

2010 DEED OF AGREEMENT

This Deed of Agreement is made by the following parties (**the parties**):

Metropolitan Fire and Emergency Services Board
of 456 Albert Street, East Melbourne, VICTORIA

(MFESB)

- and -

United Firefighters' Union of Australia
of 410 Brunswick Street, Fitzroy, VICTORIA

(UFU)

BACKGROUND

- A. The UFU is a registered organisation under the *Fair Work (Registered Organisations) Act 2009*.
- B. The MFESB employs a number of employees who are now and may from time to time be members of the UFU.
- C. The parties have reached agreement on the terms and conditions of employment to be offered by MFESB to persons employed by the MFESB referred to in this Deed of Agreement (**Deed**).
- D. The parties have recorded the terms of their agreement in this Deed and in the MFESB & UFU *ACFO Agreement 2010*, an enterprise agreement made under the *Fair Work Act 2009* (**the 2010 Enterprise Agreement**).
- E. The parties acknowledge that the provisions of this Deed will in part be for the benefit of employees (both existing and future) of MFESB who are engaged in classifications specified in the 2010 Enterprise Agreement.
- F. The parties acknowledge that some of the terms of this Deed are included in the 2010 Enterprise Agreement.
- G. In consideration of the mutual promises contained in this Deed and the UFU agreeing to pay the sum of \$1.00 to MFESB upon the execution of this Deed, the parties agree to the terms and conditions as set out in this Deed.

1. Structure of Deed

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2. Interpretation

- 2.1. The 2010 Enterprise Agreement means the MFESB & UFU ACFO Agreement 2010 set out at Schedule A to this Deed.
- 2.2. The Act means the *Fair Work Act 2009*.
- 2.3. Employee means a person employed by the MFESB to whom the 2010 Enterprise Agreement applies. A person is an employee whether their employment commences before, on or after the date of this Deed.
- 2.4. Employer means the MFESB.
- 2.5. A statutory Agreement is an agreement approved by Fair Work Australia pursuant to the Act or an enterprise agreement within the meaning of Part 2-4 of the Act.
- 2.6. The parties means both the MFESB and the UFU. A party means either of the MFESB or the UFU. The other party means:
 - 2.6.1. In respect of the MFESB, the UFU; and
 - 2.6.2. In respect of the UFU, the MFESB.

3. Application of Deed

- 3.1. The parties acknowledge and agree that UFU enters into and continues to be a party to this Deed:
 - 3.1.1. on its own behalf and for its own benefit; and
 - 3.1.2. on behalf and for the benefit of each employee of the MFESB from time to time during the currency of this Deed.
- 3.2. The terms of this Deed apply to all employees.

4. Notice to Employees

Current Employees

- 4.1. The MFESB will send an e-mail to each existing employee that has an intranet link to this Deed.

New employees

- 4.2. Prior to the commencement of a new employee's employment, the MFESB will inform the employee that a copy of this Deed and the 2010 Enterprise Agreement are available on the MFESB intranet.

5. Obligations

Obligations on the MFESB

- 5.1. If a term or condition of this Deed confers an entitlement or benefit on an employee, MFESB will comply with that term or condition and provide that entitlement or benefit.

- 5.2. If a term or condition of this Deed imposes an obligation on the MFESB with respect to an employee, the MFESB will comply with that obligation.

Obligations on both parties

- 5.3. If a term or condition of this Deed places an obligation on a party to do or refrain from doing an act or thing, the other party will comply with that term or condition.
- 5.4. If a term or condition of this Deed confers an entitlement or benefit on a party, the other party will comply with that term or condition.
- 5.5. If a term or condition of this Deed permits a party to do an act or thing, the other party will permit that act or thing to be done.

