IN THE FAIR WORK COMMISSION
AT MELBOURNE

FWC Matter No: AG2018/1278

APPLICATION BY THE METROPOLITAN FIRE AND EMERGENCY SERVICES BOARD

STATUTORY DECLARATION OF EMILY JAY

I, Emily Jay, 456 Albert Street, East Melbourne, Manager, Human Resource Business Partnerships, make the following declaration under the Statutory Declarations Act 1959:

1. I am authorised to make this statement on behalf of the Metropolitan Fire and Emergency Services Board (MFB).

2. Except where I say otherwise, I make this statement based on my own direct knowledge and observations.

3. This statement is provided in relation to the application for approval of the Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement 2016 (Proposed Agreement).

4. I am currently on maternity leave and gave birth to my first child on 2 August 2018. I anticipate being on maternity leave until approximately 6 July 2019.

PERSONAL BACKGROUND

5. I am employed by the MFB as a Manager, Human Resources Business Partnerships, which is a role that I have occupied since February 2016.

6. In my role, I have had oversight of and involvement in the process of implementing part-time and other types of flexible working arrangements for operational firefighters employed by the MFB (collectively, Alternative Working Arrangement).

PART-TIME & FLEXIBLE WORK IN THE MFB

7. Requests for Alternative Working Arrangements tend to arise where an employee has family or carer responsibilities that they are seeking to accommodate. I am also aware that the MFB has implemented requests for Alternative Working Arrangements in relation to an employee’s transition back into the workforce following a period of parental leave.

8. The MFB currently has three operational firefighters who are working on a part-time basis. There are also at least three other operational firefighters working flexible working arrangements, albeit in circumstances where they still work full-time hours.

9. Presently, all employees working on a part-time or a flexible working arrangement are working on the special administrative duties roster performing day shift work.

10. The MFB does not currently have any employees on Alternative Working Arrangements who are carrying out work as operational firefighters.
11. To the best of my knowledge, no requests have been made by any firefighters employed by the MFB for Alternative Working Arrangements while carrying out work as operational firefighters. Given my role and its responsibilities, I expect that I would be aware of any such requests if they had been made of the MFB by an employee.

12. Employees on Alternative Working Arrangements are usually placed in district offices. This is because standard fire stations are not able to accommodate employees in addition to the standard crew situated at those stations. Standard fire stations do not conventionally have spare computers, desks or rooms to accommodate additional employees.

13. To my knowledge, since the commencement of my employment with the MFB, all of the requests that the MFB has received from operational firefighters for Alternative Working Arrangements have been accommodated. However, in my experience, these requests tend to arise very infrequently.

*Part-time arrangements*

14. The MFB currently has three employees working on a part-time basis. Two of those employees are working pursuant to a job-share arrangement in relation to a single position in the MFB’s Emergency Management department. The other employee is working reduced hours at the district office of Oakleigh, having recently returned from a period of maternity leave.

15. Prior to the implementation of the Alternative Working Arrangements outlined, these employees were engaged as operational firefighters on the 10/14 roster.

*Flexible arrangements*

16. In my experience, requests for flexible working arrangements in the MFB are more common than requests for part-time work.

17. An employee working on a flexible working arrangement does not necessarily work fewer hours than an employee on the 10/14 roster. For example, a flexible working arrangement might involve the relevant employee working five days per week, as opposed to the four days per week on the 10/14 roster. It also includes employees who work from home.

18. The MFB currently has a number of operational firefighters currently on flexible work arrangements. While the MFB does not have a formal policy in place pertaining to flexible work arrangements, I have handled each of these employee requests for flexible working arrangements and have identified capacity within the MFB organisation to accommodate each of them.

19. I am not aware of the details of any flexible work arrangements in place prior to my commencement at the MFB.

20. Currently, the employees on flexible arrangements are located at Eastern Hill, Burnley and the Northern District Office. All employees are off-shift and on administrative duties. One such employee works from home two days per week.

*Process for applying for an Alternative Working Arrangement*

21. There is no formal policy or procedure that sets out how an employee is to apply for a part-time or flexible working arrangement. Instead, these requests come about in a number of ways.
22. Most commonly, an operational firefighter will raise the request with their Officer in Chief or Commander pursuant to their right to request flexible working arrangements under the National Employment Standards (NES) in the Fair Work Act 2009.

23. The MFB to date has not sought evidence from the employees on flexible work arrangements or part-time arrangements to confirm they have personal circumstances to satisfy the NES. One of the employees on such an arrangement has however submitted evidence in form of a medical certificate to confirm she requires flexibility on return from parental leave.

