

**IN THE FAIR WORK COMMISSION
AT MELBOURNE**

Matter: Intractable bargaining application (B2023/771)

Applicant: United Firefighters Union of Australia (**UFU**)

Respondent: Fire Rescue Victoria (**FRV**)

FRV'S POSITION IN RELATION TO THE CONTESTED MATTERS

**(filed pursuant to the directions of the Full Bench dated 22 April 2025
and as amended on 30 May 2025)**

INTRODUCTION

1. FRV's objective in the current proceeding is to secure an industrial outcome that benefits relevant FRV employees and the Victorian community. In doing so, it seeks to ensure that the intractable bargaining workplace determination (**IBWD**) which is ultimately made:
 - (a) recognises the value and importance of its operational staff – including through the provision of a fair wages and allowance outcome;
 - (b) prioritises protecting the health and safety of its operational staff;
 - (c) continues to foster a positive workplace culture;
 - (d) ensures that FRV remains in a position to deliver on its important purpose of keeping Victorian communities safe;
 - (e) continues to foster a constructive relationship with the UFU;
 - (f) provides for ongoing harmonisation and fire services reform; and
 - (g) facilitates financially sustainable operations taking into account the applicable funding framework.

FRV'S APPROACH TO DOCUMENTS TO BE FILED

2. The Full Bench has directed the UFU, FRV and the Minister for Emergency Services (**Minister**) to file and serve:
 - (a) respective positions in relation to the substantive contested matters that are anticipated would be the subject of substantive evidence and submissions (**Contested Matters**); and
 - (b) draft Workplace Determination and/or any draft proposed clauses in relation to the Contested Matters.
3. In circumstances where FRV is required to comply with the industrial relations framework that the Victorian Government sets for bodies within the Victorian public sector, and is subject to the direction of the Minister, FRV adopts the following materials filed by the Minister:
 - (a) the position document in relation to Contested Matters (**Position Document**) – as set out in **Annexure A**; and
 - (b) the draft proposed workplace determination (**Draft IBWD**) – as set out in **Annexure B**.

CONTESTED MATTERS IDENTIFIED IN POSITION DOCUMENT

4. It continues to be the position of the Minister and FRV that there are no matters that meet the definition of 'agreed terms' in section 274(3) of the *Fair Work Act 2009* (Cth) (**FW Act**) for the purposes of inclusion in the IBWD. Each term in the workplace determination is therefore a 'matter in issue'. Therefore, the Full Bench will ultimately need to be satisfied that the requirements of

sections 270(3), 270A and 275 of the FW Act are satisfied in relation to each clause to be included in the IBWD.

5. However, the Contested Matters identified in the Position Document are the matters that the Minister and FRV submit require substantive determination by the Full Bench.
6. For the purpose of identifying the Contested Matters, it has been assumed that the UFU will adopt the position that all terms in the Version 14 document previously filed in the Commission in this matter on 28 July 2023 are 'agreed terms', save for the quantum of increases to wages and allowances (which are substantively in contest). Accordingly, the Contested Matters identified in the Position Document are terms in the Version 14 document which the Minister and FRV submit:
 - (a) should not be included in the IBWD; or
 - (b) should only be included in the IBWD if appropriate amendments are made.
7. In relation to these Contested Matters, the Minister and FRV submit that the relevant terms in the Version 14 document should not be included and / or should be amended because:
 - (a) provisions of the FW Act in relation to terms to be included in an IBWD require the relevant position to be adopted;
 - (b) certain Constitutional limitations on the capacity of the Full Bench to impose particular types of clauses as part of an IBWD require the relevant position to be adopted; and / or
 - (c) the relevant terms are not supported by the Minister and / or FRV because they are otherwise not appropriate to include in the IBWD for operational and / or financial reasons.
8. Relevantly, the operation of provisions of the FW Act and limitations that apply to terms that can be included in an IBWD (which do not apply to enterprise agreements) means that there are terms in the current enterprise agreement, and matters that were discussed in bargaining, that cannot now be included in the IBWD.
9. The explanations provided in the Position Document for the position adopted by the Minister and FRV in relation to each of the Contested Matters are necessarily articulated at a high level and will be expanded upon in the written and oral submissions of the Minister and FRV.

DRAFT IBWD

10. The terms of the Draft IBWD filed by the Minister and FRV seek to give effect to each of the positions outlined in the Position Document with respect to Contested Matters.
11. In this respect, the Draft IBWD seeks to take into account the applicable legal limitations on terms that can be included in an IBWD and reflects the position that FRV has been authorised to adopt by the Victorian Government. However, the Minister and FRV acknowledge that it is possible that the Full Bench will consider that further amendments are required to some terms in order to comply with the applicable legal limitations and / or requirements.
12. The Minister and FRV also acknowledge that further work is being undertaken in relation to terms which appear to be historical or legacy clauses – many of which have been flagged in the Draft IBWD – and which may no longer be relevant and / or which need to be updated. The Minister and FRV will provide updated drafting in relation to these terms once this further work has been completed.

MINTERELLISON

Solicitors for Fire Rescue Victoria

13 June 2025