# DECISION

*Fair Work Act 2009*
s.604—Appeal of decision

**United Firefighters' Union of Australia**
**v**
**Fire Rescue Victoria**
(C2023/3422)

VICE PRESIDENT ASBURY
DEPUTY PRESIDENT COLMAN
DEPUTY PRESIDENT O'NEILL

BRISBANE, 30 NOVEMBER 2023

*Appeal against decision of Commissioner Wilson ([2023] FWC 1235) at Melbourne on 29 May 2023 in matter number C2023/635 – appeal dismissed.*

**[1]** The United Firefighters' Union of Australia (UFU) has lodged an appeal against a decision dated 29 May 2023 in which Commissioner Wilson declined to make an order sought by the UFU pursuant to an application lodged under s. 739 of the *Fair Work Act 2009* (Act) and the dispute resolution procedure in clause 21 of Division A and clause 26 of Division B of the *Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020* (Agreement).

## Background

**[2]** Like in many of the industrial disputes involving the Victorian fire service over the years, the road that has led to these proceedings has been a long and winding one. We will venture a succinct summary of the background.

**[3]** Clause 42 of Division A and clause 49 of Division B of the Agreement state, in identical terms, that Fire Rescue Victoria (FRV) *'endorses the establishment of a firefighters registration board'*, and that it *'will demonstrate this by a letter of endorsement to the UFU Secretary'*. On 23 April 2021, FRV sent the UFU a letter of endorsement. The parties corresponded and held discussions about the establishment of a registration board. However, by early 2022 a registration board had still not been established. The UFU considered that the FRV had stopped progress towards the establishment of a board. On 29 March 2022, the UFU lodged an application under s. 739 of the Act and the dispute resolution procedure in the Agreement that sought for the Commission to assist the parties to reach agreement on the establishment of the registration board contemplated by the Agreement (first application). Conciliation failed to resolve the matter. The UFU then asked the Commission to arbitrate the dispute. The matter was heard by Commissioner Wilson on 29 and 30 August 2022.

**[4]** At the hearing of the first application, the UFU sought an order from the Commission that would require FRV to enter into a contract with a company that the union had formed for

the purpose of providing registration services to the FRV, the Victorian Professional Career Firefighters Registration Board Limited (VFRB). Among other things, the service contract proposed by the union contained terms to the effect that the VFRB would determine who may be registered to work as a professional career firefighter in Victoria; that FRV would pay to the VFRB an annual fee in respect of each registered firefighter; and that the service contract would continue to remain in place until such time as it was terminated with the agreement of the UFU. The UFU also asked the Commissioner to answer four questions concerning certain terms of the contract that would address the role of the UFU under the contract.

**[5]** The FRV did not oppose affirmative answers to the four questions posed by the UFU, nor did it oppose the proposed order. It noted however that the Minister for Emergency Services had refused to consent to the FRV entering into the service contract.

**[6]** The Minister opposed the first application on various jurisdictional bases. The Minister submitted that there was no actual dispute to settle, because the clauses in the Agreement dealing with the establishment of a registration board required only that FRV send the UFU a letter of endorsement concerning the establishment of a board, and this had already occurred. The Minister contended that the clauses of the Agreement dealing with a registration body were invalid by virtue of ss. 172 and 253 of the Act because they did not deal with matters pertaining to the relationship between employer and employee or between employer and union. Further, the Minister submitted that her consent was required for FRV to enter into the proposed contract and that she had not given her consent. And she contended that the proposed service contract would impermissibly fetter the powers of FRV under the *Fire Rescue Victoria Act 1958* (Vic) (FRV Act).

**[7]** In a decision dated 2 December 2022, referred to by the parties as the *'Fettering Decision'*, Commissioner Wilson accepted the last of these contentions and declined to make the order sought by the UFU. He rejected the Minister's other objections. At [80] of the decision, the Commissioner said that he was not to be understood as suggesting that the service contract could not be drafted in such a way that it did *not* fetter FRV's functions. The Commissioner reiterated this point at [94].

**[8]** In mid-December 2022, the UFU wrote to FRV proposing amendments to the service contract which it believed would cure the *'fettering'* problem. The amendments inserted new provisions which stated that, for the avoidance of doubt, the standards in relation to the VFRB's registration function would be the same as the professional standards already contained in the Agreement.

