Office of the Chief Officer
CFA Headquarters
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Ref:

19 June 2016

The Hon. James Merlino M.P.
Minister for Emergency Services

Dear Minister

Re: Proposed Operational Staff Enterprise Agreement 2016

I write to you in my capacity as Chief Officer of the Country Fire Authority (**CFA**) regarding the proposed *Country Fire Authority/United Fire Fighters Union of Australia Operational Staff Enterprise Agreement 2016* negotiated with the United Firefighters' Union (**UFU**).

I acknowledge that the Government has accepted the UFU's proposed agreement (incorporating the changes recommended by Commissioner Roe on 1 June 2016 and President Ross on 9 June 2016) (**Proposed Agreement**).

The purpose of this letter is to indicate to you my views and record my concerns with the Proposed Agreement in my capacity as Chief Officer of the CFA. I thought this may be particularly useful for you, as the newly appointed Minister for Emergency Services, in order to gain a better understanding of the important issues which arise from an operational perspective.

As Chief Officer, I have a number of statutory powers and obligations under the *Country Fire Authority Act 1958* (**CFA Act**). As you will appreciate, I am concerned to ensure that these obligations are, at all times, appropriately discharged.

Under the CFA Act, the Chief Officer is accountable for, amongst other things:

- the order and control of all CFA fire brigades, groups of brigades, officers and members of brigades (s27);
- the practice requirements of members of permanent and volunteer brigades (s29(a));
- all apparatus and other property of the CFA (s29(c));
- the control and direction of all brigades at the scene of a fire (s30(1)(b));
- for the purposes of preventing, extinguishing or restricting the spread of fire throughout country Victoria, taking any reasonable measures necessary for the protection of life and property (s30(1)(i)).

The CFA currently has in place appropriate and long-standing practices that support these critical operational responsibilities. Presently, decisions that I am required to

make as Chief Officer are based on the operational complexity and associated risk associated within a geographical area - whether or not I have obtained UFU agreement is not a relevant factor. This allows me to make strategic decisions to prepare for and respond quickly and decisively to emergency situations, as you and the community expect of me.

Having reviewed the Proposed Agreement and considered the legal advice obtained by the CFA from senior industrial relations practitioners and Senior Counsel, I do have a number of serious concerns that the agreement, if implemented, will result in a fundamental change to my current decision-making approach and inhibit my ability to discharge my statutory obligations as Chief Officer.

My fundamental concerns relate to the new requirements under the agreement that the CFA must reach agreement with the UFU in relation to operational matters, the resolution of disputes where UFU agreement is withheld and the clauses in the Proposed Agreement which adversely impact on diversity in the workplace.

As you may be aware, the Proposed Agreement contains a total of 50 new clauses which require UFU agreement before changes can be implemented by the CFA. I have considered each of these clauses, which give the UFU a 'power of veto' over many matters. For example, UFU agreement is required before the CFA can:

- implement changes to minimum staffing and the seniority of roles at any station/appliance and this can only be for a period of 7 days before further UFU agreement needs to be sought (clause 45.3);
- direct firefighters to 'cross-crew' on an appliance (clause 45.15);
- make changes to 'all aspects' of clothing, equipment (including Personal Protective Equipment), technology, station wear and appliances (e.g. fire trucks) (clauses 90.4 and 90.7);
- appoint instructors that are not from the CFA or Metropolitan Fire and Emergency Services Board (**MFB**) to undertake training (clause 162.1.4(b));
- engage employees covered by the agreement on a part-time basis (clauses 51.3, 51.6.4, 51.6.5, 140.5, 165.3.1, 165.3.2, 183.3, 183.4.2, 194.3, 194.4.2, 207.3, 207.4.2 and 219).

I do believe that consulting with our workforce on significant change in relation to employment related issues is a critical part of my decision-making responsibilities and remain committed to engaging with our people in a meaningful way, where appropriate. However, this is different to having to seek UFU agreement on changes that, in many cases, are matters that go to management of the CFA and the discharge of mine, the CEO's and the Authority's statutory duties.

