Senate Submission on: Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016

By Volunteer Fire Brigades Victoria

Andrew Ford, CEO
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About Volunteer Fire Brigades Victoria (VFBV)

Volunteer Fire Brigades Victoria Inc.

Volunteer Fire Brigades Victoria (VFBV) is established under the Victorian Country Fire Authority Act (CFA Act) to specifically enable volunteer members of brigades to consider and bring to the notice of the Country Fire Authority (CFA) all matters affecting their welfare and efficiency (other than questions of discipline and promotion).

More generally, under the CFA Volunteer Charter, VFBV is recognised as the association representing CFA volunteers, providing for their general representation to the CFA Board and management and to governments, ministers, members of parliament, councils, instrumentalities, business and the public.

Whilst independent of the CFA, VFBV works closely with CFA and other key stakeholders to engage volunteers and develop policy and organisational arrangements that encourage, maintain and strengthen the capacity of volunteers to provide CFA services to the community. 95% of CFA Brigades and CFA Groups elect to pay an annual financial affiliation contribution to the running of VFBV.

VFBV also represents Coast Guard brigades in Victoria and has close working relationships with other emergency service volunteer associations across Victoria and Australia. VFBV and volunteer fire brigade associations in all states of Australia work together on issues of common interest and/or national relevance through the Council of Australian Volunteer Fire Associations (CAVFA).

VFBV is an organisation made up of the CFA volunteers it represents. Through a statewide network of District Councils and elected volunteer representatives, VFBV maintains direct links with grass roots volunteers over their issues, needs and concerns.

The VFBV Board meets with the CFA Board as the peak forum for strategic consultation on matters impacting on volunteers whether policy development, volunteer welfare, volunteer support, equipment and infrastructure, volunteer development or planning for CFA’s future.

VFBV works in partnership with the State Government, Emergency Management Victoria, CFA Board and Management, Members of Parliament, official inquiries, municipal councils and instrumentalities, business and the public to proactively shape the future of emergency management. This is achieved through day to day practical work in VFBV/CFA Joint Committees, through the Ministerial level Volunteer Consultative Forum, and in working to ensure positive, practical results from reviews such as the Victorian Fire Services review, the Jones Inquiry and the Victorian Auditor General’s Office (VAGO) report on Managing Emergency Services Volunteers.

Given its organisational background, expert knowledge, access to local information and depth of experience in matters affecting volunteers and the provision of a volunteer based service model, VFBV is best placed to provide advice on matters affecting volunteers. VFBV facilitates numerous regular state and local consultation forums and engagement activities to ensure that the views of volunteers are known and represented.
VFBV seeks to promote and share with CFA a commitment to a community based volunteer and integrated fire and emergency service which delivers a safer Victoria.

VFBV is strictly non-party political. We welcome the support of all parties, MPs, Senators and candidates.

That being said, we do celebrate the understanding of and commitment to the CFA including its volunteers and paid staff as an integrated team, by the former Labor Emergency Services Minister Jane Garrett MP. Ms Garrett resigned from her role as Minister on principle on 10 June 2016 after a deeply admired campaign to defend CFA – she could not agree with her Premier’s actions to foist the UFU Agreement on the CFA. As Minister, the modern 21st Century reforms she was pursuing with the CFA Board, CFA CEO Lucinda Nolan and Chief (fire) Officer Joe Buffone were important to maintaining and strengthening CFA’s service capacity to deal with future challenges. Sadly, these have been lost for the moment and will suffer a severe body blow if the UFU Agreement makes its way to the Fair Work Commission and is accepted.

The Relationship between VFBV and CFA

VFBV is independent from CFA and at the same time is an important part of CFA’s foundation and future success. CFA is the community based brigades that form it. CFA management and staff provide the framework, governance, leadership, systems and expertise to direct, coordinate, support and empower this network of community based CFA brigades to deliver a remarkable and world envied service to the community. VFBV is an integral mechanism for enabling CFA to harness the leadership, knowledge and experience of volunteers and to engage volunteers in decision-making about matters that affect their welfare and efficiency. In a community and volunteer based organisation such as CFA, genuine engagement with volunteers is vital not only to improve service outcomes but to maintain volunteer interest and their ongoing contribution to their community. Robust, meaningful, respectful and honest communication and consultation is essential.

VFBV is proud to be well regarded by CFA and Government as the voice of CFA Volunteers and the body representing CFA Volunteers to the CFA Board and Management and to Governments. To ensure we are well informed of volunteer views, VFBV maintains direct links with grass roots volunteers across Victoria over their issues, needs and concerns.

VFBV and CFA work hard together to maintain a good and collaborative relationship. This does not mean that CFA and VFBV always agree, nor need to agree, but the constructive and close relationship is fundamental to ensuring CFA volunteers views are known and considered well in CFA decision making. Formal VFBV/CFA consultative processes and VFBV’s volunteer engagement networks are also an essential ingredient for CFA engaging and informing CFA volunteers. The relationship and processes are two way and focused on sustaining and strengthening CFA for the benefit of communities.

A good relationship is the foundation for CFA and VFBV to work through strategic challenges and opportunities constructively. Often VFBV and CFA share the same frustration because not all issues can be managed within the CFA’s sphere of influence. Sometimes these shared frustrations manifest as a tension between CFA and VFBV when in fact the blockers to progress are externally caused or just plain difficult to resolve. In the past few years in particular, CFA and VFBV have worked hard to
significantly improve consultative effort and to build a robust, respectful and mutually beneficial relationship.

CFA is an incredible organisation and the good work done by both volunteers and paid staff at all levels is something to be very proud of. CFA is continually evolving and changing to keep up with, and when possible lead, changes in the environment we operate in. VFBV and CFA volunteers are always ready to consider new ideas, address challenges and embrace opportunities. This collaborative approach has the potential to be significantly damaged by a small component of the total workforce. VFBV and CFA do have to deal with hard and sensitive issues, sometimes with quite different viewpoints, however the enormous amount of positive work and constructive advancement driven by the partnership between VFBV and CFA is the most valuable and rewarding effort.
About the Country Fire Authority (CFA)

CFA was established in 1945 and operates under the Country Fire Authority Act 1958. It is responsible for fire and emergency services (outside the metropolitan fire district) on private property throughout Victoria. The CFA is a statutory authority and has a nine member Board appointed by the Minister for Emergency Services. Four of the members are nominated by Volunteer Fire Brigades Victoria to ensure there is volunteer knowledge on the Board.

There are approximately 60,000 CFA volunteers comprising 97% of the CFA’s workforce. There are around 900 UFU operational paid staff representing about 1.5% of the CFA’s workforce. The remaining paid staff provides a diverse range of professional, administrative, technical and other support in CFA. Under the state’s CFA Act, paid staff are required to support the volunteers in a fully integrated manner. The Andrews-UFU deal does not include reference to this fundamental statutory requirement. Further, various clauses in the deal entrench requirements that make it difficult for staff members to support volunteers. A key example is in the important area of training where relevant staff work standard hours which do not match general volunteer availability to access training usually evenings and weekends. To make such paid staff available for training volunteers represents a significant overtime cost to CFA (provided staff are available) and therefore imposes limits and impediments to the level of volunteer training that should be available. The provision of outside trainers is also heavily regulated and limited under the UFU Agreement.

CFA Brigades protect 60% of suburban Melbourne, regional cities and all of country Victoria 24/7, 365 days a year. CFA protects 3.3 million Victorians, and more than one million homes and properties across Victoria. The critical important community service roles that volunteers perform within Victoria and supporting other states during major emergencies is recognised in the unique CFA service delivery model.

CFA is committed to the prevention, preparedness, response and recovery phases of emergency situations, providing a diverse range of risk reduction, fire suppression and incident management services to minimise the impact of fires and other emergencies on Victorian communities. These safety and well being services are delivery using CFA’s 2,248 appliances and approximately 35,367 operational and 21,944 support volunteers that are used to provide a broad range of services such as structural fires, bushfires, rescue, road rescue, industrial accidents, technical rescue, hazardous materials incidents, emergency medical response, flood, storm and other calls for emergency assistance. CFA’s unique integrated volunteer and career staff operating model is the only approach capable of economically and practically dealing with the quantum, scale, spread and simultaneous occurrence of fire and other emergencies experienced in Victoria while still providing day to day emergency response.

CFA also provided a number of non-emergency activities including community awareness, education and safety programs, planning for major community risks, fire prevention planning, land use planning and advice at municipal level, technical services including building code inspections, post incident

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1 Statistics for CFA from the 2014-15 Annual Report
analysis and fire investigation, vegetation management, planned burning and sustainable fire management. Volunteers participate in all aspects of these non-emergency activities and as volunteers come from the community, they are the key link between services and building community resilience.

CFA volunteers work at all levels of emergency response, from frontline crews, through experienced volunteers in specialist and support roles, to the highest levels of senior incident management and command roles.

All recent inquiries and commissions have recognised the fundamental importance of the current volunteer arrangements. The need for trained, experienced volunteers is growing. Already one of the most wildfire prone areas in the world, Victoria faces the twin challenges of a rapidly growing population and increased urbanisation within an expanding metropolitan Melbourne and regional cities.

Because volunteers are fundamental to Victoria’s emergency management capability, fundamental to community resilience and at the core of communities sharing responsibility for their own safety, it is vitally important to ensure that they are involved in decision making on all issues that affect them, both to make the most of their frontline knowledge and to help sustain Victoria’s essential volunteer resource.

CFA volunteers across the state, and a large portion of these coming from outer metropolitan Melbourne, give Victoria its most important asset in providing the very large surge capacity required to respond early and quickly to large scale bushfires and other major emergencies. This depth of numbers of qualified volunteers means that Victoria can sustain its response over days, weeks and even months (as demonstrated by the 2002-03 and 2005-06 campaign fires and 2009 Black Saturday fires).

VFBV supports CFA’s unique integrated model of operation where recruitment and deployment of paid staff to work with volunteers is a matter for determination of the CFA and its Chief Officer in consultation with volunteers based on assessed need, not political benefit, deals or expedience.

Paid firefighters are trained, qualified, committed and dedicated firefighters, however, they are only a small part of Victoria’s emergency response capacity. It is essentially the sheer number of available trained and experienced volunteers upon which Victoria relies to deal with major emergency events. Anything that endangers this surge capacity is a recipe for pending disaster. This has been recognised again and again by expert inquiries, reviews and reports including the 2009 Victorian Bushfires Royal Commission.

VFBV wants to make it very clear that CFA volunteers appreciate and respect the dedication, skill and work of our CFA colleagues and have no interest in interfering in their legitimate pay and conditions. Our vision for CFA is for it to be a modern and contemporary emergency service where volunteers and paid staff work side by side, as equals and respect one another. We are against anything that tries to create a wedge between volunteers a paid staff, and any arrangements that seek to demoralise, discriminate or segregate volunteers from our paid colleagues. We are all CFA members who want to put our communities first. Our desire is for CFA to move beyond the 1950’s style industrial agreement currently being pushed by the UFU to a modern approach, focussed on all CFA people working
together to maintain and build volunteer and community safety; a respectful culture focussed on empowering and supporting local volunteer brigades and community with the flexibility and agility to enable CFA to tailor resources and support local community’s needs. An approach that respects our CFA Chief Officer, Board and management as those ultimately accountable for CFA’s performance and enables them to make timely and robust decisions without undue industrial interference.
Factors critical to Community Safety in Victoria

The importance of the CFA service delivery model, as a volunteer based and fully integrated organisation, has been recognised and incorporated into the CFA Act. Relevant to any decision to make changes to the model and therefore the CFA Act, must take into consideration some fundamental factors that are critical to the future success of Victoria’s firefighting capability. To make a change without proper consideration and consultation with volunteer and their representative body, VFBV, would be negligent.

**Balancing the need to maintain local service capacity PLUS ensure peak load capacity exists for Victoria’s major fires/disasters**

The 2009 Bush Fires Royal Commission (BFRC) recognised that any consideration of change to the overall structure, governance arrangements and command structures of the fire services in Victoria must be tested against balancing two key requirements. These being how the changes improve:

1. Victoria’s ability to manage bushfire prone areas (including preparing for and responding to major fires); and
2. service Victoria’s expanding urban fringe and growing regional towns.

VFBV strongly supports the contention that these two requirements should not be considered in isolation.

Decisions about one aspect of service planning, resource allocation, training, equipment etc invariably have flow on effect to other areas of fire service capability. It is not appropriate to consider decisions about one aspect of fire service planning, resourcing, operations, management or culture without also considering the flow on impact of those decisions on Victoria’s overall fire suppression, prevention and preparedness capacity including the impact on community readiness and resilience.

Regardless of the presenting issue at a local level or a specific service planning challenge one thing remains constant. And that is future consideration of Victoria’s fire services cannot separate the interrelationship between maintaining and strengthening capacity to deal with major disasters (bushfire, other emergencies etc), urban growth and rural changes.

