACHMENT 36, TO THE SECOND 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

The United Firefighters' Union of Australia
(Applicant)

Fire Rescue Victoria
(Respondent)

MINISTER'S POSITION DOCUMENT

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

Agreed terms

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

Matters at issue

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

Substantive workplace determination matters

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

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

CHRIS O'GRADY KC

FRANCESKA LEONCIO

Counsel for the Minister for Emergency Services

CLAYTON UTZ

Solicitors for the Minister for Emergency Services

17 November 2023

Attachment A

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

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