



16 April 2013

Mr Peter Marshall  
National and Victorian Branch Secretary  
United Firefighters Union of Australia  
410 Brunswick Street  
Fitzroy VIC 3065

Dear Mr Marshall

### **Bargaining for new operational staff agreements**

The MFB wishes to commence bargaining for two enterprise agreements to replace the two current operational enterprise agreements that have a normal expiry date of 30 September 2013. Accordingly, please treat this letter as formal notification that the MFB is now initiating bargaining.

All operational employees have also been, or are in the process of being, notified of the MFB's intention to initiate bargaining. In accordance with the MFB's obligations under section 173(1) of the *Fair Work Act 2009* (Cth) all operational employees will shortly receive a Notice of Representational Rights.

In anticipation of bargaining, we **attach** the following two proposed enterprise agreements which we intend to be subject to negotiation by bargaining representatives:

1. **The Metropolitan Fire Brigade Operational Employees Agreement 2013** which will cover operational employees up to and including the rank of Senior Station Officers and Fire Services Communication Controllers; and,
2. **The Metropolitan Fire Brigade Senior Operational Leadership Agreement 2013** which will cover Commanders and Assistant Chief Officers.

The MFB intends to negotiate the two agreements concurrently as separate streams of bargaining.

Please note, the attached documents reflect a significant agenda for change in this round of bargaining. Specifically, the MFB's position is that an enterprise agreement should not contain:

- content that purports to interfere with, or curtail, the functions of the Victorian Government or its capacity to function as a government (e.g. clauses that restrict or affect how the Victorian Government acquires and allocates its resources). The MFB cannot agree to include terms inconsistent with the *Fair Work (Commonwealth*



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*Powers) Act 2009 (Vic)* or inconsistent with the constitutional limits on the power of the Commission to approve in the enterprise agreement;

- a consultation clause that is inconsistent with the model clause set out in *the Fair Work Act 2009 (Cth)*;
- clauses that are not permitted and are unenforceable under the *Fair Work Act 2009 (Cth)*;
- clauses that are unlawful and unenforceable under the *Fair Work Act 2009 (Cth)*;
- clauses that are unclear, ambiguous and open to differing interpretations and cause confusion;
- clauses that allow matters to remain open for further bargaining during the life of the agreement; and
- content that should be contained in policy and procedure.

The above approach reflects the view adopted by the MFB that the current enterprise agreements include a number of provisions which, taking into account the implied constitutional limitation set out in *Australian Education Union, Re; Ex parte State of Victoria (1995) 184 CLR 188* or the *Fair Work (Commonwealth Powers) Act 2009 (Vic)*, are of no effect because of the operation of section 253 of the *Fair Work Act 2009 (Cth)*. The following clauses in the current enterprise agreement in our view are of no effect:

Clause 32 – Maintenance of classifications;

Clause 33.1 - Safe Staffing levels;

Clause 33.2 – Safe Staffing levels (redundancy);

Clause 36 – Crewing Appliances and Stations (including clause 36.7);

Clause 70 – Career Paths and Opportunities;

Clause 74 and 116 – Maintenance of classifications;

Clause 82 – Rostering arrangements and procedures; and

Clause 92.10 – Training (Minimum numbers to the fireground).

Taking the above into account, we consider the attached agreements are positioned for the future, to ensure the MFB (including our workforce) is well placed to lead emergency management in the metropolitan district and across the sector. In light of the above, the MFB does not intend to pursue changes during bargaining to key provisions such as:

- 10/14 shift;
- annual leave accrual; and,
- rest and recline arrangements.

Importantly, because the MFB highly values its employees and the work of our operational staff, we intend to keep our employees informed of the progress of bargaining, including providing regular updates.



Please contact Seán Hogan, Director Employee Relations, by no later than Friday 26 April 2013 to arrange a suitable time to meet with the MFB and all bargaining representatives to discuss the attached documents.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nick Easy', written in a cursive style.

**Nick Easy**  
Chief Executive Officer

A handwritten signature in black ink, appearing to read 'Shane Wright', written in a cursive style.

**Shane Wright**  
Chief Officer