Adding resources in one area or introducing a work practice in another to the detriment of treating a more pressing issue or at the risk of eroding Victoria’s ability to deal with major fires, could have disastrous consequences.

**CFA community embedded and volunteer based model underpins community sharing responsibility for their own safety**

CFA had the legislative duty of superintending, enforcing and taking all necessary steps for the prevention and suppression of fires and for the protection of life and property in the case of fire and other designated emergencies. In addition to its own fire suppression and prevention efforts, a shared responsibility between CFA and the community is core to CFA’s service delivery approach. This
approach requires active effort to build and maintain community awareness and capacity to support and participate in their own safety as an essential ingredient to success of the fire services effort.

The CFA community embedded and volunteer based service model not only provides the state’s surge capacity to deal with major disasters it also provides a vital direct link for community participation and shared responsibility. Apart from its enormous economic and fire response capacity contribution, the CFA’s volunteer based service model provides significant foundation for social cohesion and community resilience. It is essential therefore that all CFA (and in fact emergency management sector) service delivery planning and resource effort includes a focus on building community and volunteer capacity.

**CFA volunteer based model is critical to meeting Victoria’s peak load and surge capacity for major, concurrent and prolonged emergencies**

Victoria is one of the most fire prone areas of the world and in recent years Victorians have experienced longer and more extreme fire season conditions.

The ability to mobilise large numbers of emergency personnel to major disasters anywhere in Victoria (and frequently interstate), often over long durations and frequently to concurrent large scale emergencies plus maintain service coverage to local service risks (eg suburban areas) is one of the most critical fire service resource management responsibilities for Victoria’s fire services.

Recent decades show a regular annual occurrence of major events requiring deployment of massive numbers of trained volunteer firefighters and future climate/population assessments generally predict potential for more frequent and more consequential (life, property, livelihood loss) events.

Recent years also demonstrate that large scale non fire emergencies (flood, storm, threats to critical infrastructure supply such as gas or coal) can and do occur randomly at all times of the year impacting broad community areas and significant numbers of people.

CFA brigades service all of country Victoria, more than half of metropolitan Melbourne, and all provincial centres and townships across Victoria. Victoria’s surge capacity is derived from this entire network of CFA brigades but importantly a large portion of the volunteer surge capacity is supplied from CFA brigades in the highly populated urbanised outer metropolitan areas.

Sustaining volunteer capacity across Victoria and particularly in outer metropolitan Melbourne and provincial towns where there are larger concentrations of CFA volunteers is vitally important for Victoria’s statewide peak load and surge capacity.

The peak load capacity is not just required for high profile disasters like the 2009 Black Saturday fires, each year there are numerous days when thousands of trained firefighters need to be deployed to major emergencies. Even at a local level, large events (eg. large fires, industrial, commercial fires etc) frequently require an ability to deploy very large number of trained volunteer firefighters sometimes for many days and at the same time needing to manage normal response availability in the surrounding areas.

This same volunteer surge capacity is equally important to providing the large numbers of highly trained firefighters and operational command personnel required to combat large non bushfire
emergencies including major industrial fires, Hazelwood mine fire, flood events, Longford Gas Explosion.

Population growth, a changing climate and urban expansion will see even more people living in high risk environments and more communities on the urban development/fire risk interface.

The resource approach to managing urban population growth in Victoria will have a direct impact on Victoria’s ability to deal with major fires/emergencies.

**CFA integrated resource model is vital to maintaining Victoria’s volunteer surge and peak load capacity at the same time as managing urban service growth challenges**

As outlined above the CFA volunteer capacity in outer metropolitan Melbourne areas and provincial centres makes up a substantial portion of Victoria’s volunteer surge and peak load fire response capacity. CFA incident statistics show that for the big emergencies 40 - 50% of personnel deployed are volunteers supplied from volunteer and integrated CFA brigades in the greater metropolitan area of Melbourne (excluding the MFB district where there are no volunteer firefighters). Maintaining volunteer capacity in these areas serviced by the CFA integrated brigade model is vitally important for Victoria’s capacity to deal with large scale emergencies.

Over the years CFA volunteer brigades have generally been able to evolve their capacity to match changes in local community circumstances and service demand increases such as those caused by urban population growth. Sometimes growth does exceed the capacity of volunteers or community circumstances challenge a brigade’s ability to sustain required levels of volunteer capacity and additional support needs to be provided to the brigade. When the support solution requires additional paid firefighter support the current CFA model deploys paid firefighters to supplement and support the existing volunteer capacity. This approach is known as the CFA integrated brigade resource model.

The key difference between the CFA integrated brigade model and the MFB paid only model is that the CFA integrated brigade resource model enables the CFA Chief Officer to employ paid firefighters at targeted CFA volunteer brigades to supplement existing volunteer capacity with paid firefighter support, adding to but not displacing the vital volunteer firefighting capacity at these locations. In the past the CFA Chief Officer has had reasonable flexibility in determining when, where, what roles and how many additional paid resources might be deployed based on local community need and brigade volunteer capacity. In recent years the CFA Chief Officer’s influence and control of additional paid firefighter deployment decisions has become highly influenced and controlled by industrial agreements which has significantly impeded his ability to allocate and manage resources flexibly to meet changing community and brigade support needs.

The CFA integrated brigade resource model enables CFA to grow volunteer brigade capacity to meet growing service demand in urban growth areas and at the same time maintains the volunteer ‘surge’ capacity to manage large scale, long duration and concurrent major emergencies.

All CFA brigades are volunteer based and in approximately 34 of CFA’s 1220 brigades there are also CFA paid firefighters working with and alongside the CFA volunteers as ‘CFA integrated brigades’. It is also recognised that the 34 brigade work within a network of volunteer brigades and provide support to this network. VFBV strongly supports the continuation of the integrated brigade model.
Background to the current concerns

Emergency service/management matters are constitutionally, and by practice, reserved to the states and territories in all the aspects including but not limited to:

- Management arrangements, structures, relationships, organisation and operations whether planning, preparation, response or recovery;
- Accountabilities and responsibilities;
- Standards and performance;
- Funding and resource arrangements; and,
- Personnel, staffing, consulting and volunteer recruitment and registration, training, equipping, supporting, deployment and tasking.

These matters are set out in state or territory legislation and official state or territory based fire or emergency agency operating procedures in each state and territory. Such legislation empowers and assigns responsibility to a minister and/or an authority or similar body or person to manage or oversee aspects of these things with relevant accountabilities.

Constitutionally, these are matters for each state and territory alone and the Commonwealth has no role save for the provision of special grants and support to the states and territories in response to emergent circumstances within their jurisdiction, such as the provision of military support, or by seasonal arrangements such as provision of aircraft for aerial firefighting.

There is a risk that existing provisions of the Commonwealth Fair Work Act (FWA) gets used to enable relevant state or territory emergency management legislative framework and provisions to be overridden by the inclusion in approved enterprise agreements (approved by the Fair Work Commission) of clauses contrary to the relevant state or territory legislative provisions.

For example, the pending enterprise agreement covering paid firefighters in Victoria’s Country Fire Authority (CFA) that has been the subject of widespread opposition in Victoria, includes a significant number of clauses dealing with a wide variety of matters that are at odds with the requirements of the Victorian Country Fire Authority Act (the CFA Act). They are currently unlawful and unenforceable under Victorian law. Our concern is that this CFA/UFU Operational Staff Enterprise Agreement 2016 (UFU Agreement), if it is approved by the Fair Work Commission, would have Commonwealth statutory force and override relevant Victorian state laws to the extent of any inconsistency.

The UFU Agreement contains clauses requiring all manner of matters be the subject of a consultation process by consensus between CFA and the union. Under Victorian state legislation many of these matters are the preserve of CFA Board and management including matters of statutory responsibility reserved to the CFA Board and the CFA Chief (fire) Officer under the CFA Act.

More explicitly, the UFU Agreement has more than 50 clauses on matters where no decision can be made or implemented without the union’s explicit agreement. Again these matters include those that by statute are the responsibility of the CFA Board and/or the Chief (fire) Officer including operational...
matters; the provision of support and equipment to volunteers; and the contribution and role of volunteers.

These requirements of the UFU Agreement represent not only the subordination of appropriate management prerogative but the contradiction of statutory requirements and responsibilities under Victorian legislation.

The CFA Act remains unaltered, with the CFA Board, CEO and Chief (fire) Officer being held accountable for relevant decisions, however if the UFU Agreement is approved by the Fair Work Commission then they will not be able to make such decisions.

The threat of this happening was the reason for the Victorian Minister for Emergency Services, the Hon Jane Garrett, MP, the CFA CEO Ms Lucinda Nolan (an ex-Deputy Commissioner of Victoria Police) appointed November 2015, resigning in June.

Their resignations were as a consequence of the Victorian Premier and subsequently his cabinet endorsing the UFU Agreement after the Premier met privately with the Secretary of the UFU, Mr Peter Marshall. Up until this time, the Premier had maintained public opposition to the UFU’s demands on the content of the UFU Agreement in support of Ms Garrett and the CFA.

For CFA volunteers, the Premier’s reversal to support the UFU Agreement was a significant disappointment, particularly after volunteer requests to meet with him and other Victorian State Ministers on the matter had been ignored.

On 10 June this year, the day of Ms Garrett’s resignation and the new Minister Mr James Merlino’s appointment, Mr Merlino wrote to the CFA Board and applied significant pressure for them to withdraw their opposition to the UFU Agreement and approve it. This was despite the fact that the independent CFA Board had senior legal advice, including that of the Crown Counsel, Melinda Richards QC that directly informed its opposition. Based on this senior legal advice that UFU Agreement contained terms contrary to requirements of the CFA Act and other Victorian legislation the then CFA Board determined that they could not approve the UFU Agreement in compliance with their statutory and fiduciary responsibilities.

Their concerns included its effect on the operational management role of the Chief (fire) Officer, CFA volunteers and discriminatory clauses. They consequently refused to approve it and were sacked by the new Minister, James Merlino for what was essentially failing to act unlawfully in compliance with Mr Merlino’s demands.

Apart from the political drama of these events, the core point is that the then CFA Board had senior legal advice that sections of the UFU Agreement they were being called upon to support were unlawful in that they were inconsistent with the requirements of Victorian legislation. The concern was that if the UFU Agreement containing these unlawful terms was lodged with and approved by the Fair Work Commission what was unlawful under Victorian law could become lawful under Commonwealth law and to the extent of any inconsistency prevail over Victorian law. This is despite the fact that the laws in question were over matters, in this case emergency services/ management that are reserved to the states by operation of the Constitution.

20160914 - Senate Submission on: Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 – by Volunteer Fire Brigades Victoria - Page 13
It is this fundamental matter as it affects emergency service volunteers belonging to organisations like CFA that the Bill seeks to rectify.

We note that there has been only minor changes in the UFU Agreement now pending in contrast to the version before the CFA Board on 1 June this year and that the substantive matters that were the basis of the then CFA Board’s opposition to accepting the UFU Agreement have not been resolved.

By the end of June 2016, the CFA’s Chief (fire) Officer, Mr Joe Buffone also resigned. This followed attempts by him to persuade the CFA’s new Board members, as well as the new Minister, that the industrial deal impeded his operational management role, public safety and the CFA volunteers and needed significant amendment, which was denied.

The Chief (fire) Officer of the Metropolitan Fire Brigade (MFB) Peter Rau and the Acting Chief (fire) Officer Paul Stacchino have heavily criticised similar clauses operating and proposed in their industrial arrangements trumping their power to determine public safety matters assigned to them under the MFB Act.

MFB Chief Officer Mr Rau wrote to Minister Merlino on 30th June 2016 stating that clauses in the MFB EBA, similar to those being proposed in the CFA UFU Agreement “seriously impedes the delivery of effective fire prevention and suppression services in Victoria..... ...the current agreement significantly impedes the ability to dynamically deploy resources (including at short notice) in the interests of protecting all Victorians.... ...its power of veto over my statutory responsibilities is unworkable and undermines community safety.” His letter went on to say that “The extensive consult and agree (veto) provisions would continue to permit the UFU to interfere with fundamental operational decisions of the MFB. In the MFB’s experience, it is no answer to these concerns to have the Fair Work Commission arbitrate on matters that are not agreed.”

In September 2016, in his submission to the Victorian Legislative Council Committee inquiring into Victoria’s fire season preparedness, the MFB’s Acting Chief Fire Officer wrote that a number of MFB/UFU proposed enterprise agreement clauses would impose “constraints upon the capacities of the Board and the Chief Officer to exercise their powers and discharge their functions under the MFB Act”. His letter stated that in fact the proposed MFB/UFU enterprise agreement contains 150 requirements for consent and agreement over relevant MFB decision making (including decisions on equipment, resourcing, appliances, rostering and training) up from 82 in the existing agreement. Further, he said that the requirement to ‘consult and agree’ under the current MFB/UFU enterprise agreement 2010 in practice has resulted in more than 150 disputes between the MFB and UFU since 2011, either at the Fair Work Commission or through resolution procedures. The Acting Chief (fire) Officer said parts of the 2010 MFB/UFU enterprise agreement were “unworkable in the context of operating the fire services”.

