

# Chapter 3

## Introduction

3.1 The key purpose of the bill is to preclude or render ineffective any term in an enterprise bargaining agreement (EBA) that would impact on the capacity of a designated emergency management body to properly manage its volunteers, regardless of whether the EBA comes into effect before or after the bill is passed.

3.2 In addition, the bill provides a voice for volunteer bodies by according them a statutory right to make submissions to the Fair Work Commission (FWC) in respect of issues arising from an EBA that affects, or could affect, the volunteers of a designated emergency management body.

3.3 Submitters in support of the bill emphasised that numerous clauses in the proposed EBA between the Victorian Country Fire Authority (CFA) and the United Firefighters Union (UFU) would adversely affect the overwhelmingly volunteer firefighting workforce (approximately 97 per cent) of the CFA.

3.4 These submitters also argued that the proposed EBA contained numerous clauses that were inconsistent with the CFA Act and would constrain the CFA Chief [Fire] Officer in carrying out their duties.

3.5 These submitters therefore argued that the bill was a necessary, timely, and targeted response to the CFA dispute that would provide volunteers with an appropriate voice in matters where their interests were affected by an EBA.

3.6 Submitters who opposed the bill argued that the proposed EBA dealt with the relationship between the CFA and its paid employees and did not impinge on the role of volunteers in the CFA.

3.7 Submitters opposed to the bill also argued that the bill was inconsistent with the basic policy of collective bargaining, was unnecessary and uncertain in its scope, and was an unwarranted intervention into state matters.

## *Versions of the EBA*

3.8 The committee notes that the FWC does not publish a proposed EBA until it has been finally agreed by both parties.

3.9 The EBA between the UFU and the CFA has been through various iterations. The most up-to-date version at the time of writing was provided to the committee as

an attachment to the submission from the UFU Victoria Branch and labelled '2016 CFA UFU Operational Staff Enterprise Agreement 2016 – FINAL'.<sup>1</sup>

3.10 The reference to EBA clauses in this report is taken from version 17.6 of the EBA provided by the UFU with their submission. However, the FWC 'Final Recommendation' of 1 June 2016<sup>2</sup> referred to an earlier version of the EBA. The committee notes that the clauses between various versions of the EBA do not necessarily align. There is, therefore, some inconsistency between the numbering of the clauses to which the FWC (and some submitters) refer and the numbering of the clauses in the most recent version of the EBA. While the report refers to the clause numbers as they currently stand, where possible, the committee also provides the previous clause number in square brackets afterwards.

3.11 The rest of this chapter canvasses the key issues raised by submitters and witnesses to this inquiry in greater detail.

### **Adverse impact of the EBA on volunteers and CFA culture**

3.12 As noted in chapter two, the CFA is a statutory agency operating under the CFA Act. That same Act also accords statutory recognition to the role and voice of volunteers in the CFA.

3.13 Mr John Peberdy was a CFA board member from September 2009 to June 2013, deputy chair from October 2013 to August 2015, and acting chair from 29 August 2015 to 17 June 2016. He argued that the aim of adding the volunteer charter (sections 6F to 6I) to the CFA Act was 'to build a strong, vibrant and capable emergency service'.<sup>3</sup>

3.14 Mr Peberdy pointed out that the role of paid firefighters under the CFA Act is to support the volunteers in a fully integrated manner<sup>4</sup> and that, in the future, there would be an increase in the integrated station model 'in densely populated locations including peri-urban Melbourne and larger country cities/towns'.<sup>5</sup>

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1 United Firefighters Union Victoria Branch, *Submission 83*, Attachment 6—Country Fire Authority / United Firefighters Union of Australia Operational Staff Enterprise Agreement 2016. This version of the EBA was released on 12 August 2016.

2 See Fair Work Commission, Final recommendation, *United Firefighters' Union of Australia v Country Fire Authority*, 1 June 2016, <http://cfaonline.cfa.vic.gov.au/mycfa/Show?pageId=publicDisplayDoc&docId=026463> (accessed 22 September 2016).

3 Mr John Peberdy, *Submission 4*, pp. 3–5. See also ss. 6F–6I, *Country Fire Authority Act 1958 (Vic)*.

4 Section 6F of the *Country Fire Authority Act 1958 (Vic)* states that 'The [Victorian] 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.'

