



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**COMMISSIONER WILSON**

**C2023/2071**

**s.739 - Application to deal with a dispute**

**United Firefighters' Union of Australia  
and  
Fire Rescue Victoria  
(C2023/2071)**

**Melbourne**

**10.00 AM, FRIDAY, 16 JUNE 2023**

**Continued from 04/05/2023**

PN1

THE COMMISSIONER: Good morning, parties. Thank you for your attendance. If I can take the appearances, please.

PN2

MR W FRIEND: Commissioner, I appear for the United Firefighters Union.

PN3

THE COMMISSIONER: Thank you, Mr Friend.

PN4

MS R SWEET: Good morning, Commissioner. Sweet, initial R. I appear with Mr M Garozzo.

PN5

THE COMMISSIONER: All right. Thank you, Ms Sweet.

PN6

MS SWEET: Thank you.

PN7

THE COMMISSIONER: Well, Mr Friend, this is your application and you have filed the relevant material. Before I turn to that, are there any preliminary issues that need to be determined from either side?

PN8

MR FRIEND: No.

PN9

THE COMMISSIONER: That's good to hear. All right, thank you.

PN10

MR FRIEND: We have sorted all the preliminary issues out, Commissioner. I see from the court book the Commission has very helpfully prepared that all the material is in your hands. I wasn't proposing in those circumstances to open. We don't think this hearing today will be of very long compass. Professor Mitchell is not required for cross-examination. I have a few questions for Ms Schroder. That won't take long and then there will be brief oral submissions.

PN11

THE COMMISSIONER: All right. Thank you. Mr Friend, I do just have a couple of questions for you, if that's appropriate.

PN12

MR FRIEND: Sure.

PN13

THE COMMISSIONER: There is in the hearing book a preliminary outline of submissions filed by your client.

PN14

MR FRIEND: Yes.

PN15

THE COMMISSIONER: And then also outline of submissions. I just wasn't sure  
- - -

PN16

MR FRIEND: The outline of submissions supersedes the preliminary outline.

PN17

THE COMMISSIONER: That's what I assumed.

PN18

MR FRIEND: Yes.

PN19

THE COMMISSIONER: All right.

PN20

MR FRIEND: It's very similar.

PN21

THE COMMISSIONER: Sure, it was.

PN22

MR FRIEND: At the beginning, anyway.

PN23

THE COMMISSIONER: Then I have another question which probably shows more about me than you with your submissions. I'm just not absolutely sure and I'm looking for an explanation of how the additional recurring payment is intended to work, and if you could take me through that either now or at the appropriate time, please. What I'm particularly referring to is that there is the draft order at page 59 of the hearing book - - -

PN24

MR FRIEND: Yes.

PN25

THE COMMISSIONER: - - - and then in a number of places that refers to a percentage of salary being the proposed increase, plus additional recurring payments depending on current salary set out in annexure A. Then at page 69 there is then a table which I presume is the annexure A and that's where I became a little bit lost as to precisely how that was intended to work in conjunction with the draft - - -

PN26

MR FRIEND: It might be useful if I try and explain that to you now then, Commissioner, because it's important that we all understand what is being sought. The draft order at 59, can I take you, Commissioner, to that on that first page - - -

PN27

THE COMMISSIONER: Sure.

PN28

MR FRIEND: - - - and just work through the first three payments. Temporary work location allowance, that's the straightforward one.

PN29

THE COMMISSIONER: Yes.

PN30

MR FRIEND: \$4.37 and we have increased that by 9.5 per cent to 4.79.

PN31

THE COMMISSIONER: Right.

PN32

MR FRIEND: So all the monetary amounts are quite simple. Then with the insecure work allowance, that is currently at 25 per cent of salary. What we proposed based upon Professor Mitchell's report is that the 25 per cent of salary continues to be paid, but on top of that with each pay a sum representing 9 and a half per cent of the existing allowance.

PN33

Now, the 25 per cent is going to be different for firefighters of different ranks and so the reference to annexure A is a reference to – if you can turn to that; 'Attachment A' it's headed on page 69, Commissioner. If we take a firefighter level 1, the second rank, and the 25 per cent, the amount for that firefighter every pay period will be \$36.87 on top of the 25 per cent.

PN34

THE COMMISSIONER: All right. Thank you. The penny has just dropped.

PN35

MR FRIEND: It's a bit complex and it took us a while to get there.

PN36

THE COMMISSIONER: All right.

PN37

MR FRIEND: As you will know, the plan has changed.

PN38

THE COMMISSIONER: It took me back to the days of log tables in high school, which wasn't a good feeling.