**[9]** On 23 December 2022, the UFU asked the Commissioner to revoke the Fettering Decision pursuant to s. 603 of the Act. In January 2023, FRV advised the UFU that it was not opposed to the amendments that the UFU had made to the service contract. However, FRV did not agree to enter into the revised contract on the basis that a direction issued by the Minister on 18 September 2022 now expressly prohibited it from doing so.

**[10]** On 8 February 2023, the UFU lodged a second application under s. 739. It sought an order from the Commission requiring FRV, subject to the completion of certain details, to enter into the revised service contract with the VFRB in the terms that the UFU had put to FRV in December 2022, which the union believed had removed the *'fettering'* problem.

**[11]** The Commissioner heard the second application on 30 March 2023. At the start of the hearing, the UFU asked the Commission to adjourn its application to revoke the Fettering Decision until its second application had been determined. The Commissioner agreed.

**[12]** In support of its second application, the UFU contended that the only basis on which the Commissioner had dismissed the first s. 739 application was his concern that the service contract fettered FRV's functions under the FRV Act. The Commissioner had indicated that the problem might be remedied by amending the service contract, and this was what the UFU had then proceeded to do. The revised contract had removed the perceived *'fettering'* problem by making clear that the VFRB's registration standards would be the same as those that were set out in the Agreement. The UFU and FRV had also confirmed to one another that they did not intend for the VFRB to be able to impose standards that went beyond those prescribed in the Agreement. Further, the FRV did not oppose the amendments to the service contract, even if it felt constrained from entering into the contract because of the ministerial direction. The UFU submitted that the Commissioner had indicated at [98] of the Fettering Decision that, were it not for the fettering problem, he would answer the questions posed for determination in the affirmative and that because the fettering problem had now been removed, any barrier to the relief sought by the union must fall away and the Commission should issue an order compelling FRV to enter into the revised service contract with the VFRB.

**[13]** FRV opposed the application only on the basis that the ministerial direction now prohibited it from entering into the proposed service contract with the VFRB.

**[14]** The Minister opposed the granting of the order firstly on the basis that the dispute was in substance the same one advanced by the UFU in its first application, and that it was therefore an abuse of process. Secondly, she contended that for various reasons the amendments to the proposed service contract did not in fact cure the fettering problem. Thirdly, the Minister submitted that the Commission could not make an order requiring FRV to enter into the revised contract because her consent was required, which she had not given. Moreover, since the hearing of the first application, the Minister had in September 2022 specifically directed FRV not to enter into a service contract with the VFRB, and reiterated to FRV her expectations of it in this regard in March 2023. The Minister submitted that an order of the Commission could not compel FRV to act contrary to her direction. The Minister further contended that the proposed order would purport to bind the VFRB, which was not covered by the Agreement, and that for the reasons explained by the Full Bench in *UFU v Metropolitan Fire and Emergency Services Board* [2012] FWAFB 9555 (*UFU v MFESB*), this was beyond the jurisdiction of the Commission.

## The decision

**[15]** In his decision, the Commissioner rejected the Minister's contention that the UFU's second application was essentially the same as the earlier dispute. He considered that it was different because the union had sought to address the fettering problem that had been identified in the earlier matter and now sought an order requiring FRV to enter into a modified service contract (at [23]).

**[16]** Secondly, the Commissioner decided that he would not determine at this time whether the amendments to the service contract removed his concerns about the fettering of FRV because the UFU's application to revoke the Fettering Decision had been adjourned. The Commissioner said that he had yet to hear the parties' arguments on that application, and still needed to examine whether the amendments to the service contract were sufficient to overcome the fettering problem that had been identified in his earlier decision (at [41]).

**[17]** As to the Minister's contentions that various matters prevented the making of an order, the Commissioner concluded that the FRV Act did not require the Minister's consent in order for FRV to enter into the service contract (at [57]). He also agreed with the UFU that the proposed order did not purport to bind a third party, as it would be directed only at FRV, not the VFRB, and the reasoning in *UFU v MFESB* was therefore not applicable. The Commissioner accepted that FRV was compelled to follow the ministerial direction unless or until it was withdrawn or declared invalid, but said that the UFU was correct in saying that the status of the direction was a matter that arose after any order of the Commission had been made (at [62]). He then said: *'However for different reasons, set out below, I am not satisfied that an order should be issued in this case.'*

**[18]** The Commissioner then stated at [74] that he was not satisfied from the material before him that it would be *'appropriate'* to grant the relief sought by the UFU for two reasons. First, he accepted a submission that had been made by FRV to the effect that further work was required to be done in order to make the draft service contract a final document that could be signed, noting that though this work might be minor or inconsequential, it would likely require some negotiation between the parties (at [75]). Secondly, the Commissioner stated that if the order were issued, it would likely place the FRV officers involved in *'an impossible situation'* in which they would not be able to comply with both the ministerial direction and the order of the Commission (at [76]).

