



**Office of the CEO**

Headquarters  
8 Lakeside Drive, Burwood East VIC 3151  
T: 9262 8605

4 October 2016

Mr Stephen Palethorpe  
Secretary  
Senate Standing Committee on Education and Employment  
PO Box 6100  
Parliament House  
Canberra ACT 2600

**By email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)**

Dear Mr Palethorpe

**Senate Standing Committee on Education and Employment - Inquiry into the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 (Committee)**

We refer to your email of 29 September 2016 requesting that answers to questions on notice be given effectively, by open of business 4 October 2016.

The questions on notice fall into the following categories:

1. legal advice and associated invoices received by the Country Fire Authority (CFA) (page 88 of the proof transcript);
2. an answer to the following question (page 99 of the proof transcript):

*“could you provide details of assistance, if any, provided to the VFBV by the CFA in relation to agreement analysis or legal issues arising from the dispute and the proposed agreement, and could you provide dates, file notes and correspondence if that assistance has been provided? And could you provide details of any financial support for issues specifically related to the bargaining dispute to the VFBV and the costs of that assistance?”*

3. CFA Chief Officer, Mr Steven Warrington’s to review and comment on the letter from Metropolitan Fire and Emergency Services Board (MFB) Chief Officer, Mr Peter Rau, to the Hon James Merlino MP, dated 30 June 2016 (page 90 of the transcript proof).

We respond to these matters in turn below.

**1. Legal advice received by CFA**

The legal advice sought constitutes confidential legal advice provided to CFA, a State agency, in the course of performing its deliberative functions. Further, the relevant documents are currently the subject of discovery orders in the Supreme Court proceeding *Volunteer Fire*



*Brigades Victoria v Country Fire Brigades* (SCI 2016 02269) (Supreme Court proceedings) and a claim of legal professional privilege has been made over them. Public release of the documents during the course of that proceeding, in particular, would have the potential to prejudice the conduct of that proceeding.

Given the scope of the Committee's powers over State agencies, that the documents constitute legal advice forming part of CFA's deliberative processes, and the potential effect of the production of the advice in the context of the ongoing Supreme Court proceedings, CFA is in the process of seeking the Minister's views on whether a claim of public interest immunity should be made.

## **2. Assistance provided by CFA to the Volunteer Fire Brigades Victoria Inc (VFBV)**

CFA provides annual funding to VFBV. CFA provided \$1,305,600.00, \$1,423,361.00 and \$1,451,828.22 of funding to VFBV in 2014/15, 2015/16 and 2016/17 respectively. In addition, the CFA funds five VFBV Field Officers, one in each CFA region.

Please find **enclosed** Schedule A of relevant documents that CFA is in a position to provide immediately.

The CFA is legally in possession of other documents which it has received from VFBV in the course of discovery in the Supreme Court proceeding. As they have been received under discovery, those documents are received under the aegis of an implied undertaking to the Supreme Court. In those circumstances, and given the potential prejudice to the Supreme Court proceedings arising from acting contrary to those undertakings, it may be more appropriate for the Committee to seek these documents from the VFBV. To assist the Committee these documents are listed at Schedule B.

## **3. Chief Officer Mr Steven Warrington's Response to MFB Chief Officer Mr Peter Rau 30 June 2016 letter to Minister for Emergency Services, the Hon James Merlino MP**

Mr Warrington's response is at Schedule C.

## **4. Other Matters**

We confirm that on 12 August 2016, the CFA Board authorised the CEO to put the Country Fire Authority United Firefighters Union of Australia Operational Staff Agreement 2016 (Proposed Agreement) to a vote of operational staff. The Board Resolution, Joint Statement of Intent and letter from the Board Chair to the Chief Officer of 12 August 2016 are **enclosed** and also publicly available at: <http://news.cfa.vic.gov.au/news/statement-from-chair.html>.

Please also find **enclosed** map of the CFA brigade locations, districts and region boundaries and surrounding fire authority locations referred to at page 87 of the proof transcript.