PN39

MR FRIEND: You would have to get the slide rule out for this one occasionally.

PN40

THE COMMISSIONER: Yes, that's right.

PN41

MR FRIEND: So I hope that makes sense.

PN42

THE COMMISSIONER: No, that's all right.

PN43

MR FRIEND: And it may be that if you didn't understand what we have drafted, Commissioner, it needs a bit of massaging in the order, but we'll see how we go with that.

PN44

THE COMMISSIONER: Well, I was somewhat embarrassed to raise it. I thought I should because it's fairly fundamental.

PN45

MR FRIEND: Yes.

PN46

THE COMMISSIONER: So in terms of the order - I'm just concerned about an order if it were to be made and how that would be phrased to properly pull up the base, if I can put it that way, of 25 per cent of salary and then the additional amount. That may require some finessing if and when we get to that point.

PN47

MR FRIEND: Yes, well, I'm happy for someone to suggest a better form of words than the ones we have selected there, but we tried to capture that outcome.

PN48

THE COMMISSIONER: All right.

PN49

MR FRIEND: It is complex, but it's one that works and addresses the difficulties that are raised by Professor Mitchell - - -

PN50

THE COMMISSIONER: All right.

PN51

MR FRIEND: - - - in relation to if you have a permanent increase of 2 per cent, which was the initial claim, what happens when the pay rate goes up. You could get rid of the 2 per cent, of course, or you could end up with some double-dipping and so we've done it this way because when this agreement - if this agreement is replaced by a new one, and we hope it would be, then whether this will go away and there will be just a percentage amount and an allowance depending on what's agreed.

PN52

THE COMMISSIONER: All right. Thank you. That does help me enormously, in my understanding at least. So you don't propose to give an opening?

PN53

MR FRIEND: Not unless you would assisted by one.

PN54

THE COMMISSIONER: No, no, I've asked the questions that I would be assisted on, so in respect of your material if I can mark as exhibits the relevant documents. There is the outline of submissions with the draft order - - -

PN55

MR FRIEND: Yes.

PN56

THE COMMISSIONER: - - - and attachment A, which I will mark as exhibit UFU1.

**EXHIBIT #UFU1 APPLICANT'S OUTLINE OF SUBMISSIONS PLUS DRAFT ORDER AND ATTACHMENT A**

PN57

There is then the report completed by Professor William Mitchell at the University of Newcastle which will be UFU2.

**EXHIBIT #UFU2 REPORT BY PROFESSOR WILLIAM MITCHELL**

PN58

Then there is the submissions on permission to appear, commencing at page 86 of the hearing book, which will be exhibit UFU3.

**EXHIBIT #UFU3 APPLICANT'S SUBMISSIONS ON PERMISSION TO APPEAR**

PN59

MR FRIEND: Yes, that's all we rely on, Commissioner.

PN60

THE COMMISSIONER: All right. Thank you.

PN61

MR FRIEND: That is our case.

PN62

THE COMMISSIONER: Indeed.

PN63

MR FRIEND: Evidentiary case.

PN64

THE COMMISSIONER: Okay. If I turn to you now, Ms Sweet.

PN65

MS SWEET: Yes, thank you, Commissioner. I prefer to rely on the written submissions which commence at court book 89.

PN66

THE COMMISSIONER: All right.

PN67

MS SWEET: I propose just to briefly summarise where things stand. The FRV concedes that, Commissioner, you have jurisdiction to determine the claim. Commissioner, as you will appreciate, there are two claims - one for the increase and one for the fixed monetary sums - then there are the other allowances which are expressed as a percentage of salary.

PN68

It's considered it's appropriate to (a) order the increase to the first type of claim and to order what is phrased by the FRV as a new compensatory allowance. It's our position that that should be expressed as an annual lump sum that is reviewable annually and it's considered it's appropriate to order that increase on the grounds that the purchasing power of the existing allowances has been reduced due to the cost of living increases that are outlined in Professor Mitchell's report.

PN69

The dispute has narrowed substantially to one of quantum. There is a side issue as to what is the proper characterisation of the second allowance. It might be that nothing turns on that. Is that an increase or is it a new allowance as the FRV says it is; it's a new compensatory allowance. Nothing may turn on it, but the parties are slightly at odds on that.

PN70

Commissioner, as you will see in the submissions at paragraphs 36 to 37, the FRV has quantified the claim. It comes in around \$6.5 million per annum; 4.88 million of that is the increase to fixed allowances and 1.68 relates to the lump sum payments in respect of allowances that are expressed as a percentage of salary.