24. However, if a requirement for a statutory declaration were added under the Proposed Agreement, this formality could be satisfied by the firefighter filling in a Statutory Declaration form and having it witnessed by an authorised person. The MFB plans to prepare a relevant form, consistent with the requirements for a statutory declaration in Victoria.

25. Once that request is made, the relevant Officer or Commander will ordinarily notify the MFB Human Resources department of the proposed Alternative Working Arrangement. The arrangement is usually then recorded in writing and the employee is issued with a letter setting out the terms of the Alternative Working Arrangement. In my experience, this is consistent with the process used by other organisations in managing a request for a flexible or part-time work arrangement.

26. In some cases, the Human Resources department will play an active role in accommodating a request. By way of example, one of the current part-time employees applied for part-time work by approaching her Commander at the end of a period of maternity leave to discuss her return to work. The Commander then reached out to Human Resources and arranged a meeting to discuss the availability of part-time positions within the MFB.

27. On the other hand, Human Resources sometimes has little to no formal involvement in arranging and implementing an Alternative Working Arrangement. For example, the two employees who are working a job-share arrangement in the MFB’s Emergency Management department approached their Operational Manager. The Operational Manager proceeded to consult with the Deputy Chief and then directly implemented the arrangement by consensus.

28. The level of involvement by Human Resources can vary from case to case.

29. Some managers consult Human Resources on an advisory basis, whereas others may require the assistance of Human Resources with any number of issues, from responding to the initial request through to the implementation of the Alternative Working Arrangement itself.

30. I have had firefighters approach me directly in order to seek my advice regarding the appropriate way to raise the prospect of working flexibly with their Officer. Ordinarily, my advice is to write a request under the NES for a flexible working arrangement.

**UFU involvement in part-time and flexible arrangements**

31. When I commenced employment with the MFB, I was advised in my handover that it was common practice to notify the United Firefighters’ Union of Australia (UFU) of requests for part-time and flexible work arrangements where such requests were implemented or under consideration.
32. On one occasion in February or March 2016 I wrote a letter to the UFU Secretary, Mr Peter Marshall, which notified him of a proposed flexible working arrangement for an employee at Eastern Hill.

33. In that context, the letter asked whether the UFU wished to put forward a view in relation to that arrangement.

34. I did not receive a response from the UFU to that letter. I took that silence to mean that the proposal was not opposed by the UFU.

35. It is my understanding that the UFU is aware of the MFB’s current Alternative Working Arrangements, including the details of particular arrangements. Given that many of our operational firefighters are active members of the UFU, including firefighters who are in positions of leadership at Stations who necessarily would be involved in facilitating such requests, it is my understanding that these employees will generally make the UFU aware of such arrangements in an informal way through their discussions. Given that UFU has knowledge of the arrangements, and does not object to them, I take this to be implicit agreement on the part of the UFU.

Pregnancy Policy

36. Firefighting is an inherently dangerous occupation. As a result, it is a requirement of MFB policy that for health and safety reasons, pregnant women are to be taken off usual operational duties and assigned safe duties.

37. In order to address concerns that the work options for pregnant women were limited, I updated the policy and sought to have the UFU endorse it.
38. The process for updating the policy commenced with the normal channels of consultation within the MFB, followed by discussions with the UFU and it now takes effect as a policy of the MFB.

39. Now shown to me and marked EJ-1 is a true copy of the MFB Firefighter Pregnancy - Policy & Procedure dated 30 March 2017.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the Statutory Declarations Act 1959, and I believe that the statements in this declaration are true in every particular.

[Signature of person making the declaration]

Declared at on of

[place] [day] [month] [year]

[Signature of person before whom the declaration is made]

[Alice Maher Alexander]
600 Bourke Street, Melbourne 3000
An Australian Legal Practitioner within the meaning of the Legal Profession Uniform Law (Victoria)

[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1: A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years—see section 11 of the Statutory Declarations Act 1959.

Note 2: Chapter 2 of the Criminal Code applies to all offences against the Statutory Declarations Act 1959—see section 5A of the Statutory Declarations Act 1959.
IN THE FAIR WORK COMMISSION

Matter No: AG2018/1278

Application by the Metropolitan Fire and Emergency Services Board

Attachment EJ-1
**Firefighter Pregnancy – Policy & Procedure**

Approval level: Executive Leadership Team  
Date authorised: 30 March 2017  
Revision frequency: Annually  
Version number: 1.0

**1. INTENT**

This policy & procedure is intended to convey the approach of the MFB when notified that a firefighter is pregnant or potentially pregnant and to protect the health and safety of the firefighter and their unborn child/ren whilst at work. It also provides a list of roles deemed safe for operational duty during pregnancy.