The MFB/UFU enterprise agreement consultation and effective veto concerns to which the MFB Acting Chief Fire Officer refers are substantially similar to those of the UFU Agreement pending for application to the CFA.

The UFU’s pattern of behaviour in utilising their brand of consultation clauses in a manner that is reported to disrupt fire service management and impede operational management is only enabled because their agreements have been approved by the Fair Work Commission. Victorian emergency
management legislation including the CFA Act and the MFB Act and the powers and responsibilities those acts confer on the Boards and leadership of the two fire services.

The enterprise bargaining process under the FWA does not require or allow that such industrial agreement provisions prior to approval be considered or sanctioned by a parliament, despite their effect on Commonwealth, State or Territory, made by a State or Territory parliament. Nor does it require or allow that such industrial agreement provisions be considered by the Fair Work Commission as to their effect on public safety.

The Fair Work Commission is bound to act and approve an enterprise agreement where there is compliance with the relevant provisions of the FWA. Under the current FWA there is no requirement for them to be cognisant of or have regard to the provisions of state or territory emergency management legislation or matters of public safety. Therefore any terms in an enterprise agreement that are contrary or inconsistent with the provisions of state or territory emergency management legislation or public safety are currently not relevant to whether the FWC approves such enterprise agreement.

Where the employer and employee applicants are in accord, and provided the requirements of the FWA have been met, the Fair Work Commission is bound to approve the agreement. Exceptions to this relate to a narrow range of specified matters encompassing state equal opportunity and a small range of industrial matters such as occupational health and safety, but not issues of emergency management, public safety or volunteer impact even in organisations like CFA that are volunteer based and recognised in State legislation as having specific requirements with regard to volunteers and volunteer capacity and volunteer consultation.

Through the current provisions of the FWA and the consequent processes of the Fair Work Commission, the executive branch of government, whether Premier, Minister or independent body can potentially circumvent the requirements of their own state legislation via terms and arrangements set down in an approved enterprise agreement without reference back to their parliament if they are mindful of so doing.

In respect to at least the matters of emergency management to which we limit our comments in this submission, we submit this runs contrary to the framework of recognised division of powers and responsibilities between the Commonwealth and the states and is both an anomalous and unintended consequence of the current FWA.

We submit that the Commonwealth has no legislative framework for establishing or regulating emergency service organisations because it has no legislative power to do so under the Constitution. These are matters reserved to the states.

We further submit that the *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016* (the Amendment Bill) recognises this salient fact and in so far as emergency service volunteers in organisations subject to the FWA ensures that matters related to emergency services volunteers are reserved as state and territory matters and not encroached upon by Commonwealth industrial laws whether intended or not.
The Amendment Bill, subject of this inquiry, cures the issue in regard to effects on emergency management volunteers by the operation of the FWA in its current form. It amends it to make matters defined in Section 4 of the Bill objectionable emergency management terms which are unlawful for inclusion in an enterprise agreement or of no effect in the case of an (existing) enterprise agreement. This Amendment Bill should consequentially protect much of the appropriate management power of the CFA Chief (fire) Officer, CFA CEO and CFA Board from enterprise agreement over-reach. No other constitutionally permissible alternative to this approach has been raised with VFBV.

The matter of identifying and causing amendment to be made removing any objectionable terms in a relevant enterprise agreement submitted for approval is a matter for the Fair Work Commission. Where such terms are clothed in language or terminology that is not transparent as to its effect there is a need for an appropriate interested party to draw the Fair Work Commission’s attention to such offending terms or provisions such that it can adjudicate the matter.

Whilst the current FWA allows the Fair Work Commission members to have discretion in allowing interested parties to provide relevant information to assist the Commission, there is no as of right entitlement for interested parties to be heard or otherwise make submissions to the Fair Work Commission on objectionable matters in which they have an interest.

The Amendment Bill currently the subject of this inquiry, makes provision for this to be done by volunteer bodies such as VFBV in the case of objectionable emergency management terms.
Emergency Management Arrangements in Australia

By the nature of emergency management in Australia, the organisation, operation, support, protections and guarantees of Australia’s fire and emergency services is based on a nucleus of trained and dedicated paid staff and the capacity and resilience of the nation’s emergency service volunteers who number well over a quarter of a million people.

Volunteers work as first responders to all types of emergencies including fires, chemical and industrial incidents, floods and storms, marine and land search & rescue, emergency medical response, road accident rescue as well as undertaking all aspects of emergency organisation support services including communications, administration, logistics, fire prevention, community education and building local community resilience. It is estimated that there are over 250,000 emergency services volunteers in Australia.

They are embedded in cities, suburbs, regions and even the smallest rural communities and not only provide unique local response capacity but, importantly, a surge capacity of personnel and equipment that can be deployed to multiple and long duration emergencies anywhere within their state or territory or, where needed, across Australasia and on occasions, internationally.

At an organisational level, one of the critical keys to success is the engagement of volunteers themselves in determining local organisational and operational arrangements and being involved in the design and selection of the type of equipment, infrastructure, personal protective clothing and related gear they need to deliver services to their communities. Consultation in its most meaningful form, and local determination of on the ground arrangements and support, that best fit the needs of volunteers is essential to having an effective emergency volunteer capacity. The minimisation or undermining of volunteer consultation and resulting effect on their morale and engagement is a threat to our volunteer based emergency capacity. Political/industrial encroachment on volunteer consultation rights including the reading down of statutory volunteer consultation rights as part of industrial relations deals with paid employees is a major issue in Victoria arising from the Andrews’ governments arrangements with the United Firefighters Union.

Australia’s emergency service volunteers are state and territory based, organised and managed. Legislation under which they operate is state and territory legislation. Their organisation, operations, support, training, equipment and funding arrangements are properly state matters, governed by each state and territory’s relevant legislation. Compensation, work safety and insurance for volunteers are likewise, state matters. The Commonwealth plays no role in these matters dealing with emergency services and their volunteers. The Commonwealth has no primary or step-in power or authority in these matters.

There is a system of national co-ordination at a Ministerial level and operational level which has served Australia well, but otherwise the Commonwealth has no direct role in the management, organisation and operation of emergency management in Australia.

We stress this important point regarding the Commonwealth’s non-role because the effect on state and territory emergency management, particularly as regards to their management of emergency
service volunteers, of the provisions of the Fair Work Act and operation of the Fair Work Commission enabling industrial agreements to reset and determine emergency management arrangements is an anomaly and a dangerous one at that. Currently, there is no requirement for the Fair Work Commission to have knowledge of or regard to the public safety implications of the decisions it makes in enterprise agreements that affect state and territory emergency management.

The *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016*, which is the subject of this Senate Inquiry, cures the anomaly in so far as it prevents Commonwealth industrial relations interference with volunteers in the emergency services via enterprise agreements approved by the Fair Work Commission. This is an important step.

VFBV does not have issue with the Fair Work Commission’s role and power in regard to remuneration issues, allowances, leave entitlements and other matters that affect individual traditional conditions of employment for paid workers in the emergency services. It is when Fair Work agreements overreach into matters of the organisation and systemic operations of emergency management/services in states and territories, including arrangements regarding volunteers, that we take critical objection.

In instances where a state or territory government make aberrant, short-sighted or politically expedient decision on matters with emergency management implications, the issue must be free to be addressed within that state or territory and its legislative and legal system without Commonwealth industrial law enabled impediments and barriers through the functioning of the Commonwealth industrial relations system. This is particularly the case where such impediments and barriers are thrown up as unintended consequences of Commonwealth industrial law as is the case in the matters that this Bill seeks to cure.
The current situation in Victoria

In June this year, events affecting Victoria’s Country Fire Authority (CFA) which are inconsistent with maintaining and strengthening that state’s volunteer emergency service capability, were brought to the attention of MPs and candidates from across the political spectrum including representatives of the Federal Government.

The United Firefighters Union of Australia, Victorian Branch, (UFU) had secured an industrial deal with the Victorian Andrews’ Government for a UFU Agreement that would change the nature and operational arrangement for that state’s volunteer based CFA, as it exists under sovereign legislation made by the Victorian Parliament. The deal relied on by-passing the Victorian Parliament where the ‘numbers’ would not support legislative changes to accommodate the deal.

By successfully submitting the UFU Agreement incorporating the terms of the deal and securing its approval by the Fair Work Commission under relevant Commonwealth Fair Work Act provisions related to enterprise agreements, there is a risk that the UFU Agreement could become statutory under Commonwealth law thereby prevailing over Victorian law to the extent of any consistencies. This process negates the need to have the Victorian emergency management legislation amended to facilitate the outcomes agreed to with the United Firefighters Union (UFU) leadership.

The Country Fire Authority Act (the CFA Act) makes clear that the CFA is first and foremost a volunteer-based organisation in which volunteer officers and members are supported by employees in a fully integrated manner. Under the deal, this fundamental requirement of the CFA Act is ignored and the UFU Agreement constructs a paid staff operating model separate from the overall CFA integrated operating system that is meant to see volunteers and paid staff working together in a fully integrated manner as required by the CFA Act. Furthermore, the deal essentially allows the paid staff (1.5% of the workforce) decision making influence become unduly dominant. The deal subordinates volunteers in an organisation that is fundamentally volunteer based and predominantly a volunteer workforce (97%).

The UFU Agreement supported by Premier Andrews reads down the concept of integration of volunteers and paid staff leading to arrangements and rules for interoperability between what would essentially become two different operating regimes in one public statutory authority, thus beginning the destruction of the world renowned CFA fire and emergency service model of operation. It is contrary to the CFA Act and its manifestations are therefore unlawful under Victorian law. Only the Victorian Parliament can change Victorian law – except for the manipulation of the Fair Work Act in regard to the terms of enterprise agreements.

In a very practical sense, the effect of the UFU Agreement means that CFA will increasingly have paid staff and volunteers operating under different doctrine and other practical arrangements that segregate and differentiate paid staff and volunteers rather than facilitate and encourage a fully integrated organisation as intended by the CFA Act. Volunteers will be excluded from large formally common areas of their own fire station and perhaps in the future appliances. Thus creating significant cultural and organisational separation instead of the ‘One CFA’ integrated model with common CFA
identity, equipment and appliances; which also has benefits for asset management efficiency including maintenance costs.

The Andrews-UFU deal hands control to the union of matters ranging from the specifications, acquisition, utilisation of fire trucks and equipment, to the nature and arrangements for volunteer support. It controls how CFA policies, procedures, business rules, directions, standing orders, operating procedures and operational work instructions. It requires significant changes to CFA’s day to day fire and incident response and also command and control arrangements.

Jack Rush, QC who was senior council assisting the Victorian Bushfire Royal Commission stated in the Herald Sun of 22 June 2016, “The enterprise bargaining agreement, central to the [Ministerial and CFA] sackings, is contrary to the CFA Act. It provides unprecedented powers within the CFA to the United Firefighters Union. The EBA undermines the role and independence of volunteers.”

He continued “Apart from a massive decline in the morale of volunteers across the state, the Andrews Government legacy will be to seriously weaken the ethos, independence and ultimately the integrity of one of the great volunteer organisations in the history of Victoria. Thus, ultimately, the capacity and effectiveness of the CFA as the nation’s pre-eminent firefighting organisation is severely reduced at great cost to our state.”

The CFA management, including its Chief (fire) Officer will be effectively required to pass decision making to union consultative arrangements that requires union agreement before making decisions on fundamental operational, resource and workforce deployment matters. Furthermore, the proposed union consultative arrangements exclude volunteer participation contrary to the Volunteers Charter requirements of the CFA Act.

The UFU Agreement requires a very large number of clauses that the union must be consulted and agree on decisions in the matters enumerated in various sections of the UFU Agreement. All other decisions are subject to a consultation process which requires consensus between the UFU leadership and CFA management before decisions can be made and implemented. There is a disputes process for dealing with matters over which the CFA and the Union cannot agree that leads to the Fair Work Commission and the Federal Court unless one side gives way or a compromise can be agreed. In the meantime, no change can occur and, as noted above, volunteers are excluded from any role in this process even if the issue in question substantially affects them.

So in this system required by the Andrews-UFU deal volunteers representing 97% of the CFA workforce can be held over a barrel by the union representing about 1.5% of the workforce while the union and CFA fight it out in protracted industrial processes. This arrangement is despite, and we say in contravention of, the CFA Board, its CEO and its Chief (fire) Officer being bound by their office and organisational accountabilities under the CFA Act and other relevant Victorian public sector legislation in regard to timely, efficient and effective decision making.