PN71

The position of FRV is that the granting of an increase and the granting of a new allowance should be made, but it should be less than sought because although the broader economic environment is a relevant consideration, it's not the only consideration. The UFU's position does not appear to take into account the budgetary constraints within which the FRV operates. Ms Schroder deals with those in her statements and she will later be subject to some cross-examination.

PN72

So the additional matters that FRV puts forward as relevant are twofold. The first is budgetary matters, the second is the financial state of the FRV. In terms of budgetary matters there's no funding available to meet the claim. There has been no forecasting of budgeting made for those claims and that has, therefore, not been taken into account in the government's funding allocation to the FRV. That's the first thing and Ms Schroder gives evidence about that.

PN73

The second thing, being the financial state of the FRV for the financial year '21 to '22, there is a deficit of 132.5 million and Ms Schroder deals with this. She says

there is a downward trend in the FRV's financial position. That is expected to continue, that there will be another financial deficit anticipated for the next financial year. That is a summary of where the FRV's position sits as of today.

PN74

I did want to just briefly raise one thing, which is there is an argument in respect of the order which begins at court book 59. There are the three columns; the issue is with the current amount payable. On my instructions the FRV says there are discrepancies as to whether that assessment of the current amount payable is right. On a number of these matters sometimes, Commissioner, they are under-quotes and sometimes they're over-quotes; some of them are very small and some of them are more significant.

PN75

I do just want to raise that it's not accepted that that is accurate and we wouldn't propose to trouble you with that, Commissioner, but it might just be that there needs to be a coming together of the parties to come to an agreed position on each of those current amount payables because it will affect obviously the increases.

PN76

THE COMMISSIONER: I am assuming that would go to those things expressed as dollar amounts, not to those expressed as percentages. It may not be.

PN77

MS SWEET: Well, it will be relevant to the quantum of both.

PN78

THE COMMISSIONER: Subject to checking, I guess becomes the issue. Yes, okay.

PN79

MS SWEET: That's correct, Commissioner.

PN80

THE COMMISSIONER: All right.

PN81

MS SWEET: That is all I proposed to raise in opening, Commissioner. You may have questions for me. If not, I propose to call Ms Schroder.

PN82

THE COMMISSIONER: All right. Before you do, Ms Sweet, can I maybe raise a similar question to the one I asked Mr Friend about the annexure. Now, you don't concede the quantum and I understand that quite clearly, but in respect of an outcome that provided there should be a lump sum reviewable annually - - -

PN83

MS SWEET: Yes.

PN84

THE COMMISSIONER: - - - is the way that it has been set out by the union an acceptable way to proceed? That is, that the main body of the order says the



proposed increase is whatever it is, but then in addition there should be the incremental amount payable according to the classification of the individual.

PN85

MS SWEET: I don't understand that there is opposition to that.

PN86

THE COMMISSIONER: Yes, okay. All right. That was the first question then in respect of those matters. The other question then is you clearly put forward a submission that the quantum proposed by the union is not accepted and is too high from your client's perspective. Is there a different amount that you wish to put forward?

PN87

MS SWEET: We have a specific amount to put forward and I draw your attention to the submissions where it's raised that in a forward-looking sense and under the relevant wages policy it could be no greater than a 3 per cent increase each year for the course of a three-year agreement. I don't have instructions to put anything more specific than that, Commissioner.

PN88

THE COMMISSIONER: All right. Thank you. So, look, before we move on I'll just mark those submissions of yours. There is the outline of submission which commences at page 89, which I'll mark as FRV1.

#### **EXHIBIT #FRV1 RESPONDENT'S OUTLINE OF SUBMISSIONS**

PN89

Looking at the hearing book there is an email which is included at page 117, being an email from Ms Campanaro to Professor Mitchell. Did you want that marked as an exhibit or is that something to be dealt with by Ms Schroder?

PN90

MS SWEET: It won't be dealt with by Ms Schroder. It was just for completeness because the instruction email to Professor Mitchell was not otherwise provided with the (indistinct).

PN91

THE COMMISSIONER: All right. Okay, in that case I will mark that document. The email from Ms Campanaro to Professor Mitchell will be marked as FRV2.

#### **EXHIBIT #FRV2 EMAIL FROM MS CAMPANARO TO PROFESSOR MITCHELL**

PN92

Then the submissions on permission to appear will be marked as FRV3.

#### **EXHIBIT #FRV3 RESPONDENT'S SUBMISSIONS ON PERMISSION TO APPEAR**

PN93

If we can call Ms Schroder please.

PN94

MS SWEET: I call Kirstie Schroder.

PN95

THE ASSOCIATE: Can you please state your full name and address.