**[19]** The Commissioner proceeded to reflect on the nature of the discretion reposed in the Commission in the matter before him. He noted at [89] that the FRV saw the ministerial direction in stark terms, and that it considered that it had no discretion to disregard it. He said that FRV could not negotiate with the UFU over the clauses requiring completion, that any negotiations would be futile, and that an order in the terms sought by the UFU would not settle the dispute before him. The Commissioner concluded:

> "[91] I am also unable to see a pathway to resolution of the dispute now before the Commission: any such pathway would require the Ministerial Direction to be set aside, either by consent or by a court. The fact of the Ministerial Direction and the consequential impasse it creates for FRV in taking any steps to finalise the Service Agreement together with me not yet being persuaded that the Service Agreement does not impermissibly fetter FRV leads me to conclude that I should not at this time determine the dispute.
>
> [92] I therefore decline to make the order sought by the UFU for two essential reasons. I am not yet satisfied that the Service Agreement does not impermissibly fetter FRV, and I am not satisfied that the Commission should make the order as sought given the Ministerial Direction as I am concerned there would either be no utility in doing so or that issuing the order would not settle the dispute.
>
> [93] The dispute is determined accordingly."

## The appeal

**[20]** An appeal under s. 604 of the Act is an appeal by way of rehearing however the Commission's powers on appeal are only exercisable if there is error on the part of the primary decision-maker (*Coal and Allied v AIRC* [2000] HCA 47 at [17]). Generally, an appellant must obtain the Commission's permission in order to appeal, however in this case clause 21.7 of Division A and clause 26.7 of Division B of the Agreement confer a right of appeal from a decision of the Commission made under those clauses. The UFU therefore does not require the Commission's permission to appeal the Commissioner's decision.

**[21]** The UFU's appeal contended that the Commissioner made various legal errors on the basis of which the Full Bench should quash the decision and remit the application to the Commissioner for redetermination. In its submissions, the UFU helpfully grouped its 13 grounds thematically to distil three general categories of alleged error.

*Failure to exercise jurisdiction (appeal grounds 6 and 13)*

**[22]** The first category of error concerned an alleged failure on the part of the Commissioner to exercise jurisdiction. The UFU contended that the Commissioner had misdirected himself as to the effect of relevant authorities which required him to exercise arbitral powers and settle the dispute that had been referred to him without regard to interventions by external parties such as the Minister (ground 6). It submitted that the Commissioner had failed to exercise those powers and had not resolved the dispute that was referred to him under the dispute resolution procedure in the Agreement, and had thereby fallen into error (ground 13). The UFU said that the Commissioner appeared to have recognised at [79] that it was necessary for him to settle the dispute but that despite this he concluded at [91] that he should not determine the matter. The Commissioner had in effect refused to exercise the jurisdiction that was conferred on him by the Agreement and which he was obliged to exercise and had therefore committed error.

**[23]** Superficially, there is a certain tension between paragraphs [91] and [93] of the Commissioner's decision. At [91], the Commissioner stated that he *'should not at this time determine the dispute'*. But at [93], he concluded that the dispute was *'determined accordingly'*; that is, he would not issue the order sought for the two essential reasons articulated at [92]. While at first glance these statements may seem contradictory, we consider that on a fair and contextual reading, the Commissioner was clearly referring to two different things: the underlying dispute and the immediate dispute. At [91], he decided that he should not determine the *underlying* dispute, and left open the possibility of issuing orders of the kind sought by the union in the future. This was the approach he had adopted in the Fettering Decision. That the Commissioner considered that orders might be issued in the future in relation to the underlying dispute is clear from his statement in [91] that he should not determine the dispute *'at this time'*, and from his earlier indication that he had not yet heard argument in the UFU's revocation application.

