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Leighton Drury  
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FIRE BRIGADE EMPLOYEES' UNION  
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16 February 2023

## Re: Health Checks Dispute and Code Red

Dear Leighton,

Thank you for your correspondence of 3 February 2023. I note that the Fire Brigade Employees Union (FBEU) has re-issued 'Code Red' bans in relation to the Health Check Program (the Program).

The ban on the program was issued prior to both parties having had the opportunity to hold further meetings to discuss the FBEU and member's further concerns. It is noted that FRNSW had already been working towards and making changes in support of FBEU requests, suggestions and feedback, via our working party arrangement.

Outlined below is a response to the matters raised within your correspondence of 3 February 2023.

### 1. Assessment Information and Special Leave

The FBEU has not provided specific information regarding the 'main areas of concern' for FRNSW's consideration and review. This makes it difficult for FRNSW to address any FBEU or specific member concerns.

As advised in November 2022, FRNSW undertook a review of all Health Check written materials and have made a number of amendments based on FBEU feedback. These amendments have been implemented by UHG and have hopefully assisted to improve the process, information and understanding for staff in relation to the purpose of subsequent assessments, and communication of medical information.

In relation to special leave, the *Crown Employees (Fire and Rescue NSW Firefighting Staff Death and Disability) Award 2022*, (the Award) is the only industrial instrument which provides for special leave to permanent firefighters within FRNSW. Importantly, Special Leave is provided only in limited circumstances, as expressed in Clause 8 of the Award.

## **2. FRNSW Health Standard**

The Health Standard is overseen and utilised by qualified Occupational Physicians who possess medical training and expertise to assess and make decisions in relation to the requirements of the standard.

FRNSW is open to reviewing and continually improving the Health Standard, to support staff health, safety and well-being, in relation to undertaking the high risk and inherent requirements of firefighting.

FRNSW is open to seeking FBEU input into a review of the standard. An initial review is to be undertaken by the FRNSW Occupational Physician's and FRNSW Health and Safety Branch. Once the initial review is undertaken and a draft developed, FRNSW will provide the standard to the FBEU for consultation and consideration of feedback.

## **3. Frequency of Health Checks**

The frequency of health checks is governed by requisite Award provisions. FRNSW acknowledges that delays occurring as part of these provisions would no doubt be frustrating. FRNSW is open to working with the FBEU to simplify and improve processes, noting that in some circumstances, delays may be caused by various factors including administrative errors or parties involved in the process.

## **4. FRNSW Contractual Arrangements with UHG**

As FRNSW have previously advised, UHG does not receive any financial incentive for requesting staff members to obtain further medical information or to undertake additional testing. I have been advised that UHG are on a fixed fee arrangement and do not receive additional fees for additional health check related appointments.

The Independent Occupational Physician (IOP) does not make decisions based on financial or fee payments. IOPs, as medical practitioners are bound to only refer staff for tests considered necessary, based on their clinical judgement. An IOP is expected to exercise their clinical judgement, in line with the FRNSW Health Standard, to assess and support firefighter health, safety and well-being and to aid FRNSW in meeting its duty of care to our employees.

## **5. FBEU Member Representation**

This issue has been the subject of recent Industrial Relations Commission proceedings (discontinued by the FBEU) and FRNSW's position remains unchanged. A support person (family member or friend) is permitted to accompany firefighters/officers during medical appointments. UHG's position on this matter is consistent with that of FRNSW.

## 6. Complaints Process

As the Program evolves and matures, opportunities for improvement will always arise. If at any time a firefighter wishes to raise questions, concerns or frustrations in relation to their individual health check, we would encourage them to contact the Health Check Coordinator from the FRNSW Health and Safety Branch.

If a concern is referred directly to the FBEU, the FBEU should raise the matter with the Health Check Coordinator (with consent from the affected worker).

FRNSW will then work to identify, address and resolve any issue or concern in relation to the health check program. Please be assured that FRNSW staff will not be 'singled out or punished' for providing negative feedback. Feedback is encouraged so that we can look to continuously improve the health check program. If staff of UHG behave unprofessionally, then we also need to receive such feedback so that we can work to address and resolve directly with UHG.

## 7. Privacy

The health check program forms an integral part of FRNSW's safety management system. Following FBEU feedback through our working party discussions, FRNSW updated the Health Check Report to include a link to UHG's Privacy Policy.

FRNSW advised FBEU on 23 November 2022 that if there existed any information or advice to suggest UHG had acted contrary to privacy requirements, they should notify FRNSW for further investigation. To date, no specific information has been provided by the FBEU to FRNSW.

## 8. UHG's Application of FRNSW's Health Standards

From FRNSW's perspective, previous FBEU issues or concerns have been reviewed and addressed, following matters having been brought to our attention.

Whilst I appreciate the FBEU's interpretation, that FRNSW cannot evaluate a members health result (case examples provided by the FBEU) without requiring the name and contact information, FRNSW considers this interpretation as incorrect. In order to evaluate 'health results' requires the 'health check file', not isolated information. This is to ensure a holistic overview of the information forming the health review.

Notwithstanding, where the FBEU have any issues or concerns regarding a specific case, or UHG's application of the Health Standard, these should be raised via the joint committee process as outlined below (9 – Joint Committee).

## 9. FBEU/FRNSW Joint Committee

FRNSW supports the establishment of a trial committee to be led by the Director WHS. FRNSW supports discussing the logistics of this further with the FBEU. Whilst having a committee of this kind is not a requirement of the Award, in good faith and on a without prejudice basis, FRNSW are open to exploring this option further.

## 10. Relationship with Nominated Treating Practitioner (NMP)

In line with good medical practice, and the Award, details such as:

- test results
- subsequent referrals
- medical outcomes etc.

will continue to be reviewed and communicated to firefighters directly by the IOPs as per the current consent Award Provisions.

Adding layers of communication or involvement may result in:

- miscommunication of information or clinical reasoning
- a delay in the firefighter being advised of requirements or
- a duty of care concern for the IOPs.

In order to consider possible changes to this process would require a change to the Award, which FRNSW is open to discuss as part of Award negotiations.

However, in the interim and in order to continue to improve the program, as previously discussed, FRNSW has amended the Health Check Report so that follow up consultations can occur between the firefighter and their Nominated Medical Practitioner (NMP), if they feel that further support and/or explanation is required.

As the Health Check Program evolves and matures, opportunities for improvement will always arise. As part of our discussions to date, issues have been raised, resolved, and a number of program improvements have been made.

Given the commitment to additional governance structures being put in place through the Health Check Coordinator and the proposed joint committee process, in good faith FRNSW requests that the Code Red bans on health checks be lifted. The current bans have potential to place our staff at risk, particularly where opportunities for early detection of any health related issues are not able to be addressed, via the Health Check program.

FRNSW requests that the FBEU consider withdrawing the Code Red by way of written response, within 14 days from receipt of this letter.

Please feel free to contact Supt Phil Etienne to discuss this matter further on 0417 263 156 or via email [Phillip.Etienne@fire.nsw.gov.au](mailto:Phillip.Etienne@fire.nsw.gov.au).

Kind Regards



**Michael Baldi**  
**Executive Director People and Culture**