PN96

MS SCHRODER: Kirstie Schroder, (address supplied).

**<KIRSTIE SCHRODER, AFFIRMED**

**[10.22 AM]**

**EXAMINATION-IN-CHIEF BY MS SWEET**

**[10.22 AM]**

PN97

MS SWEET: It just occurred to me, is there a copy of the court book available for the witness?

PN98

THE COMMISSIONER: I think it's in that folder next to her.

PN99

Your document, Ms Schroder, appears at page 99, I hope.

PN100

MS SWEET: That's what is in my notes, Commissioner.

PN101

Ms Schroder, can you repeat your full name for the Commission?---Kirstie Schroder.

PN102

And your address, please?---(Address supplied).

PN103

What do you do for a living, Ms Schroder?---I am the deputy secretary of corporation regulations and strategic services for Fire Rescue Victoria.

PN104

You have provided a statement in this matter?---I have.

PN105

Can I take you to page 99 of the court book before you. Is that the statement you have made in this matter?---It is.

PN106

Have you read it before coming to the Commission this morning?---I have.

PN107

Are you satisfied it's correct?---It is correct.

PN108

I read that statement and tender that, Commissioner.

\*\*\* KIRSTIE SCHRODER

XN MS SWEET

PN109

THE COMMISSIONER: All right. Thank you. The witness statement of Kirstie Schroder, with one attachment, will be marked as FRV4.

**EXHIBIT #FRV4 WITNESS STATEMENT OF MS SCHRODER  
PLUS ATTACHMENT**

PN110

MS SWEET: If you just stay where you are, Ms Schroder, my learned friend will have some questions for you.

**CROSS-EXAMINATION BY MR FRIEND**

**[10.24 AM]**

PN111

MR FRIEND: I take it, Ms Schroder, you're familiar with the 2020 interim agreement?---I am.

PN112

Probably too familiar. It has a rather unusual history. You set out in paragraph 17 of your statement that the various parts of it expired as long ago as 2010; correct?---That's correct.

PN113

And most recent expiry is 2019 of the old MFB agreement?---Correct.

PN114

Notwithstanding those expiry dates, there have been increases to wages and allowances without a new agreement being made in respect of each of those three areas?---That's correct.

PN115

FRV came into existence in July 2020?---Correct.

PN116

You started negotiations informally for a new agreement at around that time?---Correct.

PN117

You didn't seek formal approval from the government to negotiate until July 2021?---That's correct.

PN118

Have you got that approval?---We have.

PN119

Yes. You would agree with me, would you not, that the negotiations have been somewhat protracted?---They have.

PN120

You attach to your witness statement the current government wages policy?---Correct.

\*\*\* KIRSTIE SCHRODER

XXN MR FRIEND

PN121

And one of the principles there is that there is to be no back pay?---Correct.

PN122

So the longer it goes, the less well the firefighters do?---Potentially.

PN123

Potentially. Well, it depends on the amount of increase, doesn't it?---Correct.

PN124

Yes. You make the point that the wages policy says the maximum increase is to be three plus three plus three?---Correct.

PN125

It's never less than that, is it, it's agreed?---Not to my knowledge, no.

PN126

No. There are other ways in which it can become more than that even within the wages policy?---Correct.

PN127

You must have known since 2020 that there would be increases in payments to firefighters?---We would have expected that, yes.

PN128

Yes, but you say in your statement that that has never been budgeted for?---So budget is provided for up to the existing wages policy at the time, so that statement is in relation to the claim of 9.5, but not in relation to having budget at 2 per cent put into the – factored into the budget or whatever the wages policy was at the time of preparing the budget.

PN129

Can I get you to turn to page 27, just so I can try and understand – sorry, paragraph 25 of your statement?---Yes.

PN130

You say that:

PN131

*FRV is required to prepare annual budgets in accordance with government standing directions.*

PN132

?---Correct.

PN133

That's budgets of all expenditure?---Correct.

PN134

Then you say:

\*\*\* KIRSTIE SCHRODER

XXN MR FRIEND

PN135

*The relevant budget forecasts are updated on a monthly basis.*

PN136

?---Correct.

PN137

So the first thing there is that the budget is a forecast expenditure?---It is.

PN138

But you say that never as part of that forecast has an increase to wages been included?---No, I'm saying that a 2 per cent forecast is in there, not the 9.5 of the claim.

PN139

Can you tell me where it says that in your statement or is that not in your statement?---It's not clear, no.

PN140

No, okay. You say that the forecasts are updated on a monthly basis?---They are.