**2. SCOPE**

This policy applies to all pregnant firefighters and any pregnant employee exposed to operational activities.

**3. REFERENCES**

This policy should be read in conjunction with the following documents:

- Metropolitan Fire and Emergency Services Board, United Fire-fighters Union of Australia, Assistant Chief Fire Officers Agreement 2010
- Metropolitan Fire and Emergency Services Board, United Fire-fighters Union of Australia, Operational Staff Agreement 2010

This policy is underpinned by the following legislation:

- *Occupational Health and Safety Act (Vic) 2004*
- *Fair Work Act 2009*
- *Equal Opportunity Act 2010*

**4. DEFINITIONS**

"MFB" means the Metropolitan Fire and Emergency Services Board established under s6 of the Metropolitan Fire Brigades Act 1958.

**Hazardous Environment**

Designated hazardous environments within the MFB are Operational Fire Grounds (including operational training environments). This is based on available medical evidence about the effect of hazards on pregnancy and provides cause for the immediate placement of pregnant firefighters whose normal duties involve potentially hazardous environments on suitable safe assignment duties.

**Medical Advice**
Written medical advice from a pregnant firefighters treating doctor which outlines details of their current capacity for operational duties and any restrictions and recommendations for alternative duties. Medical advice should be provided with reference to this Policy.

**Host Manager**
Manager overseeing the pregnant firefighter once placed in their safe assignment role. The host manager should be aware of and have read this policy and procedure prior to the placement of the pregnant firefighter,

**5. RESPONSIBILITY**

**Pregnant Firefighter**
- If employed in a designated hazardous environment (see above definition), inform the relevant Commander and Assistant Chief Fire Officer (ACFO) about their confirmed or suspected pregnancy.
- Providing the relevant ACFO with medical advice/certificate based on the position requirements, that identifies the duties the firefighter can perform and any current medical restrictions.
- Discussing and implementing an appropriate placement on suitable safe, non-hazardous duties with the relevant ACFO as soon as practicable and in line with medical advice. Suitable duties include those listed in Appendix 1, which are deemed safe.
- During the expected last six weeks of the pregnancy, if the firefighter continues to work, she is required to present a medical certificate indicating appropriate medical clearance.
- Maintaining contact with the relevant Host Manager about any issues that may arise with the duties selected.
- At least 4 weeks (preferably 6) prior to returning from a period of parental leave, providing medical advice/certificate from the relevant treating doctor indicating a clearance for full duties or any medical restrictions in place for returning to work.

**ACFO/Director**
- Advising pregnant firefighters of the relevant MFB resources in relation to pregnancy and any occupational risks associated with pregnancy as per this policy.
- Discussing and determining suitable safe duties for pregnant firefighters in conjunction with the Human Resources Business Partner (HRBP) and employee's medical advice.
- Maintaining contact and providing effective support to pregnant firefighters, who are currently fulfilling safe assignment roles and addressing any issues that may arise with the duties selected, with assistance from the HRBP.
- Being the point of contact for the firefighter whilst on parental leave, and notifying Rosters, Payroll, Host Manager, Training & Education and HRBP of the parental leave dates.
- Notifying firefighter of skills maintenance dates and rostered station details prior to return to work date.
- Maintain confidentiality when facilitating the process outlined in this document.
Human Resources Business Partner (HRBP)

- Provide advice to the ACFO and pregnant firefighter to determine suitable safe duties in conjunction with medical advice.
- Liaise with the firefighter’s treating doctor if required and with permission from the firefighter.
- Provide written advice to the firefighter in relation to availability and location of suitable safe duties.
- Assist ACFO with relevant correspondence to employee regarding parental leave, returning to work and options for requesting flexible working arrangements.

6. POLICY

In recognising its obligations and the fact that fire fighting is by nature, an occupation with complex risks, the MFB is committed to protecting the health and safety of all employees, including pregnant firefighters and their unborn child.

The presence of these complex risks is due to the dynamic nature of the occupational activity and includes task based and atmospheric hazards.

Suitable duties for pregnant firefighters should be managed on a case by case basis supported by a risk discussion. A list of suitable safe non-hazardous roles is outlined in Appendix 1.