**[24]** On the other hand, at [92] and [93], the Commissioner decided that he would determine the *immediate* dispute by refusing to grant the orders presently sought by the union, because he did not believe it was appropriate to issue such orders. He had not yet been persuaded that the fettering problems had been resolved. Further, he was not satisfied that the order should be made in light of the ministerial direction and his concern that an order would have no utility

and would not *settle the dispute*, clearly meaning here the underlying dispute. The immediate dispute before the Commissioner was whether he should now issue the order sought by the UFU that would compel FRV to enter into the revised service contract with VFRB. That dispute was categorically determined. The Commissioner did not refuse to exercise jurisdiction. He refused to issue an order. He did so in the ordinary course and quite properly: he did not consider it appropriate in the circumstances to make one.

**[25]** We see nothing in the authorities to suggest that the Commissioner was required to determine the underlying dispute in his decision, nor is there anything in the circumstances of this case that is indicative of any discretionary error in this regard. The Commissioner declined to issue the order sought but did not foreclose the possibility of an order in the future, consistent with the view he had expressed in the Fettering Decision. No failure to exercise jurisdiction was said to have occurred in that decision. Contrary to the apparent suggestion of the UFU, the revocation application had not been wholly overtaken and subsumed by the second s. 739 application. Had that been the case, the s. 603 application would have simply been discontinued. Instead, it was adjourned, at the request of the UFU, to a time after the determination of the second s. 739 application. It is true that the parties had presented argument to the Commissioner about whether the revised service contract still fettered the powers of the FRV. But the revocation proceeding remained on foot. The Commissioner believed that the parties' contentions as to why he should or should not revoke the Fettering Decision under s. 603 might inform his view about whether the fettering problem had been removed. In our opinion, this was a view that was open to the Commissioner.

**[26]** Rather than misdirecting himself as to the authorities, we consider that the Commissioner's approach was consistent with the passage from *UFU v Metropolitan Fire and Emergency Services Board* [2019] FWCFB 184 extracted at [77], where the Full Bench stated that the dispute resolution procedure in question, which allowed the Commission to use all its powers to settle the dispute, was both permissive and discretionary: it conferred power on the one hand, but on the other left to the Commission to determine which powers to exercise and how. A member is required to exercise jurisdiction but how to do so is at the member's discretion, structured by the relevant provisions of the Act and the terms of any enterprise agreement that is the source of power. A member could decide not to settle a dispute or defer a matter for no good reason. But that is not what happened here.

**[27]** Finally, there is simply no substance in the contention of ground 6 that the Commissioner was required to determine the matter before him without regard to the Minister's submission. The Commissioner informed himself in relation to the matter before him by hearing from the Minister, as we have done in the appeal. There is no error in this. No error is revealed by appeal grounds 6 and 13 and we reject them.

*Failure to determine the 'fettering' issue (appeal grounds 1-3, 10 and 11)*

**[28]** The second group of errors alleged by the UFU to have infected the Commissioner's decision related to a contention that the Commissioner had erred by failing to determine, or to determine correctly, whether the changes to the draft supply contract between the FRV and the VFRB had cured the fettering problem (appeal grounds 1-3, 10 and 11).

**[29]** By appeal ground 1, the UFU contended that the Commissioner had omitted to consider a relevant matter, namely that the powers of the FRV under state legislation were subject to the relevant provisions of the Agreement dealing with qualifications for firefighters. The UFU submitted that if there were any inconsistency, the Agreement would prevail, but in fact there was no inconsistency because, as the UFU had submitted to the Commissioner, the factual position was that the revised service contract facilitated the application of the provisions in the Agreement relating to qualifications for prospective firefighters. It said that the powers of the FRV were already constrained by the Agreement, and would not be fettered by the amended service contract.

**[30]** We reject this ground of appeal. The Commissioner did consider these matters (see [25] to [27]). He was unpersuaded by the UFU's contentions. His view, at [40], was that a *'contractual external block on engaging a particular person that FRV considered necessary … would likely not conform with the FRV's discretion to employ any person it considered necessary'*. It was suggested that this statement was merely in the nature of a *prima facie* view. But the Commissioner could of course not definitively determine the issue, because the Commission is not a court. In our opinion, the Commissioner's view was briefly stated but sufficiently clear and we find no error in it.

