



21 February 2023

Mr Michael Baldi
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By email: Michael.Baldi@fire.nsw.gov.au
CC: Phillip.Etienne@fire.nsw.gov.au

Dear Michael

Re: Health Checks Dispute and Code Red

I write in response to your letter dated 16 February 2023 (your letter). The Union has invoked the current Code Red as a result of the fact that the numerous concerns we have consistently raised with you still remain unresolved. The Union's position to the responses outlined in your letter is as follows:

1. UHG Communications, Assessment Information and Special Leave

In your letter to the Union dated 16 February 2023, you state that the FBEU has not provided specific information on the 'main areas of concern' for FRNSW's consideration and review, which is why FRNSW cannot properly address the Union's concerns. This is very confusing because in multiple previous correspondences and most recently in the Union's letter to you dated 3 February 2023, we very clearly outlined the Union's specific areas of concern.

The FBEU has reviewed new correspondence members have received from UHG following the implementation of FRNSW's feedback in November 2022. Again, as outlined in our letter 3 February letter, we explained that one of our specific concerns is that the new *FRNSW Determination Requirements* letter, a redacted copy of which is attached for your reference, refers to the broad topic of the FRNSW Health Standard that members allegedly do not meet, it *still fails* to identify the precise basis and rationale as to which specific health standard(s) have not been met nor why said standard(s) have not been met. It also does not provide this information in language that non-medical practitioners can easily understand.

The very simple outcome the Union seeks from FRNSW in this regard is for FRNSW to require UHG occupational physicians to *clearly* identify which specific standard(s) members have not met, why the relevant Standards have not been met, and to do so in a clear and concise way that laypeople can understand. The FBEU remains gravely concerned that individual members who are subjected to additional medical scrutiny continue to not be properly informed as to why they are being asked for additional medical testing and information. And as stated above and in our letter to you of 3 February, the Union does not agree that FRNSW's proposed solution, which is the updated letter template, addresses these issues. In fact, again as previously stated, FRNSW's updated letter template is not materially different from the prior templates UHG physicians have sent to our members.

Regarding Special Leave with Pay, the Union fails to see the basis for which permanent and retained members are not entitled to Special Leave with Pay provisions pursuant to clause 8.3 of the *Death and Disability Award* when they have been stood down as a result of a health check concern. The FBEU maintains the view that clauses 8.1.1 and the subsequent provisions (including clause 8.3) of the D&D Award are automatically invoked by virtue of the fact the Department has been informed, and thus “has reason to believe” that members in these circumstances may be permanently or temporarily unfit for duty.

2. FRNSW Health Standard

The Department’s commitment to review and continually improve the Health Standard is welcomed and we look forward to genuine and comprehensive consultation on this matter. As per our log of claims for Award Negotiations, the FBEU is prepared to have this discussion as a matter of urgency between the parties and would be happy for this to be the first agenda item for discussion in Award negotiations.

In the meantime we remain concerned that the current Health Standard continues to impose unnecessary medical scrutiny and/or restrictions on our members.

3. Frequency of Health Checks

While we acknowledge the Department’s commitment to simplify and improve processes, the Union remains concerned regarding health check frequency and the scheduling of subsequent health checks following prolonged individual checks that remain unresolved.

The Union therefore reiterates our invitation to accept and agree to our proposed Health Screening program as proposed in our log of claims for award negotiations which would assist in resolving these concerns.

The Union further specifically requests that in the meantime the period between health checks for an individual firefighter is extended by the time it takes UHG to complete their obligations beyond the timeframe allocated the relevant key performance indicator. For example, if UHG take three months to action an item beyond their benchmarked timeframe, a member’s subsequent health check falls due three months after the original due date of the subsequent check.

4. FRNSW Contractual Arrangements with UHG

The FBEU seeks documented evidence which supports notions made by FRNSW that UHG do not receive any fee, gain or reward for placing our members under additional medical scrutiny. We maintain the view that this transparency is in the public interest as well as in the interests of our members as well as the Department. We specifically request a copy of the contract and associated documents between FRNSW and UHG.