6. Deed and 2010 Enterprise Agreement

- 6.1. Neither party will engage in any conduct that:
 - 6.1.1. suggests or has the effect that a provision of the 2010 Enterprise Agreement should operate in a manner contrary to this Deed; or
 - 6.1.2. suggests or has the effect that a provision of this Deed should not operate or be complied with.
- 6.2. Without limiting the foregoing, 'conduct' includes:
 - 6.2.1. making an allegation;
 - 6.2.2. commencing, supporting or making a submission in any proceeding in any forum; and
 - 6.2.3. any action in relation to any proceeding at Fair Work Australia or any Court in relation to industrial action, the 2010 Enterprise Agreement or any entitlement of any employee.
- 6.3. The parties agree that this Deed may be produced in any proceeding as a bar to any such conduct.

7. Rostering

- 7.1. The parties agree that for reasons including the welfare and safety of employees covered by this agreement, the MFESB will not employ any employee on any basis other than a roster of hours provided for in the 2010 Enterprise Agreement.
- 7.2. For the avoidance of doubt, the MFESB will not employ an employee on a part-time or casual basis, and no employee may hold a position on such a basis unless by agreement between the parties.

8. Dispute Settlement

In the event of a dispute, controversy or claim arising out of or relating to this Deed or the performance or non performance of this Deed (including, but not limited to,

any dispute as to the meaning of a particular provision which a party considers to be ambiguous or uncertain) the parties must follow the following process:

- 8.1. Step 1 – Where the dispute involves a particular employee, the dispute shall be submitted by the UFU to the employee's immediate supervisor.
- 8.2. Step 2 - If not settled at Step 1, the matter shall be submitted to the appropriate senior officer.
- 8.3. Step 3 - If not settled at Step 2, the matter shall be recorded in writing. The matter shall be submitted to the appropriate delegated Industrial Representative of the employer for consultation.
- 8.4. Steps 1 – 3 - Must be concluded within a period of ten (10) consecutive days.
- 8.5. Step 4 - If the matter is not settled at Step 3, the dispute shall be formally submitted in writing to the Manager Employee Relations, setting out details of the dispute and, where appropriate, accompanied by supporting documentation. The Manager Employee Relations will meet with the UFU within 7 days and endeavour to reach a satisfactory settlement.
- 8.6. Step 5 - If the matter is not resolved within 10 days of the meeting between the Manager Employee Relations and the UFU required under Step 4, the matter must be referred by either party to mediation.
- 8.7. If the matter is referred to mediation under Step 5 above, the parties:
 - 8.7.1. agree that the dispute resolution process will be conducted by an independent and accredited mediator agreed to by both parties;
 - 8.7.2. agree that if they are unable to agree on an independent mediator, the Chairman of the Victoria Bar Council will appoint a mediator on behalf of the parties;
 - 8.7.3. agree that the parties will share equally the costs of the independent mediator;
 - 8.7.4. agree that they will participate in the mediation process in good faith;
 - 8.7.5. acknowledge the right of either party to appoint another person to act on behalf of the party in relation to the mediation process and have a representative present at the mediation; and
 - 8.7.6. agree that during the time when the parties attempt to resolve the matter, the parties must cooperate to ensure that the dispute resolution procedures are carried out quickly as is reasonably possible.
- 8.8. If the dispute is unable to be resolved through mediation, the UFU or the MFESB may initiate proceedings in a court of competent jurisdiction.
- 8.9. While the above procedures are being followed, work must continue and the status quo must apply in accordance with the existing situation or practice that existed immediately prior to the subject matter of the

grievance or dispute occurring. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this sub-clause.

- 8.10. For the avoidance of doubt, subject to compliance with this clause in respect of disputes, claims or controversies within the scope of this dispute settlement procedure, this clause is not intended to affect the parties' access to any proceedings or remedy under the Act or at common law.