PN141

The previous wages policy, was that two plus two plus two?---The 2019 was two plus two plus two.

PN142

Yes, and that's why it was the figure that was included in the - - -?---And FRV were given permission to continue the 2019 even though the 2020 became 1.5.

PN143

Since 2021 none of that two plus two plus two has been paid to firefighters, has it?---Correct.

PN144

But it's in the budget, it's in the forecast, isn't it?---Correct.

PN145

So there is at least some budgeting that will cover this increase?---Correct.

PN146

All right. That budgeting is updated on an annual basis – sorry, a monthly basis?---Monthly basis, monthly.

PN147

Yes, so once the new wages policy comes out – has come out in April, I think it was, you would be including a three plus three plus three increase in your budget forecast?---In the following financial year we will. The budget is set for a full financial year.

\*\*\* KIRSTIE SCHRODER

XXN MR FRIEND

PN148

But you update the forecast on a monthly basis - - -?---The forecast on spend is updated on a monthly basis.

PN149

Yes, so why wouldn't you update the forecast on the spend to take into account the increase from 2 to 3 per cent per annum?---Because you can only update the spend based on the spend you've actually had; so the forecast isn't for money coming in, it's for the expenditure.

PN150

But it's for future expenditure; correct?---For future – no - - -

PN151

The forecast is in respect of future expenditure?---To a certain extent what's known would go in there, but your budget is set with the amount of money that you're able to spend over that financial year. So the 3 per cent that's allocated in the new budget, in the new wages policy, will take effect in the following financial year. When we go to government we present our budget and they will approve the budget on the basis of what we have presented.

PN152

Just while we're on that page, you have set out in paragraphs 23 and 24 the government funding on each two years, '22 or '23?---I have.

PN153

There is other income for FRV - - -?---Correct.

PN154

Other revenue streams, aren't there?---There are.

PN155

Yes. Are you able to tell us what they are for those years, approximately?---The amount?

PN156

Yes?---I couldn't give you the amount, but they are for false alarms and - - -

PN157

Yes?---Yes.

PN158

Various other trading activities that FRV engages in?---Yes.

PN159

All right. Now, you have said in your statement – I'll take you to the paragraph – at paragraph 40 that:

\*\*\* KIRSTIE SCHRODER

XXN MR FRIEND

PN160

*Recent deficits would have been much more substantial but for the cooperation of the UFU over the past three years identifying and implementing a significant number of efficiencies and cost savings of 117 million.*

PN161

?---Correct.

PN162

Some of those are this year, are they?---Some of those, yes.

PN163

So they're not in the budget?---No.

PN164

So there are cost savings contributed to by the UFU which are not in the budget, but which FRV would make?---Correct.

PN165

Any idea how much that is?---I would have to get advice on what that is.

PN166

Quite possibly more than \$6 million?---Quite possible.

PN167

Yes. Thank you. Now, FRV's position is it concedes there should be an increase in allowances?---Correct.

PN168

You don't have a position about how much that should be other than less than what is claimed?---Correct.

PN169

You understand that even what is claimed wouldn't bring the allowances up to 2021 levels. Do you understand that?---The Professor Mitchell document is sound.

PN170

It's sound?---Yes.

PN171

Thank you. If FRV requires more money there are avenues that it can take to get it?---Correct.

PN172

And you set those out in paragraph 41 of your statement?---I do.

PN173

You would expect that if an increase in allowances is ordered by this Commission, FRV would comply with the Commission's order?---I do.

\*\*\* KIRSTIE SCHRODER

XXN MR FRIEND

PN174

And the appropriate steps would be taken to make sure it had the funds to do so?---They would.

PN175

Thank you, Ms Schroder.

PN176

THE COMMISSIONER: Ms Schroder, before Mr Friend finishes I just want to ask you a question about one he asked. In paragraph 23 you say that:

PN177

*The FRV received Victorian government funding of approximately \$848 million.*

PN178

Then in paragraph 19 you say that:

PN179

*The general expenditure is roughly one-eighth from the consolidated fund and seven-eighths from the fire service property levy.*

PN180

Am I to take the 848 million as the total of those eight-eighths or is it merely the consolidated - - -?---Yes, the total of those eight-eighths.

PN181

Right, okay. All right. Thank you. Anything arising, Mr Friend?

PN182

MR FRIEND: No, thank you, Commissioner.

PN183

THE COMMISSIONER: Ms Sweet?

PN184

MS SWEET: Yes, Commissioner. Might I just take a couple of minutes to seek some instructions?

PN185

THE COMMISSIONER: Indeed. Should we adjourn for that time?