Please contact Ms Emma Fenby on 0435 523 479 or [e.fenby@cfa.vic.gov.au](mailto:e.fenby@cfa.vic.gov.au) with any questions.

**Frances Diver**  
Chief Executive Officer  
Country Fire Authority



## **Schedule A**

### **Assistance provided by the CFA to the VFBV**

- a. Letter from Lucinda Nolan to Andrew Ford on 8 June 2016 inviting consultation.
- b. CFA funding letters provided to VFBV on 14 March 2013.
- c. CFA funding letters provided to VFBV on 29 September 2015.



## Schedule B

### Documents Discovered in the Supreme Court Proceedings by VFBV

- a. Email from Lucinda Nolan to Andrew Ford on 9 June 2016 regarding message from OLT.
- b. Email on behalf of Lucinda Nolan to Andrew Ford on 31 May 2016 forwarding Corrs' email "RE: Documents for Minister" (and attachments).
- c. Email from Lucinda Nolan to Andrew Ford on 12 May 2016 forwarding email from Lucinda to Matt O'Connor and Jesse Maddison regarding the benefits to staff covered by the Operational EBA and attached overview document prepared by Corrs.
- d. Email from Lucinda Nolan to Andrew Ford on 12 May 2016 dated 12 May 2016, forwarding the CFA's submission to IRV.
- e. Email from Lucinda Nolan to Andrew Ford on 9 May 2016 with attachment outlining CFA identification of problematic clauses and commentary on EBA version 17.1 b.
- f. Email from Lucinda Nolan to Andrew Ford on 3 May 2016 attaching information sheet.
- g. Email from Lucinda Nolan to Andrew Ford on 3 May 2016 forwarding UFU bulletin.
- h. Email from Lucinda Nolan to Andrew Ford on 30 April 2016 forwarding comparison of v 17.1 (February 2016) and 17.1B (April 2016) of the proposed enterprise agreement.
- i.
- j. Email from Lucinda Nolan to Andrew Ford on 30 April 2016 with attachment CFA table of key concerns with EBA version 17.2
- k. Email from Lucinda Nolan to Andrew Ford on 30 April 2016 regarding myth busting.
- l. Email from Lucinda Nolan to Andrew Ford on 28 April 2016 regarding draft agreement.
- m. Email from Lucinda Nolan to Andrew Ford on 22 March 2016 attaching letter to members and problematic clauses.
- n. Email from Lucinda Nolan to Andrew Ford on 21 March 2016 regarding queries re: EBA potential impacts on volunteer duties, PPC, uniforms etc.



## Schedule C

### Chief Officer Mr Steven Warrington's Response to MFB Chief Officer, Mr Peter Rau 30 June 2016 letter to Minister for Emergency Services, the Hon James Merlino MP

As requested, I have reviewed the letter that Mr Peter Rau, Chief Officer of the Metropolitan Fire and Emergency Services Board (MFB) sent to the Minister for Emergency Services, the Hon James Merlino MP, on 30 June 2016.

MFB and Country Fire Authority (CFA) are both Victorian fire services, but are governed by different pieces of legislation. The powers of the CFA Chief Officer (CO) and the MFB Chief Officer are expressed differently. Furthermore, CFA and MFB are culturally distinct organisations, in part because of CFA's founding as a volunteer organisation with a large jurisdiction.

Due to the differences between CFA and MFB, I do not think that issues faced by MFB under its enterprise agreement can be extrapolated to CFA's experience.

I also make the following specific comments in response to issues raised by Mr Rau in his letter:

- (a) Mr Rau details several occasions where the need to consult with the United Firefighters Union (UFU) prevented Mr Rau, as Chief Officer of the MFB, deploying resources and people during emergency events. I have a letter from the Chair of the CFA Board, **enclosed**, stating that:

*'... the Fair Work Act 2009 and any award or agreement made under it cannot interfere with or detract from (my) powers and obligations under the Country Fire Authority Act 1958 concerning directions to perform work relating to the provision of essential services or in situations of emergency.'*

This letter has provided me with assurance that I will not be prevented from deploying resources in an emergency as required.