In clauses throughout the UFU Agreement, there are explicit requirements for there to be consultation and agreement with the union before a decision can be made and implemented. This provides the union with an effective veto over CFA management decision making.
Even though that state’s legislation makes the CFA Board and its senior officers accountable for such matters the UFU Agreement dissolves any notion of appropriate responsible management prerogative and transfers an effective right of undue control to the union’s leadership.
Examples of matters in the UFU Agreement inconsistent with the CFA Act and negative impacts on volunteers

The fundamental importance of CFA Volunteers and the CFA Act

Victoria’s CFA legislation and the CFA Volunteer Charter provides amongst other things for volunteer rights to meaningful consultation on matters that may affect them before any relevant decisions are made. Meaningful consultation means that there is informed dialogue, sharing of relevant information and discussions which can influence (but not dictate) the final decision. This arrangement for incorporating and engaging volunteers recognises their unique role in CFA and local communities. It creates a genuine sense of local and collective self-determination within the confines of the relevant legislation and shows recognition and respect for their commitment to community service. It is an essential ingredient in sustaining a successful volunteer organisation.

Conversely, the UFU Agreement works against the positive engagement of volunteers by CFA. It excludes volunteers as third parties from being included at any level in consultation on matters covered by the UFU Agreement and other matters which may affect the union or paid employees covered by the UFU Agreement. And even if the matters were able to be discussed between volunteers and CFA leadership, there is no prospect that such discussions will affect decisions on matters roped in by the union under the terms of the UFU Agreement. Therefore, the requirements of the Volunteer Charter and the CFA Act are breached by the words and application of the UFU Agreement.

CFA is required under its Act to develop policy and organisational arrangements that encourage, maintain and strengthen the capacity of volunteer officers and members to provide CFA services. There is nothing in the Andrews-UFU deal to support this statutory requirement. However, the deal does have clauses allowing the union to vet current policies and shape and effectively determine policy proposals by CFA where those policies affect employees under the UFU Agreement in some manner. Volunteers are excluded from this process. The nature of CFA as an organisation where staff are fully integrated with volunteers means that few if any volunteer related policies and arrangements do not affect employees covered by the UFU Agreement and vice versa. The clauses provide that such new policies may only be made or varied by agreement with the union. Further, the CFA is precluded from modifying, deleting or adding to existing policy that affects employees covered by the UFU Agreement without union consultation and agreement. Still further, existing policies that affect employees under the UFU Agreement are required to be reviewed under the union consultation arrangements.

Volunteers and their representatives are excluded from these processes under the deal despite the significance of such policies to them and on them.

The deal precludes CFA from responding to government on proposed changes arising from any proposed legislative, statutory rules or regulatory changes or reforms likely to constitute a major change or significant effect on employees. In other words, CFA can’t have interaction with government on even hypothetical matters without first checking with the union under the consultation clause as part of the deal!
If registered and implemented, the UFU Agreement under the UFU Agreement might override and undermine the CFA’s legislation, arrangements and guarantees for CFA volunteers and therefore be deleterious to Victoria’s immediate and future public safety.

**CFA Volunteers – Consultation and Decision Making**

In Victoria, CFA and MFB have long held serious concerns regarding clauses within respective enterprise agreements (previous and proposed) that require ‘consultation and agreement’ effectively resulting in the UFU having a veto over Government agency decision-making.

Although the term ‘veto’ is not specifically written in the Enterprise Agreement, the result of the requirement to ‘consult and agree’ results in an effective veto. In CFA terms, the veto powers of the UFU are described in two ways; absolute and effective, and examples are well documented by previous inquiries and reviews, including the Judge Lewis Report, and the judge Jones Report.

The term “effective veto” has been used to describe a tactic employed by the UFU in the past to use the overly complex and prescriptive dispute resolution processes to achieve an effective veto. As described in the UFU Agreement, the dispute resolution means that the UFU can prevent CFA from making timely decisions, and during those process discussions, including arbitration and appeals, that status quo remains in place – which effectively prevents the decision being implemented until all those processes, including appeals, are fully exhausted.

VFBV asserts that the UFU’s ability to block, prevent, seek agreement or delay decisions of the Authority and its officers – represents veto powers. The requirement to reach agreement before something can be done, changed or implemented provides the UFU an ability to withhold agreement, and thus delay, impede or stop a decision. VFBV contends this constitutes a clear veto power. This can, and Judge Gordon Lewis has, result in very lengthy delays in determining matters requiring expeditious decision making including on operational matters.

In all organisations, but even more so in a volunteer based organisation, the importance of genuine consultation and engagement with the workforce in decisions that affect them cannot be overstated. A failure to genuinely consult with or listen to volunteers and/or underutilisation of the knowledge and experience of volunteers is an area that still requires significant attention despite being clearly identified as a priority for improvement in the recent review and inquiries.

Volunteers have also expressed deep frustration regarding the restrictive industrial agreements and the impact these have on creating inequity between consultative arrangements for paid staff versus those for volunteers. Volunteers have no interest in the pay and conditions of paid firefighters and respect the rights of paid firefighter unions to negotiate hard for the best possible pay and conditions for their members. Volunteers also respect the rights of paid staff to be consulted about matters that affect them or about matters where their expertise could make a productive contribution to decision making. Consultation should not mean effective Veto and delays, particularly in an emergency services organisation.

CFA and the emergency management sector as a whole need to be able to consult with both paid staff and volunteers in an open and transparent manner and on ‘a level playing field’. Volunteers do not accept second class treatment or differential outcomes for volunteers and paid staff simply because volunteers are not paid. Industrial instruments that restrict CFA’s ability to genuinely
consult with all parties or restrict CFA’s management’s ability to make decisions after weighing the result of consultation have cause significant concern in recent years and these issues need to be resolved.

CFA must be able to consult with both paid staff and volunteers as equals. Notwithstanding the need to ensure due and fair process is followed, CFA must have the ability to make timely decisions and no industrial agreement or secret side agreements should give a union the power of veto over CFA management decisions or create processes that lock volunteers out of the discussion.

- Consultation arrangements are essential to CFA as a volunteer based organisation capable of fulfilling its public safety obligations.
- CFA volunteers are neither employees nor stakeholders in the CFA; they essentially and practically are the CFA. Their sense of personal commitment and investment of time and effort comes in part from their sense of shared ownership of the organisation as well as a commitment to public service.

VFBV and volunteers should be on the same footing as those with the UFU; genuine and meaningful consultation but not power of effective veto. If CFA is consulting with VFBV and the UFU on an issue, and one stakeholder by their refusal to agree can stop a decision being made or delay its implementation – then that puts the other stakeholder at a significant disadvantage. How can consultation with volunteers in fact be genuine, if CFA is not the ultimate decision maker?

In the past, there have been many occasions when CFA management have advised VFBV that the only way to get the UFU’s agreement and allow the decision to be timely, means they have to give the UFU what they want, even if at times they feel it is not the right decision or thing to do. But they constantly need to weigh up expediency and the impact of the decision being tied up in confrontational dispute resolution proceedings versus just getting the task done. Thus the principle of following the path of least resistance constantly overshadows any consultation involving CFA and volunteers and puts volunteers at a distinct disadvantage.

VFBV is of the view that the veto provisions in the proposed agreement constitute an unlawful fetter of CFA statutory powers. We base this view on the general proposition that a statutory body that has conferred upon it by statute a discretionary power may not fetter that discretion by any promise or commitment that might risk limiting CFA exercising that discretion.

In addition, VFBV asserts that any arrangements that hinder or do not allow genuine consultation to occur between CFA and volunteers, with CFA able to be the ultimate decision maker, would be a direct breach of the obligations to volunteers under the Volunteer Charter and CFA Act.

We would contend it is unlawful for the Authority to allow its own statutory power conferred on it by the Victorian State Parliament to be weakened or inhibited by industrial agreement.

The arrangement in the UFU Agreement that have a combined effect of requiring CFA to reach agreement with the UFU or subject itself to arbitration through an industrial mechanism (Fair Work Australia) on matters that go to the heart of CFA’s general duty (s20 CFA Act) include operational doctrine, systems and procedures, effectively curtail or remove management prerogative.
The 2016 agreement makes a significant modification to the consultation requirements than currently exist under the 2010 CFA/UFU Operational Staff Agreement (2010 Agreement). Under the 2010 UFU Agreement, CFA was only required to consult on ‘significant’ change. The 2016 agreement removes the word ‘significant’ and thus now would encapsulate any and all change. This wording has been used in the MFB EBA since 2010 and has been the subject of significant worry, leading the MFB in 2014 to go court to try and terminate the entire 2010 Enterprise Agreement. MFB claimed in their case that the 2010 MFB EBA had become unworkable claiming ‘provisions seriously interfere with the process of change and improvement within the MFB and unreasonably impede the capacity of the MFB to carry out its statutory functions effectively’.

It is VFBV’s view that the UFU have over the life of the previous agreement, used the requirement to agree in relation to infrastructure/equipment and personal protective clothing matters to delay completion of projects, appliances, equipment and clothing. As an example, VFBV is aware that the Union frequently refuse to respond to CFA’s request for sign off on infrastructure works, delaying the implementation of firefighters being deployed to new station builds over sometimes very minor items. It is our view that the alleged delays and the potential risk to the general public shows CFA may not be exercising its general duty if it enters into a new agreement with similar clauses.

MFB’s Chief (fire) Officer is on written record sharing the same concerns as CFA’s previous Chief (fire) Officer of the negative effects that these arrangements have historically had on his ability to make timely decisions. The fact that another Victorian Fire Service shares these concerns and has documented evidence of their effects and impacts. The Committee is encouraged to explore the concerns raised by MFB Chief (fire) Officer as further evidence supporting CFA volunteers concerns.

Refer to Attachment 6 for examples of clauses in the UFU Agreement constraining CFA decision making.

**CFA Volunteers – Provision of Support and Equipment**

The UFU Agreement also provides for UFU effective control over key volunteer support initiatives such as the Brigade Administrative Support Officer (BASO), the Volunteer Support Officer (VSO) and the Community Support Facilitator (CSF) programs. These programs are delivered by paid staff who’s pay and conditions are not part of the UFU Agreement. These positions are not firefighter roles and have no operational role. They directly serve volunteer brigades and are seen as effective and dedicated programs for maintaining and building volunteer capacity and capability. The UFU Agreement arbitrarily ropes them into being classified as operational positions in order that the UFU can take effective control of them.

The UFU Agreement hands control to the union of matters ranging from the specifications, acquisition, utilisation of fire trucks and equipment, to the nature and arrangements for volunteer support. It controls how CFA policies, procedures, business rules, directions, standing orders, operating procedures and operational work instructions. It requires significant changes to CFA’s day to day fire and incident response and also command and control arrangements. It limits the roles qualified and experienced volunteers can undertake in the management and direction of paid staff at incidents.
Whilst the UFU Agreement purports to only cover paid firefighters, CFA needs to be able to manage and work with the workforce as one integrated unit, particularly on operational matters such as equipment, standard operating procedures, and line of command.

**CFA Operational Chain of Command – Volunteers**

Volunteers serve at every level of CFA operations from firefighter, to crew leader, to strike team leader (five trucks and their crews), sector commanders, division commanders, incident management team officers and incident controllers all with the necessary training, qualification and experience.

One of the most disturbing aspects of the UFU Agreement is its interference in the command and control system of CFA.

The UFU Agreement restricts that CFA paid staff will not report to volunteers except when the incident is a level 3 (i.e. major) incident, a multi agency incident or to a CFA/MFB incident controller. This means that paid staff can report to volunteer incident controllers but can only report to subordinate staff in the chain of command below the incident controller if they are paid operational staff.

In effect this would mean a dismantling of CFA’s integrated response to emergencies because trained and competent and accredited volunteers serving in fundamental chain of command roles (such as Deputy Incident Controllers, CFA Commander, Division Commander, Sector Commander, Task Force Leader, Strike Team Leader, Crew Leader, Staging Area Manager and Safety Officer).

This disruption to the post Victorian Bushfire Royal Commission command and control structure used by CFA and managed by the Chief (fire) Officer is alarming and must not be implemented for reasons of operational safety and effectiveness. CFA rules on operational command and control are straightforward – appointees have to be trained and qualified and attain requisite experience.

Volunteers would also be prevented from directing or supervising employees in Incident Management Team functional roles for Level 1 and 2 incidents encompassing; Safety, Planning, Intelligence, Public Information, Operations, Logistics and Finance.

This clause creates a fundamental change to CFA’s incident control and management.

CFA Chief Officers Standing Order 9.00 (Fire and Incidents – Management of) states: “1. All fires and incidents shall be managed in accordance with the principles of the Incident Control System of AIIMS.”

- AIIMS (Australasian Inter-Service Incident Management System) is the nationally recognised system of incident management for the nation’s fire and emergency service agencies and is founded on five fundamental principles which guide the application of the system; (1) Flexibility (2) Management by Objectives (3) Functional Management (4) Unity of Command and (5) Span of Control
- AIIMS by definition does not recognize Rank or Employment Status (paid vs unpaid) for its Functional Management, and depends on suitable qualified, endorsed and experienced members being allocated functional roles

This clause would also prevent CFA employees from taking directions from other members recognized by the CFA Act (s30A) such as officers and employees of Parks Victoria and the Department of Environment, Land, Water and Planning. It is very common for CFA to support these agencies for level 1 and 2 fires on Crown land.
It’s a matter of the best qualified for the job which is not determined by whether you are paid or volunteer. Simply put, this is not a matter for inclusion in an industrial agreement – it is an operational matter which must be determined by CFA’s operational leadership.