PN186

MS SWEET: If that would be convenient.

PN187



THE COMMISSIONER: All right. Well, look, if we adjourn maybe until 10.40.

PN188

MS SWEET: Yes. I won't be speaking to Ms Schroder.

\*\*\* KIRSTIE SCHRODER

XXN MR FRIEND

PN189

THE COMMISSIONER: No, I wouldn't assume you would. All right. In that case we'll adjourn briefly. Thank you.

PN190

MS SWEET: If the Commission pleases.

<THE WITNESS WITHDREW [10.34 AM]

SHORT ADJOURNMENT [10.34 AM]

RESUMED [10.44 AM]

<KIRSTIE SCHRODER, RECALLED [10.44 AM]

PN191

THE COMMISSIONER: Thank you, Ms Sweet.

PN192

MS SWEET: Thank you, Commissioner, for that time indulgence. Happily I have no re-examination for Ms Schroder.

PN193

THE COMMISSIONER: All right. Thank you.

PN194

Thank you, Ms Schroder, for giving evidence. You are released and free to resume your seat in the gallery.

<THE WITNESS WITHDREW [10.44 AM]

PN195

MS SWEET: That is the respondent's case.

PN196

THE COMMISSIONER: All right. Thank you. Now, submissions.

PN197

MR FRIEND: Yes, I was reading, Commissioner. Now, I don't want to waste time going over things that are agreed. We agree that there is jurisdiction, we agree there should be an increase; the first difference is how much. On the basis of the written submissions there is a difference over how the percentage allowances should be increased.

\*\*\* KIRSTIE SCHRODER

XXN MR FRIEND

PN198

I think that might resolve, but I'll leave that to my learned friend to say what the position of FRV is and I'll tell you what we say. FRV have not put a figure forward. We have suggested that the figure should be 1.5 per cent. Now, the basis for that – and the arguments for that are set out in our submissions.

PN199

Can I take you first to the report by Professor Mitchell and just highlight a couple of aspects of that. It's page 71. The first part of the report after the introduction deals with inflation and cost of living measures, and suggests that the most appropriate measure for the increases in cost of living for persons such as employed firefighters is the selected living cost indexes. It is actually 'SLCI'.

PN200

The professor outlines why that is over the ensuing pages. We probably don't need to spend much time going over that. He makes the point that even though there might be an adjustment now in respect of the allowances – remember, wages are by the bye in the context of this case – nothing about that adjustment will compensate the employees for the loss in value of money since January 2021 when the allowances were last increased.

PN201

We're not asking for that at this stage. That's something that we can deal with at another time, but at the moment as you will have seen from the submissions what the union is seeking is an interim increase to deal with ameliorating some of the effects of the long delays that occur in the making of agreements in this space. So, as the professor says on page 8:

PN202

*A single percentage increment at a discrete point in time will not provide necessary monetary compensation for the real question of how loss is endured by the wage earner.*

PN203

Section 4 deals with what the increase should be and the first part of that is dealing with the dollar sum allowance claims. Commissioner, if you look into the middle of the page just above the bold paragraph:

PN204

*The ABS employee households –*

PN205

it is actually SLCI –

PN206

*data shows that the index grew by 14.4 per cent between December 2020 and the March quarter of 2023. Using the conservative assumption that the core acceleration index declines by 50 per cent to just 1 per cent per quarter, then it will be 15.5.*

PN207

It is a conservative assessment, but that still leaves us with 15.5 per cent loss in value of the money and what the union is seeking is 9.5 per cent. Then we come to the more problematic percentage allowance claim. What we have sought to do with the way we've framed that is to provide a 9.5 per cent increase to the dollar amounts of the percentage allowances. Each percentage allowance is going to be different for each pay point, so annexure A to the draft order calculates a 9.5 per cent increase for the relevant percentage of the relevant pay point.

PN208

We think those calculations are correct and I heard what my learned friend has said about there may be being some need for the parties to get together and with these parties these days, Commissioner, I'm sure they will sort out any mathematical or arithmetic difficulties.

PN209

THE COMMISSIONER: Right.