- (b) Mr Rau referred to the requirement to consult and agree as a UFU 'power of veto.' I do not agree with Mr Rau's characterisation of the consult and agree provisions of the Proposed Agreement. The agreement provisions require agreement between the UFU and the CFA. This does not constitute a veto power for either party.
- (c) Mr Rau expressed concern that arbitration by the Fair Work Commission (FWC) is not an effective mechanism to resolve disputes. As I stated in my evidence before the Committee, it has not been the experience of the CFA that I or the officers under my control have been 'locked away' at the FWC, attempting to resolve a dispute whilst we are in an emergency situation. Further, the CFA has negotiated a joint statement of intent with the UFU which, among other things, records the parties' intention to resolve disputes as quickly and efficiently as practicable, **enclosed**.
- (d) Mr Rau referred to the recommendation of Judge Lewis in relation to the clause 47 of the CFA Enterprise Bargaining Agreement 2002 dealing with "Uniforms and Equipment". The CFA consults with volunteer and career firefighters on uniform and personal protective equipment. Firefighting is a dangerous activity. The uniforms and equipment that firefighters wear and use is of critical importance. Decisions about these matters must be made carefully, with significant deliberation and research and



with a process to take into account the views of those most directly affected – firefighters whether they be career staff or volunteers.

- (e) Mr Rau identified his need, as CO, to be able to immediately direct the deployment or relocation of resources as particularly important in the current evolving security and threat environment. I do not believe that, as CO, I would be prevented from deploying resources during an emergency event, which includes an emerging security threat.

**Mr Steven Warrington**  
**CFA Chief Officer**

Patron: The Hon Linda Dessau AM, Governor of Victoria

Office of the CEO  
Headquarters  
8 Lakeside Drive, Burwood East Vic 3151  
Phone: 9262 8605 Fax: 9262 8322



Our Ref: LN:cp

8 June 2016

Via email: [a.ford@vfbv.org.au](mailto:a.ford@vfbv.org.au)

Mr Andrew Ford  
Chief Executive Officer  
VFBV  
Unit 9, 24 Lakeside Drive  
BURWOOD EAST VIC 3151

Dear Andrew

**CONSULTATION WITH VFBV ON THE CFA-UFU OPERATIONAL STAFF PROPOSED EA  
ON MATTERS WHICH MAY AFFECT CFA VOLUNTEERS**

Thank you for your letter of 7 June to both myself and CFA Acting Chair John Peberdy.

I believe an invitation has been forwarded to you by Erin Eades seeking the availability of yourself and the VFBV Board to attend a Joint Board Meeting at Burwood commencing at 12.30pm on Monday, 20 June; and we received confirmation of VFBV availability earlier today.

I look forward to receiving confirmation of Items that you and your Board would like to list for discussion.

Yours sincerely

Lucinda Nolan APM  
Chief Executive Officer

Our Ref:  
Enquiries:  
Telephone:  
Fax:

MB:cp  
Mick Bourke  
(03) 9262 8292  
(03) 9262 8322



*File 20 ✓  
scanned ✓*

14 March 2013

RECEIVED  
15.3.13

Mr Andrew Ford  
Chief Executive Officer  
Volunteer Fire Brigades Victoria  
Unit 9, 24 Lakeside Drive  
BURWOOD EAST VIC 3151

Dear Andrew

**VFBV FUNDING 2013-14 AND ONGOING**

CFA has been pleased to work with yourself (on behalf of VFBV) in satisfying the Government's objective to provide adequate funding for VFBV.