I can see no merit or logic in my having to agree with the UFU on key operational matters, for example, the specifications of uniforms, technology and appliances and the cross-crewing of appliances. In my view, the 'veto' clauses in the Proposed Agreement undermine my statutory authority as Chief Officer to have and maintain control, at all times, of resources - it effectively removes the discretion that rests with me under the CFA Act to make prompt and final decisions about operational matters. I do not consider these restrictions to be adequate or appropriate to meet the dynamic environment in which the CFA, as an emergency service provider, operates.

In my view, it is highly inappropriate for an industrial instrument to include terms which restrict a Chief Officer of an emergency service from being able to allocate resources in a manner which he or she deems necessary in order to fulfil statutory obligations designed to help protect public safety. These terms only serve to create unnecessary delays when decisive action is needed during emergencies and times of increased alert (e.g. peak fire seasons and terror threats).

My concerns are only heightened by the challenges that I understand the MFB has had with the UFU withholding agreement where agreement is expressly required under the MFB's current operational agreement. For instance, it is my understanding that:

- the MFB was prevented from deploying new advanced appliances for two years due to the UFU refusal to agree to their deployment;
- the UFU has often used the provisions in the MFB's current agreement to prevent direct orders of the MFB's Chief Officer from being carried out;
- significant time and costs have been incurred by the MFB during recent fire seasons negotiating with the UFU on the deployment of resources, diverting the attention of senior operational management from protecting the community.

It is also important to understand that, due to the complexity of the Proposed Agreement, which is some 450 pages in length, it is misleading to look at any single clause in isolation as many clauses interrelate and it is their cumulative effect that will impede on the CFA's ability to remain dynamic and responsive to the needs of its workforce and the community as a whole.

Legal advice obtained by the CFA from Frank Parry QC and Melinda Richards QC have both confirmed that my concerns will not be addressed by the amendments proposed by the Fair Work Commission (including the most recent amendments suggested by President Ross) (**FWC**).

The advice obtained from Frank Parry QC confirms that the Proposed Agreement (including the FWC's proposed changes) do not effectively or to any significant extent address the concerns previously raised by the CFA in relation to the clauses requiring UFU agreement, nor provide any practicable or timely mechanism for the resolution of disputes where the agreement of the UFU is required. Further, in relation to the proposed consultation clause, the advice reiterates that the CFA would need to consult on <u>any changes</u> affecting the agreement or pertaining to the employment relationship in any workplace. Presently, the CFA is only required to consult when there is <u>significant change</u>. Senior Counsel expresses the view that these new consultation obligations could easily be used by the UFU to obstruct and delay change of any nature. I am aware that, at least in relation to the MFB, similar provisions have in fact been used by the UFU to this effect.

Melinda Richards QC, Crown Counsel, has provided separate advice which confirms that the clauses restricting the ability to engage employees on a part-time basis are unlawful and the requirement to seek UFU agreement for part-time employment is inconsistent with s 65 of the *Fair Work Act 2009* (which only permits an employer to refuse a request for part-time working arrangements on reasonable business grounds). The advice also highlights that, given consultation is now required for all changes, an employee's request for part-time work is likely to trigger a requirement to consult with the UFU and the UFU may also be able to bring a dispute in relation to any such

request, triggering 'status-quo' requirements pending the resolution of any such dispute. I understand that you have copies of Mr Parry's and Ms Richards' advice.

Given the above, I continue to have significant concerns that the requirement to obtain UFU agreement and the consultation and dispute resolution clauses, as proposed, will impede my ability to ensure the proper and timely delivery of emergency services across the State of Victoria, as required under the CFA Act and as you would expect of me as Minister for Emergency Services. My ability to fulfil my statutory obligations is critical to the CFA's ability to meet its service delivery obligations. Accordingly, I would urge you to take the above matters into account when determining appropriate next steps in this matter.

I would be happy to meet with you and elaborate further on the above issues if this would be of assistance to you.

Yours sincerely

Joe Buffone

Joe Buffone PSM
Chief Officer