PN210

MR FRIEND: We can do that once we've got a figure. So what the professor proposes is not an annual payment, although on one reading it looks a bit like that in the report, but if you turn to page 11 of the report, two-thirds of the way down there is a paragraph which begins:

PN211

*There are various ways of handling that complexity, but the simplest way from the perspective of administrative effectiveness and costs of living loss would be to compute a one-off lump sum amount scale to the salary which might be considered as a special allowance on top of the current percentage of salary allowance. In that way the original percentage relativities are not disturbed and the allowance would scale up proportionately when the wage is subsequently adjusted with a new enterprise agreement.*

PN212

He goes on:

PN213

*We conclude that instead of trying to deal with the purchasing power loss to the allowance, the better approach is to maintain the current percentage of salary values as per their January 2021 values, but augment them with a special lump sum payment on top of that allowance until the new enterprise bargaining provides for increase in the salary.*

PN214

*top-up dollar sum would be on top of the existing allowance based on existing percentage of salary rules and be paid at the same frequency as the standard allowance. In other words, when the percentage of salary allowance is paid, it would be accompanied by this special top-up amount.*

PN215

So it's just a new allowance comprised of two things. We submit that that is the more convenient and the more sensible way to deal with it rather than to have a

lump sum annual payment. Lump sum annual payment creates a difficulty. What if the agreement is made two weeks after the annual payment has been made and the new allowances kick in?

PN216

THE COMMISSIONER: I see.

PN217

MR FRIEND: Yes. The employee has already been paid for a year and the difference – wages go up and the percentage goes up, but if it's done on the same basis as the – we're not trying to double-dip here, that's the point that has been made constantly throughout this case. The UFU is not trying to double-dip. This is an interim payment. It will be absorbed into the payments that come.

PN218

There is a risk of double-dipping if it's an annual payment and if we do it this way then we know where we are, and the employees get a single allowance but made up of two components. It's not the introduction to a new or special allowance, it's just a single allowance made up of two components; one being percentage of the salary as it was in 2021, the other, the 9.5 per cent increase on that percentage.

PN219

If you turn over to the last page, it's not abundantly clear but if you get your calculator or indeed your log tables or your slide rule out you can work out what Professor Mitchell has done there is calculated the increases for those levels of payment at 15.5 per cent, which is why it's different from our table. You don't need to go there, except that it makes clear that's what he was suggesting and that's what we propose.

PN220

The FRV case in relation to its position is that cost of living is not the sole criterion for determining what the allowance might be. The FRV itself has made no budgetary allowance, it has no funding for this increase and its financial state is that it would not be appropriate to give the full increase.

PN221

We're not given a great deal of information about FRV's financial position and a little bit of questioning of Ms Schroder has revealed that there are savings – possibly more than \$6 million – which aren't reflected in the budget at the moment. The money may well be there from the savings that have been generated by cooperation between the union and FRV. I think, Commissioner, you will remember those questions and the outcome there.

PN222

Secondly, her evidence is if the increase is awarded the money will be found, so it comes back to a question of what is the equity in the case really and we've set out a bit of material in our written submissions which I can take you to, Commissioner, but at the end of the day it's equity, good conscience and the merits of the case which should guide the Commission in a matter such as this, we would submit. That's the statutory prescription. The objects of the Act are also important, of course, and we've pointed to the agreement-making object.

PN223

This agreement recognises that there can be increases to allowances by arbitration during the course of the agreement. That's the jurisdictional question which is resolved by the Full Federal Court. Bearing that in mind, bearing in mind that the value of the money has been eroded, there has been a substantial delay - and it's not suggested that that should be put at the feet of the UFU in the making of a new agreement - the claim is for an interim increase pending the making of a new agreement at well less than the cost of living increase.

PN224

Our submission is that the amount we have sought should be granted and bear in mind also the government wages policy - which has not set a ceiling on what the Commission can order; it sets of a ceiling on what FRV can offer - is three plus three plus three, which is 9.27 over the three years. The 9.5 is not much more than that. That is well less than what the loss of value of money has been.

PN225

It only affects the allowances that firefighters are still labouring under the wages of the old level set in 2021 or before, depending on the interim arrangements that have been made, bearing in mind that one of the agreements expired in 2010, one in 2013 and one in 2019. I'm not saying the wage rates are the same, they've increased, but we're moving a long way from when those agreements were reached.

PN226

THE COMMISSIONER: You just said you're not saying that the wage increases - sorry, you just said that the wage rates have not - - -

PN227

MR FRIEND: They have gone up.

PN228

THE COMMISSIONER: They have gone up.

PN229

MR FRIEND: Yes, they have, yes.

PN230

THE COMMISSIONER: I made a hash of that question. The question I wish to get to is can the same be said about allowances.

PN231

MR FRIEND: Yes, yes.

PN232

THE COMMISSIONER: Right.

PN233

MR FRIEND: But not since 2021.

PN234

THE COMMISSIONER: Okay.

PN235

MR FRIEND: Nothing has gone up since January 2021 and that is the period that we are looking at, and that's the period where there is a 15.5 per cent increase - - -

PN236

THE COMMISSIONER: Right, okay.