The discussions between ourselves, facilitated by the Department of Justice, have finalised the following arrangements:

- i. The current funding arrangements cease at 30 June 2013;
- ii. New and ongoing funding arrangements replace the current funding arrangements from 1 July 2013; and are ongoing and not subject to review unless the parties together agree otherwise;
- iii. The new funding is determined to be \$1,255,000 plus 2.0% indexation per annum. Indexation is to be applied each 1 July commencing 1 July 2013. So, effective 1 July 2013 the sum payable to VFBV would be \$1,280,000;
- iv. Payments will be made quarterly in advance, on receipt of a valid VFBV invoice;
- v. To achieve sound governance of the funding, VFBV will provide an Annual Report on how the funds have been acquitted and measures of efficiency and effectiveness of their application provided to assist the Association's remit as provided in s100 of the CFA Act.

Yours sincerely

Mick Bourke  
Chief Executive Officer

*2014/15 \$1,305,600  
plus GST \$130,560  
\$1,436,160*

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*\$359,040 / QTR*



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8 Lakeside Drive, Burwood East Vic 3151  
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Our Ref: MW/cp

29 September 2015

Mr Andrew Ford  
Chief Executive Officer  
Volunteer Fire Brigades Victoria  
Unit 9, 24 Lakeside Drive,  
**BURWOOD EAST VIC 3151**

Dear Andrew

#### VFBV FUNDING 2015-16 AND ONGOING

Further to CFA's letter dated 14 March 2013 establishing VFBV funding for 2013-14 and ongoing, this letter serves to reaffirm that ongoing funding commitment and, additionally, to increase the annual funding level to include provision for an additional VFBV support officer.

Working from the annual funding previously agreed and commencing 1 July 2013 (being \$1,280,000) and agreed annual indexation of 2% per annum, the previously agreed funding for 2015-16 is \$1,331,712. The following will now apply:

- i. The new funding is determined to be \$1,423,361 per annum plus 2.0% indexation annually effective 1 July 2015;
- ii. Indexation is to be applied each 1 July commencing 1 July 2016;
- iii. Payments will be made quarterly in advance on receipt of a valid VFBV invoice;
- iv. New and ongoing funding arrangements replace the current funding arrangements from 1 July 2015 and are ongoing and not subject to review unless the parties together agree otherwise;
- v. To achieve sound governance of the funding, VFBV will provide an Annual Report on how the funds have been acquitted and measures of efficiency and effectiveness of their application provided to assist the Association's remit as provided in s100 of the CFA Act.

As CFA has already paid 2015-16 Q1 and Q2 invoices based on the old rate, to transition to the new funding level, VFBV should submit an invoice covering the increase for 2015-16 Q1 and Q2. Q3 funding and all future invoices are to be based on the new agreed annual rate.

Yours sincerely

  
Michael Wootten  
Acting Chief Executive Officer

*2015-16*  
*\$355,840-25 / QUARTER.*  
*PLUS GST.*



## Department of Justice and Regulation

Secretary

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7 October 2016

Our ref:

Senator the Hon. Bridget McKenzie  
Chair  
Senate Standing Committee on Education and Employment  
Legislation Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator McKenzie

### **Inquiry into the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016**

I refer to the Committee's hearing on 28 September 2016 and, in particular, the questions directed to the Country Fire Authority (CFA) that were taken on notice.

I understand that the CFA has provided the Committee with the following material in response to those questions:

- Letter from Lucinda Nolan to Andrew Ford on 8 June 2016;
- CFA funding letters provided to VFBV on 14 March 2013;
- CFA funding letters provided to VGBV on 29 September 2015.

The CFA has identified a small number of other documents relevant to the Committee's questions. The Victorian Government has assessed those documents and, on behalf of the Government, I advise that it has claimed executive privilege in relation to them on the basis that their production would be prejudicial to the public interest.

Yours sincerely

**Greg Wilson**  
Secretary

copy to: Ms Frances Diver, Country Fire Authority

Thank you for your email.

I confirm that the claim for public interest immunity applies to both sets of documents in your email.

Please contact me with any questions.