**CFA Volunteers – Community Engagement and Education**

The importance of volunteer participation in local communities is critical to community resilience. Volunteers are part of the community they protect and they use their volunteering role to engage with their community to educate them on planning and preparedness. Coordinating and facilitating discussions involving community safety and education, or supporting local events and encouraging participation in the fire brigade, fire brigades and volunteers are integral participants in developing shared responsibility and resilience. The CFA community embedded and volunteer based service model not only provides the state’s surge capacity to deal with major disasters it also provides a vital direct link for community participation and shared responsibility. Apart from its enormous economic and fire response capacity contribution, the CFA’s volunteer based service model provides a significant foundation for social cohesion and community resilience. It is essential therefore that all CFA service delivery planning and resource effort includes a focus on building community and volunteer capacity.

The UFU Agreement includes explicit rules in the area of Community Education. The UFU Agreement claims that the role of community education on fire prevention and awareness is primarily the domain of paid firefighters and only a role for volunteers if the paid firefighter is not available. This is contrary to the current program where any firefighter with the skills to do so, will participate in engaging with and educating their community on these matters. Community education is a core duty for CFA volunteers in operational and non-operational classifications as well as paid firefighters. The UFU’s position on this matter, articulated through the UFU Agreement, is contrary to current arrangements whereby volunteers successfully engage in these roles. It is also implied that paid firefighters are the priority deliverer of these programs, with volunteers being required to take a secondary role. This impacts on volunteers, their morale and the significant role they play within their communities.

**CFA Volunteers – Operations, Contribution and Roles**

The UFU Agreement prevents the Chief Officer from making decisions unless the union agrees.

In fact, the UFU Agreement removes the matter of determining the size of staff allocations to brigades, appliances and fire grounds from the prerogative of the Chief Officer or his delegate and makes it an industrial not operational matter. The number of staff, their rank and even number and types of appliances assigned to current integrated brigades and three additional currently volunteer brigades are set out in the proposed enterprise agreement for now and into the future. Further, the agreement provides that these deployments can only be changed with the union’s agreement.

This delay and obstruction and removal of control from the Chief Officer in determining resource matters can undoubtedly have serious consequences for fire management capability, particularly if decisions are required quickly.

Provisions on matters such as crewing on appliances, dispatch of minimum paid fire crews and reporting lines, the contribution of volunteers has been demeaned and their roles significantly diminished and under-valued.
A further example of the impact on roles is the discriminatory nature of entry requirements for firefighters that does not recognise volunteers’ skills and experience. The UFU Agreement limits recruitment for firefighting roles at rank to applicants who have been employed in a recognised fire service only. This UFU Agreement expands coverage of the agreement to traditional volunteer support roles, such as the Brigade Administrative Support Officer (as referred to above) and community safety roles such as Manager Community Safety. This has the result of well qualified volunteers needing to meet recruit level entry firefighter requirements, with no consideration given to the training, skills and experience gained as a volunteer. Some of these recruit level firefighter entry requirements having no relation to the skills required to undertake these volunteer support and community safety roles.

The Jones Report (refer attachment 5) of Inquiry into the effect of arrangements made by the Country Fire Authority on its Volunteers accepted that “some arrangements in those [Enterprise Agreements] agreements may have a direct or indirect effect on volunteers in relation to their involvement in the CFA.” \(^2\) At that time, the Chief Officer is noted as agreeing “that volunteers do, and have reason to, feel second class”. \(^3\)

**CFA Volunteers – does the UFU Agreement protect the role of volunteers?**

The token clause 7A in the UFU Agreement which purports to prevent any alteration to the role of volunteers by the UFU Agreement is overridden by specific clauses which adversely affect volunteers throughout the UFU Agreement. Clause 7A is a fig leaf that conceals nothing.

Furthermore the language used in clause 7A is significantly more constrained and leaves open the agreement directly and significantly impacting on volunteers at urban and peri-urban brigades as well as the effect of the specific clauses of the UFU Agreement impacting all volunteers.

It should be noted that in times of crisis in Victoria, whether fire, flood, storm or industrial, it is these urban and peri-urban brigades that make a substantial contribution in volunteer numbers and equipment to deal with significant and long duration emergency events. Their numbers of trained, experienced and practiced volunteer firefighters and support staff (experienced and practiced through local service delivery throughout the year, engagement in bushfires, floods and other incidents as well as ongoing training) from these brigades means we can keep large numbers in the field on rotation, or launch massive attacks on major incidents, or defend whole communities or industry assets against emergency threat and still maintain local services in each brigades own area. As the Victorian Bushfire Royal Commission into the tragic and overwhelming bushfires of 7 February 2009 observed “the strength of the CFA volunteer base was evident on 7 February [2009]; this includes its surge capacity, the local knowledge of its members and its rapid response”.

In weighing the subject Bill it is important that the Committee understand that a significant part of CFA’s volunteer surge capacity comes from its urban and peri-urban brigades, the very brigades targeted by the UFU Agreement which is permitted to significantly overreach traditional personal

\(^2\) Report of Inquiry into the effect of arrangements made by the Country Fire Authority on its Volunteers, David Garnock, July 2011, p70

\(^3\) Ibid, p101
industrial relations matters and impact actual emergency service organisation and operations under the Fair Work Act as it stands.
Victoria’s accountability systems for current Emergency Management Arrangements

There is a claim being made by some proponents of the UFU Agreement that its various clauses impacting CFA volunteers and CFA management are required to deal with systemic failures in operational service delivery which are being covered up by CFA management. Nothing could be further from the truth.

Time and again Victoria’s emergency management arrangements and emergency service structure and performance has been the subject of review, inquiry and performance audit. These have included:

- 1977 (Black Saturday) Esler Barber Board of Inquiry
- 1983 (Ash Wednesday) Miller Bushfire Review Committee
- 2003 The Esplin Inquiry into the 2002-2003 Victorian Bushfires which burned 1.3 million hectares of primarily bushland and threatened a number of country centres (which were successfully defended by largely CFA volunteers)
- 2007 The Smith Report – Key Issues Identified from Operational Reviews of Major Fires in Victoria 2006/07
- 2010 (Black Saturday) Final Report of the 2009 Victorian Bushfires Royal Commission

There is a consistent pattern in these reports, the importance of community based CFA and other emergency service volunteers to Victoria’s successful response capacity. For example, the Report of the Esplin Inquiry says “Without volunteers, the fire and emergency service capability of Victoria and all other jurisdictions in Australia would be substantially compromised”. And as stated above the 2009 Victorian Bushfire Royal Commission into the tragic and overwhelming bushfires of 7 February 2009 observed “the strength of the CFA volunteer base was evident on 7 February [2009]; this includes its surge capacity, the local knowledge of its members and its rapid response”.

Anything that risks, reduces, damages or otherwise impedes CFA volunteers, or other fire and emergency service volunteers across all jurisdictions in Australia deleteriously affects emergency response capacity

In addition to the above inquiries and reviews there have been performance reports by the Victorian Auditor-General and Coronial Inquests. Further, the role of the Emergency Management Commissioner oversees Victorian emergency services and management to ensure effectiveness and efficiency. And still further, Victoria has created the role of Inspector-General for Emergency Management and made the first appointment to this office on 1 July 2014. The role of the Inspector-General includes special reviews and reports on emergency service operations, incidents and events and on-going performance monitoring of emergency services.

In addition the CFA and other emergency services in Victoria are subject to Parliamentary scrutiny and Minister oversight and are subject to other accountability systems in Victoria including the Victorian Ombudsman and the Independent Broad-based Anti-corruption Commission (IBAC).
Victoria’s system of emergency service review and monitoring, including internal audits and performance/incidents reports within emergency services enables rapid detection of any critical problems, actions to address them and learnings from them.

Contrary to the suggestions of some advocates, none of the above reviews have recommended the adoption of operational matters as detailed in the UFU Agreement including staffing numbers, deployment, command and control, expanded training for road accident rescue of all paid firefighters (a specialist task also performed by over 100 SES units and many CFA volunteer brigades and two independent groups in northern Victoria). Nor is there any support from the above reviews for the minimum staffing levels specified in the UFU Agreement for appliances or the requirement to despatch seven paid staff to a fire before paid staff commence firefighting operations. There is no support in the above reviews for a ban on the cross-crewing of appliances or refusing to include qualified volunteers as equals in CFA Operations.

All of these matters are sourced to the union’s demands as part of their industrial claim rather than decisions of the CFA Board, Chief (fire) Officer and senior managers who are actually accountable for CFA’s service delivery or recommendations of external agency experts.

It goes without saying efficient and effective fire and emergency service management that the responsible officer, in CFA’s case the Chief (fire) Officer needs to be able to allocate resources according to risk levels and changes thereto. This is a statutory responsibility and accountability of the Chief (fire) Officer under the CFA Act. Under the terms of the UFU Agreement the Chief is not allowed to change the deployment of resources including staff positions from what is dictated in the UFU Agreement without the union’s agreement. Even if the Chief Officer determines that he needs to reduce a staff position at a brigade and transfer that position to another brigade for a few days he can only do so if the union agrees in writing!

If the Chief determines that there is a need for temporary or permanent weekday staffing of a brigade he needs agreement from the union. The requirements sought by the UFU via the UFU Agreement impede the capacity of the Chief (fire) Officer to carry out his statutory responsibility and create a risk that the UFU Agreement if approved by FWC takes on the mantle of a Commonwealth statute and might prevail over state statutes to the extent of any inconsistency.
Victorian Bushfire Royal Commission, Union Claims and Reform

The 2009 Victorian Bushfire Royal Commission produced some 67 recommendations including recommendations to deal with identified failures of emergency management arrangements.

Based on the evidence to the Royal Commission it lauded the work of CFA volunteers at every level including their work in command at control. The Commission made a key distinction between the failure of the emergency management arrangements to provide appropriate command and control over the fire and the quality services, professionalism, surge capacity, community connections and bravery provide by the volunteers:

“The Commission particularly recognises the contribution of volunteers and their families. The strength of the CFA volunteer base was evident on 7 February; this includes its surge capacity, the local knowledge of its members and its rapid response. The Commission heard of volunteers preparing for the day, warning local residents and assisting with the confronting task of locating and identifying the dead. Countless more volunteers took up support roles.”

Despite claims by some vested interests, there is no part of the UFU Agreement that relates to recommendations of the Victorian Bushfire Royal Commission. The issues covered by the UFU Agreement beyond wages, allowances, leave and other remunerative and traditional industrial relations matters relate to organisational/management issues and pursuing the UFU leadership’s strategic ambition for urban expansion of paid staff. This strategic ambition is well known and evident in UFU submissions to various reviews. So far no inquiry, review or commission has supported the union’s plan.

And just to be clear, there is no recommendation of the Victorian Bushfire Royal Commission for additional paid staff for the CFA (or MFB). The decision to tell CFA that they must employ additional paid firefighters in 2010 was a political announcement by the then Victorian Premier John Brumby in the lead up to the 2010 Victorian state election. It was politically agreed that a requirement for 342 additional paid staff be inserted in the October 2010 CFA UFU Operational Staff Enterprise Agreement 2010 registered just weeks before the election. Similarly, Daniel Andrews announced that CFA would employ another 350 paid firefighters as part of his 2014 election campaign and now that deal is incorporated in the UFU Agreement as though it was a decision of the CFA Chief Officer when such is not the case.

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4 Victorian Bushfires Royal Commission Final Report, page 4
20160914 - Senate Submission on: Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 – by Volunteer Fire Brigades Victoria - Page 32
Conclusion and Recommendation

A Commonwealth tribunal approved industrial agreement should not be able to change State or Territory emergency management arrangements.

VFBV believes that if current State emergency management arrangements are to be changed it must be done through State parliamentary legislation via a transparent and open process where the risks and advantages can be carefully debated and determined.

We note that emergency management arrangements are a matter for state and territory legislatures under the current constitutional division of responsibilities.

We believe the current Commonwealth Fair Work Act in so far as it could allow enterprise agreements to alter or otherwise impact state and territory emergency management arrangements - especially as regard the organisation, operation and support of emergency service volunteers - is both flawed and inimical to sustaining and developing emergency service volunteer capacity and community resilience.

There is no reason for delaying the consideration of the Amendment Bill because of VFBV’s Victorian Supreme Court case seeking to prevent the implementation of the UFU Agreement approval procedures, including its lodgement with the Fair Work Commission. The first day of hearing of the substantive matter had been set down for 22 September but has been deferred to 3 October. The VFBV Supreme Court case centres on the failure of the CFA to meet statutory requirements in regard to consultation with volunteers on all matters that may affect them and the lawful capacity of the CFA Board to approve an agreement beyond its powers under (and contrary to) the CFA Act under which it is established.

