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3 November 2016

BY COURIER

Mr Greg Smith AM
Chairperson
CFA Board Headquarters
8 Lakeside Drive
BURWOOD EAST VIC 3151



Dear Mr Smith

Proposed Country Fire Authority/United Firefighters Union of Australia Operational Staff Enterprise Agreement 2016

We act for the Minister for Employment, Senator Michaelia Cash.

We understand that the litigation in the Supreme Court of Victoria brought by the Volunteer Fire Brigades Victoria has been discontinued. The CEO of the CFA, Ms Frances Diver, has stated publicly that the CFA intends to put the above proposed agreement to employees for a vote in early November 2016.

We have reviewed the proposed agreement. We consider that the proposed agreement contains many terms that are unlawful pursuant to sections 194(a) and (baa) of the *Fair Work Act 2009* (Cth) (**FW Act**). They include terms that are:

- a. discriminatory against women, people with family or carer responsibilities and people with disabilities within the meaning of section 195 of the FW Act. Examples include clauses 9.1.6, 9.1.7, 12.3.3, 12.3.4, 12.3.5, 12.3.7, 12.3.8, 12.3.9, 12.3.10, 12.3.11, 12.3.13, 12.3.22, 12.3.23, 12.3.24, 50.3, 50.5, 50.6.4.1, 51.1.1, 51.1.2, 51.3.1, 65.2, 148.5.2, 148.5.3, 148.6.6, 148.7.7, 150.2, 150.3.1, 150.3.2.1, 166.2, 166.3, 166.4.2.1, 175.2, 175.3, 175.4.2.1, 187.2, 187.3, 187.4.2.1 and 197.1;
- b. discriminatory against people based on their age within the meaning of section 195 of the FW Act. Examples include 12.3.3, 12.3.4, 12.3.5, 12.3.7, 12.3.8, 12.3.9, 12.3.10, 12.3.11, 12.3.13, 12.3.22, 12.3.23, 12.3.24, 80.1 and 148.5.3; and
- c. objectionable emergency management terms within the meaning of section 195A of the FW Act. Examples include clauses 13.3.1, 14, 15, 16.1, 21, 22, 25, 26, 29, 30.2.1, 31, 32, 35.4, 41, 43.2.7, 44.13, 44.15, 77.5, 83 and 141.4.2.

Furthermore, the length, complexity, inconsistency and resultant uncertainty of the provisions means that, in our view, the Fair Work Commission (**FWC**) could not be satisfied that the proposed agreement has been genuinely agreed to by employees, as required by sections 186(2)(a) and 188(c) of the FW Act.

We do not consider that the FWC could approve the proposed agreement for the above reasons.

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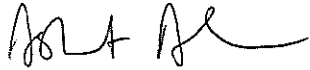
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If application is made to the FWC to approve the proposed agreement, we are instructed to:

- a. apply, pursuant to section 615A(2)(b) of the FW Act, to have a Full Bench of the FWC hear the application for approval; and
- b. make a submission opposing approval of the proposed agreement under section 597(1)(a) of the FW Act on the above bases.

Yours faithfully



Ashurst Australia