5 Mr John Peberdy, *Submission 4*, p. 4.

3.15 Mr Peberdy also submitted that during his time as a CFA board member, his experience of integrated stations was mixed. While career firefighters at some stations treated volunteers respectfully and worked well together, at other stations career firefighters expressed a disregard for volunteers and treated them as 'second-class citizens'.<sup>6</sup>

3.16 This sentiment of volunteers being treated as second-class citizens was echoed by volunteer firefighters as well. For instance Mr Greg McManus, a volunteer with 26 years of experience at the Lara fire brigade in the North Geelong district, highlighted the controlling nature of the EBA's education clauses:

It [the EBA] relates to community education as well. We are a brigade that does a lot of community education. We have a very strong community education workforce. Clause 17 actually states that community education must only be performed by paid firefighters, and volunteers can only do it if the paid firefighters are unavailable. While I have no issue with paid firefighters doing community education—and they should do it—to have volunteers subjugated and be second-class citizens when it comes to delivering community education is a real slap in the face to our members.<sup>7</sup>

3.17 Another Victorian firefighter who expressed concerns over the EBA was Mr Jay Martin. With over 22 years' experience, Mr Martin explained that he was:

...concerned that union influence and "consultation" will erode CFA management decisions making and erode the role of volunteers within CFA whereby a divide is created between paid and volunteer firefighters. The EBA will impact the ability of volunteers to fulfil operational and management roles across the organisation and relegate them to the rank of second class citizen. The EBA wishes to have volunteers closed out from applying for roles across CFA such as community education coordinators and brigade support officers. I believe this is in itself discriminatory and unlawful.<sup>8</sup>

3.18 Similar concerns were raised by Ms Leigh Sutton, a member of the Fenton's Creek fire brigade (North West region) who submitted that:

The worth and value of the CFA volunteers would be diminished by insisting on paid firefighters taking control of a fire ground. They would be reduced to second class workers even though they have the same expertise and possibly greater experience in firefighting, especially bushfires.<sup>9</sup>

3.19 Ms Sue Bull was another volunteer who expressed deep concerns about the treatment of volunteers if the EBA is signed off:

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6 Mr John Peberdy, *Submission 4*, p. 4.

7 Mr Greg McManus, Volunteer Firefighter, North Geelong district, *Committee Hansard*, 19 September 2016, p. 7.

8 Mr Jay Martin, *Submission 66*, p. 1.

9 Ms Leigh Sutton, *Submission 170*, p. 1.

To be treated as second class members of CFA & to be minimalised in such a habitual manner is a risk to public safety. This closed shop mentality often associated with unionised work places is risking the dismantling of CFA as a community embedded volunteer based emergency service. The cost to Victoria by a grab for power & control that disempowers both CFA's Chief Fire Officer & the CFA Board will be the loss of volunteer participation in protecting their communities.<sup>10</sup>

## **Adverse impact of the EBA on emergency management legislation**

### ***Hierarchy of Commonwealth and state legislation***

3.20 The FWC is an arbiter under the *Fair Work Act 2009* (Cth) (FW Act) for determining unresolved disputes between parties, generally employers and the union representing the employees. The negotiations are usually restricted to the parties involved, and this may involve a state government if they have responsibility for funding a service provider.<sup>11</sup>

3.21 Unlike most other states, emergency services workers in Victoria are employed under the FW Act rather than under specific state legislation.<sup>12</sup>

3.22 Several submitters expressed a concern that the FW Act in its current form could override relevant state legislation such as the CFA Act. These submitters specifically argued that clauses within the proposed EBA would be incompatible with the CFA Act.<sup>13</sup>

3.23 In this regard, the VFBV drew attention to what it saw as a dangerous anomaly in that the FWC could alter the operation of state emergency management arrangements merely by approving an EBA under the FW Act:

The Fair Work Commission is bound to act and approve an enterprise agreement where there is compliance with the relevant provisions of the FWA [Fair Work Act]. 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

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10 Ms Sue Bull, *Submission 297*, p. 1.

11 Fair Work Commission, Resolving disputes, [www.fwc.gov.au/disputes-at-work/how-the-commission-works/resolving-disputes](http://www.fwc.gov.au/disputes-at-work/how-the-commission-works/resolving-disputes) (accessed 4 October 2016).