PN237

MR FRIEND: - - - or decrease in the value of the money.

PN238

THE COMMISSIONER: So in respect of those - I think there were three instruments all with different expiry dates.

PN239

MR FRIEND: Yes.

PN240

THE COMMISSIONER: There is a common datum point though in respect of allowances to 2021.

PN241

MR FRIEND: I think that's right, Commissioner. They do cover all three. Sorry, I was not expressing the question very clearly to my instructor. I thought it was my understanding, but I wanted to confirm that. We also point out, Commissioner, that there is an inconsistency in the position taken by the FRV where they say, 'Well, there's no money budgeted.' No money budgeted doesn't mean no money. It means they haven't budgeted it, that's all.

PN242

Also they say that, 'There should be an increase. We're not going to tell you what it should be.' Well, where is the evidence for something less than 9.5, is our submission. There is evidence for more. 9.5 is our claim. Professor Mitchell probably would have liked to push us into 15.5, but we've stuck at 9.5. That's the claim we've made - - -

PN243

THE COMMISSIONER: All right.

PN244

MR FRIEND: - - - and that's the amount that we seek. Unless there is anything else I can assist you with, Commissioner - - -

PN245

THE COMMISSIONER: No, I don't think so, so thank you very much, Mr Friend.

PN246

MR FRIEND: Thank you, Commissioner.

PN247

THE COMMISSIONER: Ms Sweet?

PN248

MS SWEET: Yes, thank you. Just briefly, Commissioner. I will start with a matter that moves us closer together. The easiest way to do this is to take you, Commissioner, back to page 81 of the court book to the report of Professor Mitchell, the paragraph that starts:

PN249

*This top-up dollar sum would be on top of the existing allowance based on existing percentage of salary rules and be paid at the same frequency as the standard allowance.*

PN250

Commissioner, you have that?

PN251

THE COMMISSIONER: Yes.

PN252

MS SWEET: Yes, so in the course of the hearing the position of FRV has now aligned with that aspect of the report and the order so that it's no longer said that it should be an annual sum, it's said that the top-up allowance should be paid at the same frequency as the standard allowance, whatever that frequency is according to the agreements, and then that arrangement would be reviewed annually but paid at the same frequency as the standard allowance.

PN253

THE COMMISSIONER: All right. So I draw from that that you are agreed as to the concept and the framework of the allowance, but not the quantum.

PN254

MS SWEET: That's correct, Commissioner.

PN255

THE COMMISSIONER: Yes, okay.

PN256

MS SWEET: Yes.

PN257

THE COMMISSIONER: All right. So potentially above zero and potentially 9.5 or less.

PN258

MS SWEET: Yes. Commissioner, you asked me about that at the start. I don't have anything further to add to what I said in opening about the quantum. Otherwise, Commissioner, I rely on the written submissions and the opening submissions which outlined the FRV's case. I would just say in response to my learned friend's closing, he said it's not suggested that – I withdraw that.

PN259

Part of the rationale for these increases is that they are compensatory for the delay in achieving bargaining for a new agreement; getting a new agreement

agreed. My learned friend said it's not suggested that the delay should be put at the foot of the UFU. The corollary of that is it's not suggested that the delay should be put at the foot of the FRV either, but that's a neutral matter. Commissioner, I don't have any other submissions in closing.

PN260

THE COMMISSIONER: All right. Thank you. I'm just reflecting on what you have had to say there. It's at the foot of neither, which I accept your submission in that respect. No, I don't think I should take that further, but I understand what you have to say. Thank you, Ms Sweet.

PN261

MS SWEET: If the Commission pleases.

PN262

MR FRIEND: Can I just respond on that point. Commissioner, you are entitled to take into account your knowledge of how things are going and what has happened. There's nothing in the evidence. There is a wages policy which we know we were waiting for until April and I'll take that no further.

PN263

One thing – and my friend might want to say something about this because I didn't raise it in my submissions, but I just wanted to highlight Ms Schroder's statement that three plus three plus three is a minimum. It never goes lower in any agreement-making process than the wages policy.

PN264

THE COMMISSIONER: All right. I understand. Thank you very much, parties. I will shortly reserve my decision and undertake to publish it to the parties as quickly as I can. I have asked my associate, as well, to arrange for transcript of this morning's proceedings which will be provided to you at some stage over the next week. Beyond that, I'll adjourn the proceedings and wish you a good weekend. Thank you.

**ADJOURNED INDEFINITELY**

**[11.03 AM]**



**LIST OF WITNESSES, EXHIBITS AND MFIs**

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