Any employee who has been transferred to a safe assigned role will have no loss of entitlements.

Any employee who has been on parental leave is entitled to come back to the job they had before going on leave.

If the employee was transferred to a safe job before they took parental leave or they reduced their hours due to the pregnancy, then they’re entitled to return to the job they had before the transfer or reduction.

If an employee’s job doesn’t exist anymore or it has changed, then they have to be offered a suitable available job that:
- the employee is qualified and suited to perform.
- is nearest to their previous job in pay and status.

7. RISK

The fire ground is a very dynamic environment. It is multi-factorial in nature and includes risk factors that may not be immediately apparent in relation to the fire and the fire ground characteristics and changes to atmospheric conditions. These factors are compounded by the inability of the MFB to control the environment.

This dynamic feature reduces the predictability of hazard exposures, negates the effectiveness of traditional risk assessment tools such as a Job Safety Analysis and increases the reliance on individual and collective operational decision making.

Whilst the MFB takes all reasonable steps to protect the health and safety of its employees, the fire ground and response activities such as Emergency
Medical Response (EMR) have specific hazards to the health and safety of the pregnant firefighter, including:

- extreme physical exertion including lifting heavy weights
- exposure to heat
- exposure to irritant and asphyxia gases, in particular carbon monoxide which is prevalent on the fire-ground
- pyrolysis products, which may include mutagens and carcinogens that can affect the pregnancy from an early stage; and
- numerous safety hazards for trips and falls which may be accentuated due to anatomical and physiological changes in pregnancy

In addition, close contact with the public during EMR may pose risk of infection to both mother and her unborn child. Due to the wide range of known and potentially unknown risks to the mother and unborn child, pregnant firefighters should not undertake operational duties in any area of the fire ground.

Further, due to the potential adverse effect of lifting heavier weights, during pregnancy, firefighters are advised to seek guidance from their treating doctor regarding weight limits.

**Risk Controls**

Alternative safe assignment roles should be assessed, noting the above risks. If a suitable safe role not listed under Appendix 1 is identified as an appropriate placement, a risk assessment should occur in consultation with Workplace Health and Safety.

In addition to a risk discussion between the pregnant firefighters and ACFO the following risk controls should be implemented:

- At the entry medical examination for recruits in conjunction with other vaccination programs, measles, mumps, rubella and varicella (chicken pox) immune status should be determined for all candidates (male and female) and immunization offered if indicated, combined with updating diphtheria / tetanus / pertussis as required.

- All employees joining MFB shall be advised of the methods available to manage risks during the course of their employment as a firefighter and avenues for obtaining further advice.

- A pregnant firefighter must report her pregnancy as soon as she becomes aware of her pregnancy. At this point the firefighter must be removed from emergency response duties and alternative duties should be discussed and assessed with line management and the HR Business Partner. These duties may be varied in the light of information from her treating doctor.

- In preparation for return to full operational duties, firefighters are encouraged to use existing health and wellbeing services.

- All firefighters returning to work after pregnancy should obtain a medical clearance as being fit for duty. A return to work plan may be used to assist with a transition to full operational duties if required.
## 8. PROCEDURE