Whilst our Victorian Supreme Court case is important to CFA volunteers, and could act as a precedent in cases dealing with other organisations, it does not cure the risk that the current provisions of the FWA might facilitate the override of state and territory legislation covering emergency service volunteers, be they firefighters, support workers, SES or other emergency service workers in organisations like the CFA. Those potentially under immediate threat are in Victoria and the territories. Volunteers in other states are under different levels of potential risk depending upon industrial arrangements affecting the organisation to which they belong. VFBV makes no comment on the merits of the case here.

More generally, the dispute occurring in Victoria is a symptomatic of a core problem of bias that volunteer work, by definition without pay, is worth less than identical or comparable work done for pay.

This bias is inherent in the Fair Work Act which enables industrial agreements to be struck to the disadvantage of volunteers working for their community and the work they do. No recognition, no voice and no rights when decisions and agreements that directly impact and undermine the work they do are being legally determined by a tribunal which, by its nature, can have no regard for them.

Central to this, the matter at hand is about the basic and fundamental rights of emergency management volunteers as they go about their unpaid work protecting their communities, and their right to be counted and to have a voice in matters that affect them.
Put simply, one of the fundamental principles enshrined in the Fair Work Act is to provide workers with a “no disadvantage test”. The definition of “workers” under this industrial relations legislation does not include emergency management volunteers, or any other class of volunteers, and consequently they are excluded from this most basic of protections, that they will suffer “no disadvantage” by determinations that impact upon them as they go about their work for the community. All because they choose to serve the Australian public and their communities without payment. This is unfair, and unjust – and must be remedied. The issue is no more complex than that.

The proposed amendments to the Fair Work Act will ensure these dedicated volunteers are protected from Commonwealth legislation being intentionally or unintentionally misused through unintended consequences of the existing legislation.

The dedicated men and women volunteers of the Country Fire Authority, not unlike tens of thousands of fire and emergency management volunteers across the country – donate their time, skills and experience every day and night on behalf of the community. They put their own safety on the line, for the better good. They embody the Australian spirit. They deserve your protection and respect.

Platitudes about how wonderful volunteers are and the important roles they perform are of no consequence, when at its heart, a Commonwealth instrument designed to provide fairness and protections to workers either has the unintended consequence or is misused to disrespect, demoralise and subjugate tens of thousands of hard working emergency management volunteers across the country, simply because they choose to receive no payment.

At the end of the day, there are two important questions we ask you to consider:

1. Did the Commonwealth Parliament intend for its legislation to be used to override the rights and protections afforded to emergency management volunteers provided to them through state legislation?
2. Do unpaid “workers” who play a critical role in the delivery of an essential service, deserve to have no rights and protections by the Commonwealth, simply because they are not paid?

VFBV contends, that if the answer to either of these questions is no, then our volunteers deserve your support and protection afforded by the proposed amendment to the Fair Work Act, for no other reason than it is the fair and right thing to do.

VFBV supports the Bill for the above reasons and the reasons outlined in this submission.

We ask Senators to support the Bill.
Abbreviations and Terminology used in this report

CAVFA Council of Australian Volunteer Fire Associations

CFA Country Fire Authority

Former CFA Board CFA Board until June 2016 Sacked by Minister James Merlino

FWA Fair Work Act

MFB Metropolitan Fire Brigade

New CFA Board CFA Board appointed by Premier Daniel Andrews July 2016

UFU United Firefighters Union

UFU Agreement proposed CFA/UFU Operational Staff Enterprise Agreement 2016

VFBV Volunteer Fire Brigades Victoria
List of Attachments in this Submission

Attachment 1 - Relevant Victorian CFA legislation and copy of CFA Volunteer Charter

Attachment 2 - VFBV analysis of the proposed CFA/UFU Operational Enterprise Agreement 2016 - impact on CFA Act obligations


Attachment 4 - Lewis Report

Attachment 5 - Jones Report

Attachment 6 - Examples of Clauses in the UFU Agreement constraining CFA decision making
Attachment 1

RELEVANT VICTORIAN CFA LEGISLATION

This submission highlights how matters in the UFU’s agreement are contrary to key sections of the CFA Act.

Relevant sections and sub sections of the CFA Act to this submission including a copy of the CFA Volunteer Charter recognised and given legal effect under the CFA Act are set out below.

S6E  Compliance with incident management operating procedures

   The Authority must comply with any incident management operating procedures.

S6F  Recognition of Authority as a volunteer-based organisation

   The Parliament recognises that the Authority is first and foremost a volunteer-based organisation, in which volunteer officers and members are supported by employees in a fully integrated manner.

S6G  Recognition of the Volunteer Charter

   The Parliament recognises that the Volunteer Charter—

   (a) is a statement of the commitment and principles that apply to the relationship between the Government of Victoria, the Authority and volunteer officers and members; and

   (b) requires that the Authority recognise, value, respect and promote the contribution of volunteer officers and members to the wellbeing and safety of the community; and

   (c) requires that the Government of Victoria and the Authority commit to consulting with Volunteer Fire Brigades Victoria Incorporated on behalf of volunteer officers and members on any matter that might reasonably be expected to affect them.

S6H  Authority to have regard to Volunteer Charter

   The Authority must, in performing its functions, have regard to the commitment and principles set out in the Volunteer Charter.

S6I  Authority’s responsibility to encourage, maintain and strengthen capacity of volunteers

   The Authority has a responsibility to develop policy and organisational arrangements that encourage, maintain and strengthen the capacity of volunteer officers and members to provide the Authority’s services.

S23  General powers of Authority with respect to brigades, apparatus etc.

   (1) The Authority may at any time and from time to time—

   (a) take measures to facilitate the formation of permanent or volunteer fire brigades and groups of brigades;

   (b) upon application made in the prescribed manner and form register a brigade and enrol the officers and members thereof;

20160914 - Senate Submission on: Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 – by Volunteer Fire Brigades Victoria - Page 37
(c) cause to be kept a book or other written record containing the names, ages, occupations and places of abode of all members of brigades;

(d) amalgamate any brigades or disband or cancel the registration of any brigade or the enrolment of any officer or member of any brigade;

(e) furnish any apparatus and other property acquired by or vested in the Authority to any brigade or group of brigades;

(f) determine the apparatus and other property of the Authority to be available for use by each brigade or group of brigades;

(g) establish schools and facilities or courses of instruction to provide training to any person in the skills required to perform any of the functions of the Authority and permit the use of those schools and facilities by any other body or person;

(h) establish and maintain or contract for the establishment and maintenance of fire alarms and other apparatus for the prevention or suppression of fires and, without affecting the generality of the foregoing, contract with the owner of any land, building or premises for the maintenance by the Authority of fire alarms and other apparatus as aforesaid on such land, building or premises;

(i) establish and maintain or contract for the establishment and maintenance of telephonic, telegraphic, radio or other communication between the several stations at which members of brigades are placed and between any such stations and any other places;

(j) contract for the carrying out of aerial reconnaissance of the country area of Victoria or any part or parts thereof for the detection of fires;

(k) organize and conduct fire brigade competitions, defray the cost of transport of members of brigades thereto and therefrom, and provide prizes and certificates for presentation to brigades and competitors thereat; and

(l) publish or disseminate or contract for the publication or dissemination of printed matter, broadcast matter and general information in the interest of fire prevention and fire suppression.

S23A Groups of brigades

(1) Any two or more brigades registered under this Act may for the purposes of fire prevention or suppression combine to form a group of brigades.

(2) Upon being notified in the prescribed manner and form of the formation or the variation of the composition of a group of such brigades the Authority may approve or disapprove of the formation or the variation of the composition of the group.

(3) If the Authority approves of the formation of a group of brigades it shall register the group and enrol the following officers—

(a) a group officer;

(b) such number of deputy group officers as are approved by the Authority for the group;

(c) a group communications officer;

(d) a group secretary.
(4) The Authority may at any time and from time to time cancel the registration of any group of brigades or the enrolment of any person enrolled pursuant to subsection (3).

S27 Chief Officer to have control of all brigades etc.

(1) Subject to the general powers and directions of the Authority every brigade or group of brigades and all officers and members of brigades or group of brigades shall be under the order and control of the Chief Officer.

(2) The Chief Officer may—

(a) classify a brigade based on its risk profile;

and

(b) designate the area of operation of a brigade.

S29 General powers and duties of Chief Officer

Within the country area of Victoria the Chief Officer shall in addition to such other duties as the Authority determines carry out the duties and exercise the powers following (that is to say):

(a) He shall summon once a month at the least all or as many of the members of permanent brigades as may be required for practice in order to render the members fit and efficient for service, and shall arrange for regular practice of members of volunteer brigades;

(b) He shall from time to time inspect or arrange for the inspection of all brigades and report to the Authority on their state of efficiency or otherwise, and make such recommendations as he thinks fit;

(c) He shall at all times have the charge and control of all apparatus and other property of the Authority and shall cause the same to be kept in a fit state at all times for efficient service;

(d) He shall at all reasonable times have free access to any land building or premises (whether public or private) for the purpose of ascertaining and reporting to the Authority on any contravention of the laws relating to the storage of gunpowder dynamite or other dangerous explosive or of petrol kerosene or other inflammable substance or matter, or relating to the storage of empty crates cases packages sawdust shavings hay and straw, or otherwise relating to the prevention of fires or to the protection of life and property in case of fire or to the abatement of fire dangers; and

(e) He shall attend the Authority at all times when required to do so and shall make all such inquiries and reports as the Authority directs.

Division 2—Fire suppression

S30 Powers of officers at fires

(1) Where the Chief Officer believes on reasonable grounds that there is danger of fire occurring or where a fire is burning or has recently been extinguished anywhere within the country area of Victoria the Chief Officer for the purpose of preventing the occurrence of a fire, of extinguishing or restricting the spread of the fire or of protecting life or property shall have and may exercise the following powers and authorities:
(b) He shall have the control and direction of—

(i) any brigade or brigades present at the scene of the fire; and

(ii) any persons who voluntarily place their services at his disposal either individually or as members of any fire fighting organization (whether established by or for the purposes of a statutory authority or body corporate or not) whilst they remain present at the scene of the fire;

(c) He shall have authority either alone or with others under his command to enter upon any land house building or premises and if necessary to force open any outer or inner doors of any house or building which may be on fire or in the near neighbourhood of any fire for the purpose of taking any steps which he deems necessary for any of the purposes aforesaid, and he may take or give directions for taking any apparatus required to be used at a fire into through or upon any land house building or premises which he considers convenient for the purpose;

(ca) The Chief Officer may cause—

(i) any vessel, wharf, pier or jetty to be entered upon or into, if necessary with force; and

(ii) any necessary apparatus to be taken upon or into any vessel, wharf, pier or jetty;

(d) He may take any measures which in the circumstances are reasonable and which appear to him to be necessary or expedient for any of the purposes aforesaid and in particular he may cause any house building or structure to be entered into and taken possession of or pulled down or otherwise destroyed or removed, and any fences to be pulled down or otherwise destroyed or removed, and any undergrowth trees scrub grass stubble weeds or other vegetation to be burnt or otherwise destroyed or removed;

(e) He may cause water to be shut off from any main pipe channel or other works of water supply in order to obtain greater supply and pressure of water for the purpose of extinguishing the fire and he may enter or give directions for entering any land or premises and may take or cause to be taken water from any waterway, lake, lagoon, bore, dam, tank, main or pipe or other source of water supply whatsoever; and no person or body of persons having the management of any water supply shall be liable to any penalty or claim by reason of any interruption in the supply of water occasioned by any act matter or thing done under this paragraph;

(f) The Chief Officer may close any road or part of any road affected, or likely to be affected, by a fire or smoke from a fire and may direct traffic on any road in the vicinity of the closed road (or closed part of a road);

(g) If a person is interfering, by his or her presence or otherwise, with the operations of any brigade or group of brigades or is in or on any land, building or premises that is burning or threatened by fire, the Chief Officer may—

(i) order the person to withdraw and may include in the order a direction to immediately leave any area affected by the fire by the safest and shortest route; and

(ii) in the event that the person fails or refuses to withdraw—remove the person or direct a member of a fire brigade or a police officer present at the fire to remove the person;
(h) He may at any time pull down or shore up any wall or building damaged by fire that may be or may be likely to become dangerous to life or property;

(i) The Chief Officer may take such other measures as appear necessary for the protection of life and property.

(2) In subsection (1)(e), bore has the same meaning as in the Water Act 1989.

S100 Role of Volunteer Fire Brigades Victoria Incorporated

(1) The role of Volunteer Fire Brigades Victoria Incorporated in relation to this Act is to enable members of brigades (other than industry brigades) to consider and bring to the notice of the Authority all matters affecting their welfare and efficiency (other than questions of discipline and promotion).

(2) A person is not eligible to become an officer or official of Volunteer Fire Brigades Victoria Incorporated unless he or she is a registered volunteer.