12 Victorian Government, *Submission 1*, pp. 3–4.

13 Volunteer Fire Brigades Victoria, *Submission 55*, p. 12; Mr John Peberdy, *Submission 4*; Mr Michael Tudball, *Submission 5*; Ms Lucinda Nolan, private capacity, *Committee Hansard*, 28 September 2016, pp. 25–26; see also Mr Joe Buffone, Standing Committee on Environment and Planning, Inquiry into Fire Season Preparedness, Parliament of Victoria, *Transcript*, 6 September 2016, p. 76.

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public safety are currently not relevant to whether the FWC approves such enterprise agreement.<sup>14</sup>

3.24 The VFBV spelt out its concern that a substantial number of clauses in the proposed EBA would undermine CFA management prerogative and were also inconsistent with certain provisions of the CFA Act:

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.<sup>15</sup>

3.25 Likewise, Mr Peberdy argued that the EBA would effectively give the UFU a veto over the decisions of the CFA board, Chief Officer and CFA management. Furthermore, the outcome of the EBA would be to hand control of resources to career fire-fighters, and thereby relegate volunteers to 'second-class' firefighters.<sup>16</sup>

3.26 Mr Joe Buffone, the former Chief [Fire] Officer of the CFA advised the Standing Committee on Environment and Planning of the Parliament of Victoria that his resignation occurred as a result of concerns with the proposed EBA, following extensive discussions with the new CFA chair, new CEO, new minister, and the emergency management commissioner. He told the Victorian parliamentary committee that:

...the reason that I resigned was as a result of the proposed EBA and that it put me in a position such that my ability to perform my statutory

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14 Volunteer Fire Brigades Victoria, *Submission 55*, p. 15.

15 Volunteer Fire Brigades Victoria, *Submission 55*, pp. 12–13. Appendix 3 reproduces the table from the VFBV's submission which sets out 46 specific instances where EBA clauses constrain CFA decision making and erode the CFA's ability to meet its consultation obligations to volunteers consistent with the CFA Act and Volunteer Charter, *Submission 55*, p. 42.

16 Mr John Peberdy, *Submission 4*, p. 5.

obligations as the chief officer under the CFA Act had been fundamentally inhibited. The Victorian government's decision to implement the proposed agreement had put undue pressure on me and made my position untenable.<sup>17</sup>

3.27 Mr Buffone stated that around 50 clauses in the EBA contained a UFU veto power that would override his ability to fulfil his role including policy-making, timely service delivery decisions and allocating resources. He pointed out that the EBA would have an operational impact beyond just firefighting:

The EBA touches on trainers, it touches on our operational command and control staff, it touches on what I would describe as our managers in the field, who are our operations officers and our ops managers who basically do the day-to-day planning and preparedness, day-to-day management, workforce management — and when I talk workforce management, that is workforce management across volunteers and career staff.<sup>18</sup>

3.28 Furthermore, Mr Buffone observed that the clauses in the EBA could not be taken in isolation because the inter-related effect of the clauses was complex and cumulative and had an impact on how the CFA conducted its operations.<sup>19</sup>

3.29 Ms Lucinda Nolan, the former Chief Executive Officer (CEO) of the CFA, agreed with the sentiments expressed by Mr Buffone. She told the committee that the EBA had not been resolved in over three years because it overreached into operational areas that would have an adverse effect on the capacity of the Chief Officer to perform his or her operational duties. For example, there were '50 new segments within it [the EBA] covering a broad range of managerial functions and accountabilities where we need to not only consult but agree'.<sup>20</sup>

3.30 Ms Nolan also pointed out that as CEO, she would, along with the Chief Officer, be fully accountable for the operations and management of the CFA and yet under the proposed EBA, the CEO and Chief Officer would be handing over 'control, management and decision making' to the UFU.<sup>21</sup>

3.31 In a similar vein, Mr Brad Battin MP, Shadow Minister for Emergency Services (Victoria), argued that the consultation and agreement requirements contained in the EBA 'will trigger a chain of events that will force the CO [Chief Fire Officer] to a time consuming dispute resolutions clause' and may end up being

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17 Mr Joe Buffone, Standing Committee on Environment and Planning, Inquiry into Fire Season Preparedness, Parliament of Victoria, *Transcript*, 6 September 2016, p. 76.