9. Incorporation of terms of the 2010 Enterprise Agreement

- 9.1. If a term of the 2010 Enterprise Agreement, or any part of a term of the 2010 Enterprise Agreement (**Term**), is void, unlawful or otherwise unenforceable:

- (a) as being an unlawful term as defined in section 194 of the Act; or
- (b) as being a term that is not a permitted matter as defined in section 172 of the Act; or
- (c) as a result of any order, decision or declaration of a Court; or
- (d) as a result of any order or decision of Fair Work Australia; or
- (e) as a result of any amendment to the provisions of the Act or the Regulations made under the Act,

then to the extent that the Term is void, unlawful or otherwise unenforceable as a term of the 2010 Enterprise Agreement, the Term shall be incorporated into and form a term of this Deed with effect from:

- (f) in the case of an order, decision or declaration of a Court, the date the Term ceased to have full legal operation by reason of the order, decision or declaration; and
- (g) in the case of an amendment to the provisions of the Act or the Regulations made under the Act, the date on which the amendment commences to operate.

- 9.2. If a Term or any part of a Term is void, unlawful or otherwise unenforceable as a result of the operation of the Act or the Regulations made under the Act, as in force on the date the 2010 Enterprise Agreement is approved by Fair Work Australia, then to the extent that the Term is void, unlawful or otherwise unenforceable as a term of the 2010 Enterprise Agreement, the Term shall be incorporated into and form a term of this Deed with effect from the date the 2010 Enterprise Agreement was approved.

10. Remedies

Where in a proceeding under this Deed it appears to a court that an employee has not been paid an amount that the MFESB was required to pay, the Court may order the MFESB to pay the employee the amount of the underpayment.

11. Costs

- 11.1. The parties agree that they shall bear their own costs in any proceedings howsoever arising from this Deed.
- 11.2. For the avoidance of doubt, this clause does not apply to the obligation contained in clause 8.7.3 above.

12. Breach

In the event of a breach of this Deed by a party, any other party that seeks to take legal action in respect of that breach, subject to its compliance with clause 8 hereof shall be entitled to obtain orders for specific performance and/or for temporary or permanent injunctive relief (without the necessity for an undertaking as to damages) to restrain the breach or threatened breach, and to do so without the necessity for proof of actual damage suffered.

13. Actions on behalf of employees

- 13.1. The parties agree that it shall be no bar to any action brought or taken by the UFU that the action is in whole or in part for the benefit of one or more employees.
- 13.2. The MFESB undertakes that it will not raise or rely on whether by way of defence or objection to any action or otherwise, that the action is in whole or in part for the benefit of one or more employees.

14. Amendment

This Deed of Agreement may not be amended or modified except by written instrument in the form of a deed executed by the parties.

15. Termination of this Deed

- 15.1. This Deed will remain in force until:
 - (a) it is replaced by another Deed made between the parties;
 - (b) the parties agree in writing to terminate this Deed; or
 - (c) the 2010 Enterprise Agreement is terminated in accordance with the Act.
- 15.2. The parties agree that a breach or repudiation of this Deed by one party, whether a fundamental breach or not, shall not terminate this Deed nor shall it be grounds for another party electing to treat or treating this Deed as terminated.

16. Parties Bound

This Deed shall bind the parties hereto and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of any party to this Deed.

17. Date

The date of this Deed is **20/8/2010**.

18. Severability

The terms of this Deed are severable and any invalidity of one or more, or part thereof, of the terms will not affect the validity of the remainder of this Deed.

19. Jurisdiction

This Deed is governed by the laws of the State of Victoria.

EXECUTION

EXECUTED by the parties as a Deed.

EXECUTED by
The Metropolitan Fire and)
Emergency Services Board)
Affixing its seal by its authorised)
Representative in accordance)
with its Constitution)



Signature of Authorised Representative

Caroline Founstan

Name of Authorised Representative

Kirstie Schroeder *Alison*

Signature of Witness

KIRSTIE SCHROEDER *ALISON BRIDGEMAN*

Name of Witness

EXECUTED by
The United Firefighters Union of)
Australia affixing its seal by its)
authorised representative in)
accordance with its Rules)



Signature of Authorised Representative

Peter J. Marshall

Name of Authorised Representative

Michael K. Tisburg

Signature of Witness

Michael K. Tisburg

Name of Witness

SCHEDULE A – 2010 ENTERPRISE AGREEMENT