(3) Subsection (2) does not apply to the chief executive officer, an executive officer or a member of staff of the Volunteer Fire Brigades Victoria Incorporated.

(4) The regulations may provide for the payment by the Authority to members of Volunteer Fire Brigades Victoria Incorporated of personal and travelling expenses actually incurred in relation to their attendance at—

(a) such meetings of the Volunteer Fire Brigades Victoria Incorporated as are approved by the Authority; or

(b) meetings with the Authority.

(5) The expenses paid must not exceed the limits fixed by the regulations.

(6) This section applies despite anything to the contrary in the Associations Incorporation Reform Act 2012 or the rules or constitution of Volunteer Fire Brigades Victoria Incorporated.
PREAMBLE

Volunteers of the Country Fire Authority of Victoria (CFA) are fundamental to emergency management in Victoria and their vital role and importance is recognized. Volunteers and the community rely on the expertise, commitment, and goodwill of volunteers. This Charter, supported by a series of Volunteer Charter Frameworks (VCFs), sets out the principles that apply to all volunteer organizations consisting of volunteers. The principles apply to all volunteer organizations, including CFA. The principles are designed to help volunteer organizations to provide the best possible service to the community.

VOLUNTEER CHARTER

THIS VOLUNTEER CHARTER...

- is an agreement between the State of Victoria, CFA, and VFBV on behalf of the CFA Volunteer to each other;
- ensures that the State of Victoria and CFA will consult with Volunteers about all matters which might reasonably be expected to affect Volunteers;
- provides the framework for the three-way relationship between the parties, requiring the support and cooperation of the parties to the Charter to be judged against the following principles:
  - Is it fair?
  - Is it just?
  - Is it reasonable?
  - Does it discriminate against Volunteers?
  - Is the outcome practical and sustainable?
  - Is it in the best interest of the safety of the Victorian community?

- is the framework for an enduring commitment between the parties. The Charter shall be reviewed as required by the parties or at the end of four years from its date of commencement.

VOLUNTEERS IN CFA...

- volunteer their time and skills to protect life and property, prevent and suppress fires and thus create a safer community. They actively promote fire prevention works and provide fire, emergency, and community services across Victoria. Many Volunteers provide their own equipment to do so;
- are drawn from communities throughout Victoria in order to participate in an integrated fire service through a practical partnership based on mutual respect for CFA, people employed by CFA, and personnel of other organizations, to ensure that community safety needs are met to the best of their collective abilities;
- depend on the goodwill and practical support of their families, friends, and employers to enable them to serve. The time available to them is limited by the needs and demands of their employment, families, and other obligations; and

THE VOLUNTEERS WILL PROVIDE THEIR SERVICES TO THE BEST OF THEIR ABILITIES SUBJECT TO THE FOLLOWING PRINCIPLES...

- to provide their services for the protection of life and property, prevention and suppression of fires and undertake other relevant duties to create a safer community in a mutually respectful and active partnership with people employed by CFA, other organizations and the community;
- operate safely and undertake appropriate training and planning to ensure their personal safety and enhance the delivery of services in creating a safer community;
- exercise the powers vested in them by the Country Fire Authority Act 1989 and Regulations in the best interest of the community;
- recognize and support the elected VFBV representatives and the consultative mechanisms as agreed by CFA, and other authorities;
- be committed to working in harmony and consultation with CFA and seek to resolve differences of opinion internally in that instance.

THE CFA RECOGNISES THE COMMITMENT OF VOLUNTEERS. THE CFA SHALL PROVIDE ITS SERVICES AND SUPPORT TO VOLUNTEERS SUBJECT TO THE FOLLOWING PRINCIPLES...

- to recognize, value, respect and promote the skills and expertise of Volunteers and the commitments and contributions they make in their volunteer role;
- provide a code of conduct and procedures for the safe and effective delivery of services in CFA;
- ensure that all Volunteers are treated with equity and respect and are provided with support and resources to perform their duties;
- recognize and respect the needs of Volunteers that are derived from their volunteer service and provide effective and comprehensive support services within available resources including but not limited to:

- Finance and Administration:
  - Recognize and respect the needs of Volunteers that are derived from their volunteer service and provide effective and comprehensive support services within available resources including but not limited to:
  - Ensure that Volunteer views, opinions and concerns are fully considered before adopting any new or changed policies, procedures or approaches which impact on them as CFA Volunteers;
  - Provide the resources necessary to enable the delivery of services and support Volunteers who undertake safety-related activities;
  - Ensure that Volunteer views, opinions and concerns are fully considered before adopting any new or changed policies, procedures or approaches which impact on them as CFA Volunteers;
  - Provide adequate resources to enable Volunteers to deliver agreed services;
  - Provide administrative, operational and infrastructure support to enable Volunteers to deliver agreed services;
  - Recognize and respect the needs of Volunteers that are derived from their volunteer service and provide effective and comprehensive support services within available resources including but not limited to:
  - Ensure that Volunteer views, opinions and concerns are fully considered before adopting any new or changed policies, procedures or approaches which impact on them as CFA Volunteers;
  - Provide the resources necessary to enable the delivery of services and support Volunteers who undertake safety-related activities;

- The commitment.

The parties commit themselves to see and adopt the Charter in the spirit of mutual respect and goodwill and to work together in that spirit to resolve any disputes which may arise between CFA, the State of Victoria and the Volunteers by reference to the key principles set down in this Volunteer Charter.
Attachment 2

VFBV (CFA VOLUNTEER CONSULTATION AND ANALYSIS) OF THE PROPOSED CFA/UFU OPERATIONAL ENTERPRISE AGREEMENT 2016 (V17.4)

After initial VFBV Supreme Court action against CFA in June this year for failing to undertake consultation with CFA volunteers on the then proposed UFU Agreement matters which may affect them in accordance with the Volunteer Charter under the CFA Act, CFA subsequently agreed to a period of consultation and the provision of a copy the then latest version of the proposed UFU Agreement (version 17.4 – Final) to VFBV for distribution to brigades for assessment and feedback from CFA volunteers.

The analysis by VFBV and volunteers was consolidated with copies of relevant reports and other documents and provided to the Chairman of the then new CFA Board on 29 July 2016 for the information of his Board members. Our analysis revealed significant deleterious impacts on CFA volunteers. A copy of this document is attached to this submission as appendix 1 for the information of Senators. It has had a minor update to assist Senators by the inclusion of a matrix summary identifying clauses to relevant sections of the CFA Act.

By necessity the document is long and complex because the UFU Agreement is very long and complex and the ramifications of its clauses are far from easy to discern.

The current UFU Agreement is now version 17.6 but is in substance the same as version 17.4 which is the document version we were provided for consultation and analysis save for a small number of largely cosmetic changes and consequential clause re-ordering, none of which alleviate the impact on volunteers identified by the 29 July document.

There is no available document or detailed assessment provided by the newly appointed CFA Board (appointed 19/7/16), Acting CFA CEO (appointed 17/6/16), Acting CFA CO (appointed 18/7/16) or the Emergency Management Commissioner as to the effect of the various clauses of the UFU Agreement on Victoria’s emergency management capacity or on the organisation, operations and support of CFA volunteers and their capacity to deliver public safety services. The only detailed analysis in the public domain is the VFBV analysis attached to this submission.
Attachment 3

VICTORIAN FIRE SERVICE REVIEW (2015) AND GOVERNMENT RESPONSE.

There is significant reform underway to the operation, co-ordination and interoperability of Victoria’s three fire services – the Country Fire Authority (CFA), Department of Environment, Land, Water and Planning (DELWP) and the Metropolitan Fire Brigade (MFB) arising from the Victorian Fire Services Review released in October 2015 and the Victorian Government’s response to it released in March this year.

The reforms are largely under the co-ordination of the Emergency Management Commissioner, Mr Craig Lapsley. If the UFU Agreement were to be submitted and approved by the Fair Work Commission we and others in the Victorian fire services, believe it would derail the current process of reform under the Emergency Management Commissioner who’s power, role and functions as well as those of his office, Emergency Management Victoria, come under the Victorian Emergency Management Act. There is a risk that their work and authority under Victorian law in regard to reform would be subject to the terms of the UFU Agreement once it was approved by the Fair Work Commission. This is by any measure an undesirable outcome.

Both the Victorian Fire Services Review (2015) report and the State Government response recognise the importance of CFA volunteers and CFA as a volunteer based and fully integrated organisation to Victoria’s emergency management system.
LEWIS REPORT


Judge Gordon Lewis found in his independent investigation into Personal Protective Clothing (PPC) for Victorian firefighters that the UFU had a policy of obstructionism that they used until they achieved what they wanted. Judge Lewis recognised the requirements to ‘consult and agree’ was not sustainable and ultimately recommended that the following change be made to the enterprise agreement:

“The employer shall supply each employee and be responsible for the cost of replacing, repairing and/or cleaning the articles of clothing and/or equipment which the employer decides must be work and/or used by the employee, after consultation with the Union”.  

The Judge also identified other clauses that required agreement before the implementation of any change such as training instructors and code of conduct that should only require consultation as identified in the quote above. Judge Lewis recommended this amendment for both CFA’s and MFB’s enterprise agreements. This recommendation is independent recognition that the arrangements under the UFU Agreement will be neither efficient nor effective. Judge Lewis reinforced the importance of the Volunteer Charter and that the “view, concerns and opinions of volunteers are fully considered before adopting any new or changed policies, procedures or approaches which impact” on CFA volunteers. He went on “any future EBA reached bet’ween the CFA and the UFU, it should be made clear that the CFA is committed to consult with volunteer firefighters in Victoria, who shall be entitled to participate in any discussions directed at all matters that affect them, including the improvement of clothing and equipment issued to firefighters”.

Key findings relevant to this review:

- CFA and MFB EBA agreements with paid firefighters effectively give power of veto to UFU, preventing management decisions being made and seriously delaying procurement of firefighter protective equipment;
- CFA and Government failed to meet their commitment and obligations to consult with volunteers;
- Firefighters and the public of Victoria poorly served by the inability of the UFU, CFA and MFB to work cooperatively.

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5 Judge Gordon Lewis, Report on the Processes to select Personal Protective Clothing for Victoria Firefighters, p6
6 Ibid, p6
7 Ibid p6
• Future stakeholder relations effort and consultation arrangements must involve consultation with volunteer firefighters in Victoria and volunteers must be entitled to participate in any discussions directed at matters that affect them
• ‘Machinations and intransigence of CFA, MFB and UFU contrasted starkly to the Volunteer’s cooperative approach’

Relevant to the pursuit of interoperability; achieving a culture of cooperation and respect; and improving support to CFA Volunteer Brigades is the sad fact that the problems identified in the Lewis review remain largely as bad today as they were in 2008. Internally, CFA senior management frequently discuss circumstances of external process interference and industrial negotiations barriers that prevent, delay and sometimes destroy CFA management ability to develop, procure, deploy and utilise vital firefighting equipment and resources in a timely, cost effective or operationally efficient manner.

The impediments to CFA operating with the degree of statutory independence, transparency and accountability required to ensure policy, organisational arrangements, operational decisions and resource allocation priorities is driven by community needs, risk and cost effectiveness were examined by the Lewis Review.
Attachment 5

JONES REPORT

Independent Inquiry – His Honour David Jones AM (2011): Commissioned by the Victorian Government to examine the effect of arrangements made by CFA on the recruitment, training, deployment, and support to CFA volunteers.

Mr Jones was appointed to conduct the inquiry by the Minister for Police and Emergency Services on 4 April 2011. In brief, the Terms of Reference related to the examination of the effect arrangements made by CFA were having on CFA volunteers and make recommendations to address any shortcomings of difficulties it identified.

The report was a landmark in bringing together an independent examination of issues negatively affecting CFA volunteers, spanning key issues including recruitment, retention, training, engagement and effective consultation, institutional discrimination and deployment. Mr Jones made 41 recommendations to address the problems he identified and these were presented to the CFA for action overseen by a working party that included central government public service representatives, the CFA and VFBV.

Key findings relevant to this review:

- The process for addressing service needs and allocating resources must be clear and transparent. Decisions about allocation of additional career firefighters may affect the involvement of volunteers. Consequently, in accordance with the Volunteer Charter volunteers can reasonably expect to be consulted.
- ‘Decisions such as allocation of resources and possible consequences on volunteer involvement should be made by the CFA Board and CFA Chief Officer not by a Dispute Panel or Board or Reference formed by an industrial agreement.’
- The CFA model of one integrated force (volunteer and paid members) can serve the community very well.
- CFA encouraged to develop service models, standards and resource planning processes that are evidence based, not driven by industrial agreements or union pressure.
- explore legislative options for protecting volunteers in relation to their employment.
- That the CFA’s volunteer based and community embedded service model is fundamental to achieving community based responsibility for their own safety and engagement with local communities;
- CFA culture, leadership and human resource management are keys to maintaining and strengthening the community’s understanding of, confidence in, support for and active participation in the volunteer based emergency service model for Victoria, which is consequently, fundamental to the future success of the CFA.
- Achieving an appropriate CFA organisational culture and providing sound organisational leadership driven by a commitment to principles and policy designed to achieve a successful volunteer based organisation are critical;
- People are CFA’s greatest asset and must be looked after
- Improving leadership in CFA from top to bottom is key to the success of the CFA integrated model – this cannot be over emphasised and is one of CFA’s biggest challenges. Entry to leadership positions (including operational paid staff) needs to be opened up to ensure the right people hold relevant positions;
Changes need to occur to single tier entry for paid firefighters

All position descriptions and key selection criteria for roles in CFA require knowledge of and commitment to a statement of CFA vision, mission and values which need to include principles that support and complement the principles in the Volunteer Charter and recognise the volunteer based nature of CFA.