18 Mr Joe Buffone, Standing Committee on Environment and Planning, Inquiry into Fire Season Preparedness, Parliament of Victoria, *Transcript*, 6 September 2016, p. 77.

19 Mr Joe Buffone, Standing Committee on Environment and Planning, Inquiry into Fire Season Preparedness, Parliament of Victoria, *Transcript*, 6 September 2016, p. 85.

20 Ms Lucinda Nolan, private capacity, *Committee Hansard*, 28 September 2016, pp. 25–26.

21 Ms Lucinda Nolan, private capacity, *Committee Hansard*, 28 September 2016, p. 34.

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referred to the FWC. According to Mr Battin, this outcome would compromise the ability of senior CFA management to manage their workforce and protect the community.<sup>22</sup>

3.32 Mr Michael Tudball is a Country Fire Authority (CFA) Volunteer Member, firefighter for over 36 years and a government appointed CFA Board Member first appointed in 2003 and re-appointed successively in 2007, 2011, 2014. Mr Tudball, along with the rest of the CFA Board, was removed by the Victorian State Government in June 2016.<sup>23</sup>

3.33 Mr Tudball reflected the views of many of the submitters to this inquiry when he stated that the CFA is unique as a fully integrated volunteer and career firefighting workforce. As such, Mr Tudball stated that the CFA 'requires a unique approach to ensure that throughout any deliberations or decisions these two key components of our workforce are not disadvantaged'.<sup>24</sup>

3.34 As set out in chapter two, the CFA Act accords statutory recognition to the role and voice of volunteers in the CFA. In particular, sections 6F, 6G, 6H and 6I of the CFA Act recognise the CFA as primarily a volunteer organisation supported by employees and require the government and the CFA to, amongst other things, recognise the role played by volunteers, consult with the VFBV over matters that affect volunteers, and develop policy and organisational arrangement that strengthen volunteer capacity to provide services to the CFA.<sup>25</sup>

3.35 The Volunteer Charter (see Appendix 4) to which the CFA Act refers was a document signed on 27 February 2011 by the Premier of Victoria, the Minister for Police and Emergency Services, the President of the VFBV, and the Chair of the CFA. The preamble to the Volunteer Charter states that:

Volunteers of the Country Fire Authority of Victoria (CFA) are fundamental to emergency management in Victoria and their value and importance is recognised. Volunteers and the commitment they bring to the protection of the Victorian community remain the core strength of CFA. The individual and collective interests and needs of Volunteers must be protected if they are to deliver their services safely and effectively. They must always be consulted about issues that affect them as Volunteers. This Charter recognises that the members of CFA and their Association, Volunteer Fire Brigades Victoria (VFBV), operate under the *Country Fire Authority Act 1958*. This Charter is a statement of principle that will apply

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22 Mr Brad Battin MP, *Submission 15*, p. 4.

23 Mr Michael Tudball, *Submission 5*, p. 1.

24 Mr Michael Tudball, *Submission 5*, p. 1.

25 See *Country Fire Authority Act 1958 (Vic)*, sections 6F–6I, [www.austlii.edu.au/au/legis/vic/consol\\_act/cfaa1958292/](http://www.austlii.edu.au/au/legis/vic/consol_act/cfaa1958292/) (accessed 22 September 2016).

to the relationship between CFA, the State of Victoria and CFA's Volunteers.<sup>26</sup>

3.36 Mr Tudball submitted that he had legal advice that indicated the CFA would breach its statutory obligations, in particular the Volunteer Charter embodied in sections 6F to 6I of the CFA Act, if it agreed to certain clauses in the proposed EBA such as those that provide the UFU with the power to veto operational decisions.<sup>27</sup>

3.37 In his evidence to the Victorian parliamentary inquiry, Mr Buffone also indicated that the EBA would compromise his statutory obligations with respect to the role of volunteers in the CFA:

The Parliament of Victoria acknowledges that CFA is fundamentally a volunteer organisation. I think that is an important context to put when we are talking about the relationship of an industrial agreement and the impact of an organisation that is fundamentally a volunteer organisation. CFA is not two separate organisations. It is not the same as the MFB. It is not a paid workforce or a career workforce and a volunteer workforce that sit separately. It is actually an integrated model that delivers critical services all the way from the fringes of Melbourne right out to the single shed in remote Victoria.<sup>28</sup>