Kind regards,

Emma Fenby  
Legal Counsel  
Office of the CEO  
Country Fire Authority  
Mobile

On 12 Oct 2016, at 9:36 am, Hodder, Patrick (SEN) <[Patrick.Hodder@aph.gov.au](mailto:Patrick.Hodder@aph.gov.au)> wrote:

Dear Emma

**RE: Inquiry into the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 – Claim for Public Interest Immunity**

At the Senate Education and Employment Legislation Committee's hearing on 28 September 2016, at page 88 of the *Hansard*, the committee requested certain documents on notice:

- Senator Marshall requested documents relating to Seyfarth Shaw
- The Chair, Senator McKenzie, requested the legal advice that informed the former CFA board that the EBA was going to contravene their capacity to operate appropriately

In the letter of 7 October 2016 from Mr Greg Wilson to the committee, Mr Wilson advised that the Victorian Government had assessed those documents and that the Victorian Government had claimed public interest immunity over the documents 'on the basis that their production would be prejudicial to the public interest'.

Could you please confirm whether the claim, and the grounds, for public interest immunity apply to both sets of documents: that is the documents requested by Senator Marshall, and the legal advice requested by Senator McKenzie.

Regards

**Patrick Hodder** | Principal Research Officer

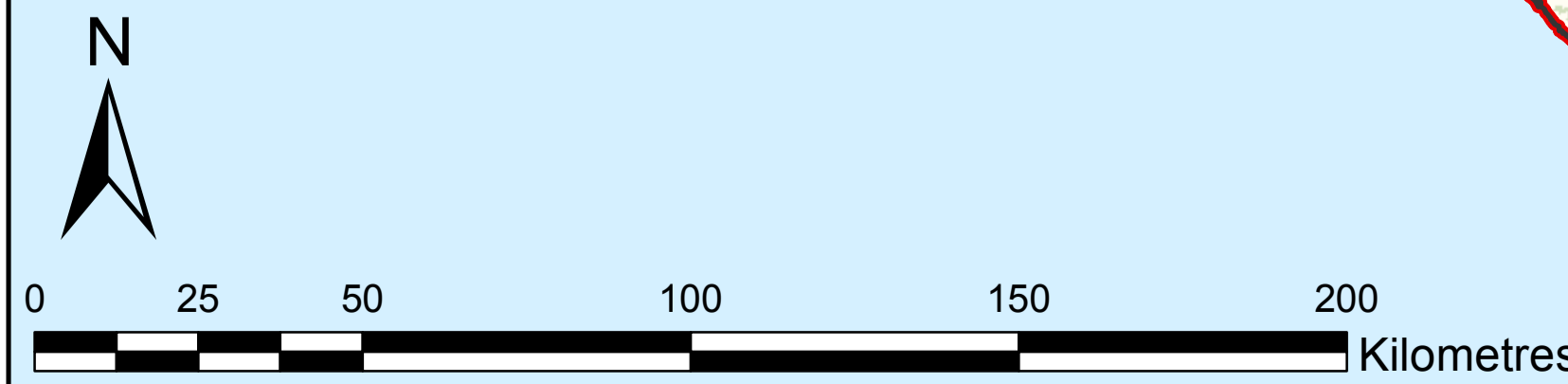
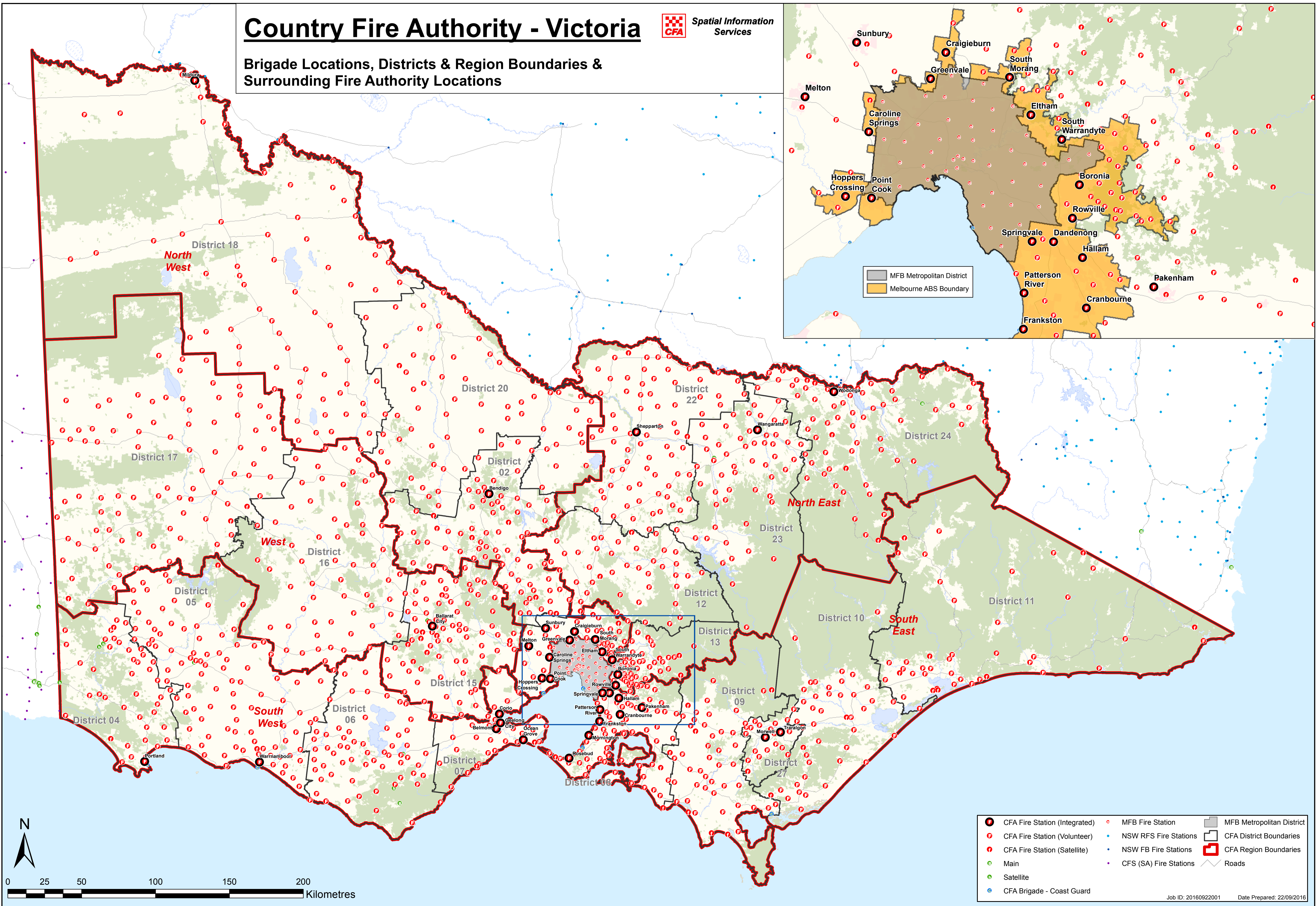
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Education and Employment Committee | Department of the Senate  
Phone 02 6277 3546  
[www.aph.gov.au/senate](http://www.aph.gov.au/senate)

# Country Fire Authority - Victoria

 Spatial Information Services

Brigade Locations, Districts & Region Boundaries & Surrounding Fire Authority Locations



	CFA Fire Station (Integrated)		MFB Fire Station		MFB Metropolitan District
	CFA Fire Station (Volunteer)		NSW RFS Fire Stations		CFA District Boundaries
	CFA Fire Station (Satellite)		NSW FB Fire Stations		CFA Region Boundaries
	Main		CFS (SA) Fire Stations		Roads
	Satellite				
	CFA Brigade - Coast Guard				