The changing circumstance of Victoria further emphasises the need for CFA to ensure it remains attractive to future potential volunteers, and more critically, that the CFA volunteer based model that provides such valuable services is sustainable into the future.

Women are currently an untapped resource for CFA volunteer recruitment and specific action is required that facilitates the involvement of women as volunteers in the CFA at all levels;

CFA should further develop its community education programs to specifically engage culturally and linguistically diverse communities to address the importance of ethnic diversity; and more needs to be done to engage young people in CFA – there may be scope to do more work with schools.

Industrial arrangements should not limit or restrict utilisation of volunteers; appointments to positions in CFA should be based on merit, appropriate competency and experience that do not discriminate against volunteers. CFA employment arrangements should be flexible and matched to support/service need.

Barriers to lateral entry and secondments are contrary to the best interests of CFA in that it inhibits the ability of CFA to appoint the most suitable person to the position. Where it prevents vacancies from being filled it is an unacceptable situation. CFA needs to revisit this arrangement with the United Firefighters Union (UFU). Restrictions to lateral entry is causing delays in CFA’s ability to fill key operational and management vacancies – sometimes for more than 12 months.

High turnover of Operations Officers and industrial arrangements which inhibit the appointment of suitably qualified volunteers to Operations Officers and Operations Managers who have a very important role in the management, leadership and support for volunteers and their brigades, significantly affects CFA brigades;

The industrial barrier to CFA employing part-time or casual employees is too restrictive and inhibits the CFA in being able to best resource the needs of the organisation. This restriction should be revisited by the CFA with the UFU.

First Aid training and maintenance of currency qualifications – Improvement is necessary with the delivery of First Aid training for volunteers.

The need for volunteer training is increasing but the availability is reducing. Availability and accessibility to Field Training Grounds (FTG) is another consistent concern and issue. CFA must take initiatives to improve FTG accessibility to volunteers for training;

CFA Training Instructors - Despite increased demands, there has not been any substantial increase to the instructor base over the last ten years;

The availability of career instructors at times that are likely to be convenient to volunteers as governed by industrial agreements is too restrictive.

New approaches are needed and they must involve greater and better use of volunteer instructors and assessors;

The use of sessional instructors has a role to play in the effective, efficient and cost effective delivery of training. However, again this is being inhibited by industrial arrangements, although, hopefully, some satisfactory outcome can be negotiated.

[There are a range of other subsidiary findings and recommendations contained within the ‘Jones Report’ regarding training issues, including the availability of specific types of training,
consultation and design and support for the Garnock Report on training – see document provided.

- Deployment and Utilisation of Volunteers to ensure experienced and qualified volunteers are utilised at all levels of the CFA, in leadership, as well as incident management roles;
- Existing qualified volunteers are underutilised in Incident Management Teams. There certainly is a perception amongst volunteers that they are a last resort resource. That should not be the case as their better utilisation is beneficial to volunteer morale and the CFA.
- There is a range of other findings and recommendations on such matters as consultation and communications processes, internal dispute resolution, disciplinary arrangements and the creation of a Volunteer Ombudsman.
Examples of Clauses in the UFU Agreement constraining CFA decision making

The following table provides a list of references in the latest version of the 2016 Agreement as examples that constrain CFA decision making and erode the CFA ability to meet its consultation obligations to volunteers consistent with the CFA Act and Volunteer Charter. There are also many other clauses not contained in the following table that require ‘consultation and agreement’ eroding CFA management prerogative, impact on timely decision making and CFA legislative accountabilities in terms of the direction, deployment and management of the CFA workforce.

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<tr>
<th>Clause</th>
<th>Topic</th>
<th>Term used</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>11.29</td>
<td>FSCC modules</td>
</tr>
<tr>
<td>2</td>
<td>12.13</td>
<td>Rank &amp; Promotional Structures</td>
</tr>
<tr>
<td>3</td>
<td>14.3</td>
<td>Community Support Facilitators</td>
</tr>
<tr>
<td>4</td>
<td>15.1</td>
<td>Brigade Administrative Support Programs/Officers (BASO)</td>
</tr>
<tr>
<td>5</td>
<td>16.1</td>
<td>Volunteer Support program/Officers</td>
</tr>
<tr>
<td>6</td>
<td>23</td>
<td>Legislation and Reform</td>
</tr>
<tr>
<td>7</td>
<td>30.2</td>
<td>Bushfires Royal Commission Report</td>
</tr>
<tr>
<td>Clause</td>
<td>Topic</td>
<td>Term used</td>
</tr>
<tr>
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</tr>
<tr>
<td>8</td>
<td>35.2.1 Work Organisation</td>
<td>“…except where agreed…” “FWC cannot determine that any employee should or will carry out such work.”</td>
</tr>
<tr>
<td>9</td>
<td>41.1  CFA Policies</td>
<td>“…may only be made or varied by agreement.”</td>
</tr>
<tr>
<td>10</td>
<td>44.1  Minimum Staffing Levels</td>
<td>“The parties have agreed...Charts in Schedule 1...”</td>
</tr>
<tr>
<td>11</td>
<td>44.3  Minimum Staffing Levels</td>
<td>“An alteration to the number and rank of employees...by agreement between the parties.”</td>
</tr>
<tr>
<td>12</td>
<td>44.14 Appliance Crewing</td>
<td>“…ensuring that there are four professional career firefighters on all appliances except as where agreed...”</td>
</tr>
<tr>
<td>13</td>
<td>44.15 Cross Crewing</td>
<td>There will be no cross crewing of appliances unless otherwise agreed...”</td>
</tr>
<tr>
<td>14</td>
<td>44.20.3 Schedule 1 dates</td>
<td>“The commencement date of operations for the charts in Schedule 1 can be extended...only by agreement...”</td>
</tr>
</tbody>
</table>
| 15     | 46.4  On Shift Relievers | “The home location for any employee...cannot be changed without agreement.  
“No other...reliever other than district-based or station-base unless by agreement...” |
| 16     | 48.3.1 Secondment & Lateral Entry | “…in agreement with the UFU, will offer agreed secondment program training for a minimum 12 CFA...and a minimum 12 MFB...” 
“...Other fire services may be considered on a case by case basis if agreed...” |
<p>| 17     | 48.3.9 Secondment &amp; Lateral Entry | “Any further extensions [beyond one year secondment] will be by agreement of the parties.” |</p>
<table>
<thead>
<tr>
<th>Clause</th>
<th>Term used</th>
<th>Topic</th>
</tr>
</thead>
<tbody>
<tr>
<td>18</td>
<td>“…must be from the MFB or from another fire service that has been agreed between the CFA and UFU…”</td>
<td>48.4.3 Secondment &amp; Lateral Entry</td>
</tr>
<tr>
<td>19</td>
<td>“…the position may only be filled, by a career firefighter of the MFB unless otherwise agreed…” &amp;</td>
<td>48.6.4.1 Lateral Entry</td>
</tr>
<tr>
<td>20</td>
<td>“…(a recruit course agreed between the CFA and UFU).”</td>
<td>48.6.4.2 Lateral Entry</td>
</tr>
<tr>
<td>21</td>
<td>“…undertake a short course…These requirements will be as determined by the CFA and UFU as agreed.”</td>
<td>48.6.4.4 Lateral Entry</td>
</tr>
<tr>
<td>22</td>
<td>“Firefighting Services other than the CFA and MFB can be considered…but such consideration must be by agreement…”</td>
<td>48.7.3 Lateral Entry</td>
</tr>
<tr>
<td>23</td>
<td>“The CFA will not employ an employee on a part-time or casual basis…unless in each case there is agreement…”</td>
<td>50.3 Part-time/Casual</td>
</tr>
<tr>
<td>24</td>
<td>“work and be rostered on hours negotiated and agreed in writing”</td>
<td>50.6.5.1 Part-time</td>
</tr>
<tr>
<td>25</td>
<td>“Where agreed between the UFU and CFA the Disputes Panel may consider…any other matter agreed by the parties”</td>
<td>58.2 Disputes Panel</td>
</tr>
<tr>
<td>26</td>
<td>“the Minister will accept a recommendation…who shall become the chairperson of the Disputes Panel…”</td>
<td>58.8 Disputes Panel</td>
</tr>
<tr>
<td>27</td>
<td>“Both parties agree to abide by the Dispute Panel’s determinations.”</td>
<td>58.14 Disputes Panel</td>
</tr>
<tr>
<td>28</td>
<td>“Peer support employees under this agreement will be drawn from professional firefighters.”</td>
<td>60.1.1 Peer Support</td>
</tr>
<tr>
<td>29</td>
<td>“…and agreed psychologists and doctors”</td>
<td>60.1.6 Peer Support</td>
</tr>
<tr>
<td>30</td>
<td>“…parties agree…to implement an enhanced Marine capability and capacity within the organisation.”</td>
<td>67.1 Marine Capability</td>
</tr>
<tr>
<td>Clause</td>
<td>Topic</td>
<td>Term used</td>
</tr>
<tr>
<td>--------</td>
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</tr>
<tr>
<td>31</td>
<td>70.2</td>
<td>Health and Safety “The parties agree to apply and to review the OHS agreement...”</td>
</tr>
<tr>
<td>32</td>
<td>73.2</td>
<td>Gambling, Drug and Alcohol Rehabilitation “The protocol will be developed and agreed...”</td>
</tr>
<tr>
<td>33</td>
<td>77.2</td>
<td>Training and Professional Development “In all training matters, the parties agree...”</td>
</tr>
<tr>
<td>34</td>
<td>77.4</td>
<td>Training Locations “Training will only take place at agreed recognised training locations...”</td>
</tr>
<tr>
<td>35</td>
<td>77.8</td>
<td>Number of Courses “The CFA will provide a minimum number of courses per year of the agreement unless otherwise agreed...”</td>
</tr>
<tr>
<td>36</td>
<td>83.4</td>
<td>Uniforms, Appliances and Equipment “The CFA and UFU must agree on all aspects of the: 83.4.1 articles of clothing; 83.4.2 equipment, including personal protective equipment; 83.4.3 technology; 83.4.4 station wear; and 83.4.5 appliances.”</td>
</tr>
<tr>
<td>37</td>
<td>83.7</td>
<td>Uniforms, Appliances and Equipment “Changes to...will be by agreement only...”</td>
</tr>
<tr>
<td>38</td>
<td>83.10</td>
<td>Uniforms, Appliances and Equipment “…consult and agree with the UFU...”</td>
</tr>
<tr>
<td>39</td>
<td>83.13</td>
<td>Uniforms, Appliances and Equipment “…prior to the development/building or tendering of the appliance/s consultation will occur and CFA will reach agreement...”</td>
</tr>
<tr>
<td>40</td>
<td>87.6</td>
<td>Amenities “Where the employer seeks to make changes to any amenities or access to communications...such changes will only occur by agreement...”</td>
</tr>
<tr>
<td>Clause</td>
<td>Topic</td>
<td>Term used</td>
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<tr>
<td>--------</td>
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</tr>
<tr>
<td>41</td>
<td>88.4</td>
<td>Infrastructure&lt;br&gt;“The Infrastructure Agreement may only be varied or departed from where this is agreement...”</td>
</tr>
<tr>
<td>42</td>
<td>88.6.2</td>
<td>New Work Locations&lt;br&gt;“...will adhere to and apply the Infrastructure Agreement for the design and specification of appliances and equipment...except as agreed...”</td>
</tr>
<tr>
<td>43</td>
<td>88.6.3</td>
<td>New Work Locations&lt;br&gt;“Deployment of staff to a particular work location shall not occur...unless agreed between the parties.”</td>
</tr>
<tr>
<td>44</td>
<td>88.7.3</td>
<td>Existing Work Locations&lt;br&gt;“Amy modifications to existing work locations...except as agreed...”</td>
</tr>
<tr>
<td>45</td>
<td>88.7.4</td>
<td>Existing Work Locations&lt;br&gt;“Any modifications will be by agreement between...”</td>
</tr>
<tr>
<td>46</td>
<td>88.12</td>
<td>Existing Work Locations&lt;br&gt;“No employee will be relocated or directed to relocate into any permanent premises...prior to there being agreement reached between...”</td>
</tr>
</tbody>
</table>