<table>
<thead>
<tr>
<th>Responsibility</th>
<th>Steps</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre- Parental Leave</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **Employee** | 1. Inform Commander and ACFO of pregnancy or potential pregnancy. Seek medical advice regarding capacity. | Medical Certificate  
Firefighter Pregnancy – Policy & Procedure |
| **ACFO/Employee/HRBP** | 2. The ACFO will make immediate arrangements to withdraw the employee from hazardous duties. Safe assignment discussion to occur with employee and ACFO based on medical advice, risks and role requirements. Discuss and agree on options and placement (transfer to safe duties). This will include any training necessary to complete safe duties. Should the firefighter indicate a preference for a particular placement, the ACFO will endeavour to accommodate such a request. However, the MFB reserves its right to manage such requests based on operational requirements. | Medical Certificate  
Safe assignment roles (Appendix 1)  
Risk discussion |
| **ACFO/Employee/HRBP** | 3. Transfer firefighter to safe assignment role in line with the medical advice. This process shall be documented and stored in the employee's personnel file | Medical Certificate  
Placement Advice |
| **Employees/Contracts and Procurement** | 4. Contracts and Procurement have suitable and practical operational maternity wear available or pregnant firefighters can also elect to seek a larger size of standard issue uniform. This can be ordered via UMS. Where this is no longer practical, the firefighter may, after consultation with their Commander and ACFO, wear neat casual attire as appropriate | Uniform Catalogue and Order Form via MFB Applications (UMS)  
Contracts and Procurement Department |
<p>| <strong>ACFO/Employee/HRBP/ Host Manager</strong> | 5. Discussion to occur while pregnant firefighter is engaged in safe assignment role to ensure its ongoing suitability | Placement advice |
| <strong>Employee/HRBP/ACFO</strong> | 6. 10 weeks before planned commencement of Parental Leave, complete leave application | |
| <strong>Post Parental Leave</strong> | | |
| <strong>Employee</strong> | 1. 4 weeks prior to returning to work, firefighter to notify Commander and ACFO of return date and any other relevant details (i.e., request for flexible working arrangement). Firefighter to also provide medical | Medical certificate |</p>
<table>
<thead>
<tr>
<th>Role</th>
<th>Location</th>
<th>Occupational Work Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Watch Room</td>
<td>Eastern Hill</td>
<td>10/14</td>
</tr>
<tr>
<td>Works Officer</td>
<td>Eastern Hill</td>
<td>10/14</td>
</tr>
<tr>
<td>Secondary car driver</td>
<td>Eastern Hill</td>
<td>10/14</td>
</tr>
<tr>
<td>Day work roles (non-operational) Includes:</td>
<td>Various</td>
<td>Day Work 10/14 (if applicable)</td>
</tr>
<tr>
<td>Advertised vacant roles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community Resilience (Regional or Emergency Management)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>District / Corporate Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operations Improvement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operational Training (Non scenario/PTA)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Special projects</td>
<td></td>
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Appendix 2

Safe assignment role descriptors

Watch room

The tasks within the watch room role do not involve attendance to the fire ground and are predominately sedentary, including the following:

- Initial response to commence turn out (alarm response)
  - Verifying information on monitor screen in response to alarm (e.g., directions and whether keys to premise are required)
  - Printing hard copy of information on screen
  - Obtaining correspondence for keys
  - Provision of printed information and keys to firefighters responding to alarm through the watch room window
- Documentation of turn out events and details in the occurrence log book
- Monitoring security cameras
- Controlling secured access onsite

- Key inventory:
  - Counting keys and verifying with database in key register
  - Ensuring keys for the turnout have been returned
  - Provision of verbal handover to next staff member on shift

**Works Officer**

The Works Officer is considered a safe role due to its general supervisory and administrative nature. The role does not involve emergency response activities and does not attend the fire ground. The main elements of the role are:

- General supervision of the Fire Station (eg monitoring the apparatus bay where fire vehicles are located to ensure that equipment is stored appropriately)
- Completing daily roster
- Providing logistical support to MFB operations from HQ
- Administrative tasks

**Second Car Driver to District Car 1 (Eastern Hill) (no attendance to fire ground)**

The second car driver role is consistent with the position utilised by Operational Support Group (OSG). The second car driver role is not the creation of a new role but the limiting of scope (attendance to fire ground) for a second car driver role to be based in Eastern Hill Fire Station, in addition to District Car 1. The position is above minimum crewing and utilises a non-operational pool vehicle.

The restrictions placed upon the safe duties role prohibits attendance at any fire call (based on MFB’s medical advice and fire ground risk research) and any other limitations, such as lifting capacities based on the individual’s medical advice.

Duties include:

- Completion of morning checks, includes a shift check
- Driving; delivering equipment, items and supplies to various MFB locations across the metropolitan regions.

There is no change to operational support (fire ground) which will still be facilitated by the central district car driver which is a position that forms part of minimum crewing.

**Day work (various locations and options)**

Various day work options are available for pregnant firefighters to safely fulfil (pending medical advice, which is the case for all safe roles). Day work positions do not include emergency response activities and there is no exposure to the hazard risks of the fire ground.
Day work positions are administrative office based roles, the tasks of which performed within an indoor environment utilising standard computer based equipment including mouse, keyboard, monitor and stationery items.

Where applicable, day work roles may be able to be performed in accordance with a 10/14 occupational work group. This is dependent on the nature and requirements of the position and is subject to agreement between the pregnant firefighter and the ACFO. This option may require flexibility from the pregnant firefighter with regard to rostering, dependent on the work requirements.

If an available day work option is deemed to be workable in a 10/14 arrangement and this is agreed to by the parties, the work location is limited to Central District Office, Western District Office and South East Metro Office.