5. FBEU Member Representation

The Union’s position remains unchanged. Our members have every right to have an FBEU official present in the capacity of a support person much in the same way the FBEU supports members in this capacity in a variety of other circumstances, including during mediation and disciplinary proceedings. The Union therefore re-iterates its request to allow its officials to support our members in this capacity.

6. Complaints Process

In our letter to you of 3 February 2023, the Union set forth specific concerns and requests regarding the need for an anonymous complaints process around Health Checks. Instead of responding to the Union's concerns in your letter to us dated 16 February 2023, you just copied and pasted the same response from your prior letter to us dated 23 November 2022. We ask that FRNSW actually address the concerns and reasons for same and in return provide a considered response, instead of copying and pasting the same response from prior correspondence.

7. Privacy

The FBEU has provided numerous examples of privacy breaches to FRNSW prior to 23 November 2022. The Union will continue to provide examples as we are made aware of them. We remain concerned that FRNSW have refused to provide a mechanism where health check information can be deleted at the request of our members following the conclusion of their health check screening. We also fundamentally disagree with the assertion that historic health check information needs to be retained by UHG for the purposes of undertaking future health checks during a firefighter's career as this is unnecessary on the basis that the sole purpose of subsequent health checks is to assess the member against the relevant FRNSW Health Standard in force at the time.

Again, these concerns could be resolved should FRNSW agree to our proposed Health Screening program as outlined in our Log of Claims.

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

The assertion that individual, de-identified examples were brought to FRNSW's attention and that FRNSW have since reviewed and addressed these, is false. FRNSW have repeatedly claimed that individual cases raised demonstrate non-compliance with the relevant FRNSW standard without any specificity as to why. The FBEU therefore reiterates numerous previous requests for such specificity to be provided.

The Union takes exception to FRNSW's assertions that individual cases cannot be effectively evaluated without the provision of personal details that have been redacted. Information provided in individual cases clearly demonstrate the relevant member's compliance with the part of the FRNSW Health Standard that is subject to additional scrutiny or testing. No specificity to demonstrate the contrary has been provided in any of the cases brought to FRNSW's attention to date.

The Union also takes exception to the claim that a 'holistic review' is required to evaluate a members compliance with a relevant benchmark in the Health Standard when all the required and relevant information to make that evaluation has been provided.

9. FBEU/FRNSW Joint Committee

The Union is prepared to consider establishing a joint subcommittee with FRNSW as part of the Consultation processes in place between the parties however we would first need to agree to clear terms of reference and discuss resourcing of such a subcommittee prior to any meeting.

10. Relationship with Nominated Treating Practitioner (NMP)

The Union disagrees with the position outlined in your response. We maintain the view that members have the right to elect to initially receive and discuss the results of their health checks with doctors, many of which have long-term relationships with our members. General Practitioners who treat our members are often more cognisant of our member's

medical and family history and are in a position to provide further context to members as medically trained personnel who are perfectly capable of interpreting FRNSW's Health Standard. The Union continues to seek amendments to the Award pursuant to our log of claims in the current round of bargaining discussions with FRNSW.

Given that significant concerns raised on behalf of members are still outstanding and unresolved, and given the impact this is having on members' health and wellbeing we are currently not in a position to withdraw our Code Red.

Should FRNSW however agree with the principles of our log of claims for implementation of a Health Screening program and resolve the other matters as raised in this correspondence we will, of course, reconsider this position.

As previously stated in this correspondence and our letter today regarding Award negotiations the FBEU is happy to make Health Screening the first agenda item for discussion in our next bargaining meeting tomorrow, Wednesday 22 February if FRNSW is open to agreeing to these items.

We look forward to your response.

Yours sincerely



Leighton Drury
State Secretary