**[31]** By grounds 2, 3 and 11, the UFU contended that the Commissioner erred by failing to resolve the fettering question, either by determining whether the amended service agreement resolved the issues identified in the Fettering Decision, or by assessing afresh whether the amended service contract resulted in an impermissible fetter on the FRV's powers. Again, the union contended that the Commissioner failed to exercise jurisdiction. But again, we disagree. At [92], the Commissioner stated that he was *'not yet satisfied'* that the service agreement did not impermissibly fetter the powers of the FRV. He had previously considered the fettering issue in detail, determined that the previous service contract did impose a fetter, and indicated that it might be possible for the contract to be recast to remove the problem. It was up to the UFU to persuade him that the problem had been removed. He was not so persuaded. Neither are we. For one matter, it would appear that the revised service agreement could have the effect that employment-related powers of the FRV under s. 25B of the FRV Act could be exercised to some degree by the VFRB rather than the FRV. The amendments to the service contract do not appear to address that issue. The Commissioner's consideration of the fettering issue was brief, but he had already examined the matter in the previous decision. There was no need to repeat that analysis. And the amendments to the contract were small. Had it been evident that they clearly cured the problem, the Commissioner might have been satisfied that this was the case. He was not. In any event, there was nothing that required the Commissioner to conclude his consideration of the fetter issue at that time, in circumstances where the revocation application had not yet been heard. It must also be remembered that there were multiple sufficient reasons for the Commissioner's decision not to issue the order, the other *'essential'* reason being the significance of the ministerial direction, to which we will return below.

**[32]** As to ground 10, we do not accept the UFU's contention that the Commissioner treated the issue of fettering as one that only arose in the revocation application. The matter arose in the second application and the Commissioner stated clearly that he was not yet persuaded that anything had changed. The UFU had asked for the revocation proceeding to be adjourned, not that it be heard concurrently with the second s. 739 application. It was not discontinued. As we have said, it was open to the Commissioner to apprehend, as he did at [87], that argument in

that proceeding might yet be relevant to the question of whether the fettering problem had been removed. But he did not leave the matter for entirely another day. He concluded that he was *not yet satisfied* that the fettering problem had been resolved. However, even if the Commissioner did defer any consideration of the fettering issue until he had heard the revocation, this would not have constituted an error.

*Error in approach to the ministerial direction (appeal grounds 4, 5, 7, 8, 9 and 12)*

**[33]** Several of the grounds of appeal alleged error on the part of the Commissioner in relation to his approach to the significance of the ministerial direction. In its fourth ground of appeal, the UFU contended that the Commissioner had wrongly concluded that further work needed to be done by the UFU and FRV in order to turn the draft service contract into a final document capable of being signed, and that this would likely entail further negotiation (at [74]-[75] and [88]). The UFU submitted that the remaining details to be completed in the contract were routine and uncontroversial matters and there was nothing to indicate that they would require negotiation. It further contended that the Commissioner had erred in concluding at [89] that the Ministerial Direction prohibited the FRV from negotiating with the UFU over the clauses requiring completion.

**[34]** It is perhaps debatable whether the outstanding details that would need to be completed in the draft service contract are of significance or that they would require negotiation. And the UFU is correct to say that the text of the ministerial direction does not explicitly prohibit FRV from completing those details. On the other hand, the Commissioner concluded that FRV saw the direction in *'stark terms'* that prohibited it from diverting from its strictures. The Commissioner's remark at [89] that FRV *'could not even negotiate'* is not necessarily to be understood as suggesting that he believed the ministerial direction directly prohibited negotiation. It may simply mean that the Commissioner considered that the FRV could not *legitimately* negotiate, given that to do so with a view to finalise outstanding details in the contract would be a preparatory step in defying the Minister's direction and also a futile exercise and therefore a waste of public resources.

**[35]** In any event however, although these matters were referred to by the Commissioner at [75] as one of two particular reasons for which he considered it to be inappropriate to grant the order, they were not one of the two *'essential reasons'* for refusing the order that were referred to by the Commissioner at [92]. It is clear that the essence of the second essential reason was that in light of the ministerial direction, which prohibited FRV from entering into the service contract with the VFRB and which FRV regarded itself bound by the order sought by the UFU would have no utility. In our opinion, this view was not only open but correct. FRV's counsel had plainly stated to the Commission that it would comply with the minister's direction (transcript at PN201).

**[36]** Appeal ground 5, 7 and 8 contended that the Commissioner had erred in finding at [76] of the decision that it would be inappropriate to grant the order sought by the UFU because of the existence of the ministerial direction, and that if the Commission had thought the direction relevant to the question of whether to grant the order, he should have determined the validity of the direction, which the UFU had contested. Instead, said the UFU, the Commissioner found at [62], [83] and [90] that he could not determine the validity of the direction.

**[37]** This is not our reading of these paragraphs of the Commissioner's decision. At [62], the Commissioner stated that on its face, the direction was valid, and that he was not satisfied that there was a proper basis for the Commission to find otherwise. Although in the next sentence the Commissioner said that consideration of the ministerial direction took him *'nowhere,'* he then added: *'... with me accepting that the direction has been made and that FRV is compelled to follow it unless and until it is either withdrawn or declared invalid'*. The Commissioner saw nothing irregular in the ministerial direction. Neither do we. However, given our other conclusions, it is not necessary for us to set out our reasons. As to [83] and [90], the Commissioner's remarks about the limits of the Commission's power in respect of determining the validity of the declaration are plainly directed at the fact that he cannot finally determine whether the direction is valid, as this is exclusively a judicial function. All of this is entirely orthodox.

**[38]** We see no basis to criticise the Commissioner's observations at [76] that to make the order sought by the UFU would place FRV officers in an impossible situation because the ministerial direction would require one thing of them and the order of the Commission another. This too was a perfectly available discretionary consideration. So was the fact that FRV considered itself bound by the ministerial direction and had told the Commission that it intended to comply with it.

**[39]** The Commissioner did form a view about the status of the ministerial direction but even if he had not done so, this would not have constituted an error. This was not a case in which the Commissioner was required to determine the validity of the ministerial direction as a *necessary* step in the exercise of his power. If the Commission is to determine, for example, an application to terminate or suspend protected industrial action under s. 424, it must form a view about whether the action in question is protected action. But in the present matter, the Commissioner had a considerable discretion as to how he would exercise his powers under the dispute resolution procedure. He was not required to assess the validity of the direction. However, the fact that an order issued by the Commission would require FRV to contravene a direction of the Minister and thereby place FRV and its officers in an invidious position is clearly a relevant discretionary consideration.

**[40]** Contrary to the suggestion in appeal grounds 9 and 12, we do not consider that any error is revealed by the Commissioner's brief discussion of the possibility of a collateral attack on an order issued by the Commission by reference to the effect of the ministerial direction, or other litigation surrounding this issue. The Commissioner's observations at [84] were made in the context of his assessment that an order issued by the Commission could widen rather than resolve the dispute. It was open to the Commissioner to have regard to this quintessentially industrial consideration in the exercise of his discretion. We reject these appeal grounds.

**[41]** Given the likely prospect that the underlying dispute will be subject to further proceedings in the Commission, we make some final observations.

**[42]** First, the scope of the dispute resolution procedure in the Agreement is broad. It applies to all matters pertaining to the employment relationship and also the relationship between FRV and the UFU. Broad too is the discretion evidently conferred on the Commission to settle disputes about any such matters under that procedure. In this case, the dispute concerned whether the FRV should be compelled by order to enter into a detailed service contract with a

particular registration entity. The Agreement however says very little about the establishment of a registration body, other than recording FRV's endorsement of the establishment of such a body and requiring FRV to send a letter to the UFU to this effect. As the Commissioner recognised in his Fettering Decision, the Agreement has nothing to say about the form of the registration board; conceivably it could be an internal function established for that purpose, or a third party entity, or a board established by legislation (at [21]). The relevant clauses in the Agreement record the parties' acknowledgement of a concept without prescribing detail or timeframe.

**[43]** In this matter, one party has proposed a detailed framework. It has asked the Commission to compel the other party to enter into a contract with a particular entity on particular terms. It seems clear that before doing so the Commission would need to be persuaded not just that there was no reason *not* to make an order, but also that there were good reasons why an order *should* be made. A merits case would be required.

**[44]** Secondly, to the extent that a merits case was said to reside in the fact that the FRV had agreed to what is proposed by the UFU, save for its concern that it must abide by the ministerial direction, the question would then arise as to what the dispute between the parties really was, and who the parties to any dispute really were. If FRV in fact wants to do what the UFU asks of it, it is difficult to see how there could be any real dispute between those parties. A dispute that was in substance one between the UFU and the State of Victoria would not be one that could be determined by the Commission under the dispute resolution procedure in the Agreement.

## Conclusion

**[45]** The Commissioner's decision is free from appealable error. The appeal is dismissed.


VICE PRESIDENT

*Appearances*:

*H. Borenstein K.C. and B Bromberg* of Counsel for the UFU.
No appearance from Fire Rescue Victoria.
*C. O'Grady K.C. and M. Davern* of Counsel for the Minister for Emergency Services.

*Hearing details*:

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