3.38 Ms Nolan told the committee that her 'greatest fear' was that the EBA would alienate volunteers:

The CFA is a volunteer organisation. We rely heavily on the goodwill of our volunteers to keep our communities safe. Not only do they turn out to support and protect their own communities, but they go as part of our surge capacity, and that could be not only state but interstate and overseas. I fear that, the way this goes, the environment will become so toxic, so divisive, that it will not be an attractive place to volunteer and they will seek to volunteer their services to other emergency agencies, such as the SES or others.<sup>29</sup>

3.39 The Victorian Farmers Federation (VFF) argued that all clauses in the EBA that restricted the CFA Chief Officer and board from exercising their right to recruit, direct and allocate staff should be removed.<sup>30</sup>

3.40 The Council of Australian Volunteer Fire Associations (CAVFA) represents more than 250,000 volunteer fire-fighters and operational support volunteers across Australia. CAVFA was concerned that EBAs registered with the FWC could have

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26 Volunteer Charter, 27 February 2011, Volunteer Fire Brigades Victoria, *Submission 55*, p. 42.

27 Mr Michael Tudball, *Submission 5*, p. 3.

28 Mr Joe Buffone, Standing Committee on Environment and Planning, Inquiry into Fire Season Preparedness, Parliament of Victoria, *Transcript*, 6 September 2016, pp. 76–77.

29 Ms Lucinda Nolan, private capacity, *Committee Hansard*, 28 September 2016, p. 24.

30 Victorian Farmers Federation, *Submission 3*, p. 2.



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adverse impacts on volunteers across Australia and that this was 'unacceptable, and untenable for any volunteer organisation serving their communities across Australia'. Furthermore CAVFA warned that if the EBA was successfully registered with the FWC, it would set a precedent for other branches of the UFU across Australia thereby creating significant issues for volunteer services Australia-wide.<sup>31</sup>

3.41 Some witnesses at the Melbourne hearing disagreed with the proposition that an EBA could override state legislation. Mr Steve Warrington, Chief [Fire] Officer of the CFA told the committee that an EBA could not override his powers under the CFA Act as Chief Officer:

The reality is that section 27 of the CFA Act essentially says that I have power—and, with that, the responsibility—to make sure Victorians are safe from fire and emergency and over all people and resources in our organisation. In my view, that overrides any form of legislation. When we are at an emergency, I do not see that happening. Leading up to it, I see that we should be consulting volunteers and our career staff in a formal consultation mechanism. This particular document has a dispute resolution officer and it has access to Fair Work; there are a number of dispute resolution processes within it. Should we get to that stage, it would be disappointing—and it is certainly not our experience to date that that has occurred.<sup>32</sup>

3.42 Likewise, Professor Andrew Stewart told the committee that the FW Act provides that an EBA cannot override state or territory laws dealing with certain matters. In particular, Professor Stewart advised that an EBA

...cannot override state laws dealing with essential services or emergency management to the extent that those laws are concerned with a direction to perform work. So, if a state essential services or emergency law—and the CFA legislation would, on the face of it, fall within that category—provides for certain things to happen, to secure essential services or to deal with an emergency, a federal enterprise agreement cannot override that.<sup>33</sup>

### **Power of veto—consultation and agreement requirements**

3.43 The issue of the consultation and agreement requirements contained within the proposed EBA was at the heart of many of the complaints made by submitters and witnesses. These submitters argued that the requirement imposed on the CFA to reach

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31 Council of Australian Volunteer Fire Associations Limited, *Submission 18*, p. 1.

32 Mr Steve Warrington, Chief Officer, Country Fire Authority, *Committee Hansard*, 28 September 2016, p. 90. The dispute resolution mechanism is contained within clauses 21A, 26 and 58 of the proposed EBA.

33 Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 42.

agreement with the UFU on numerous matters effectively conferred upon the UFU a power to veto operational decisions made by CFA senior management.<sup>34</sup>

3.44 The VFBV submitted that both the CFA and the Metropolitan Fire Brigade have 'long held serious concerns' regarding the inclusion of consult and agree clauses in previous and proposed enterprise agreements 'effectively resulting in the UFU having a veto over Government agency decision-making.'<sup>35</sup> The VFBV submission elaborated on the veto mechanism stating:

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.<sup>36</sup>

3.45 Attached to the VFBV's submission, and reproduced at Appendix 3, is a comprehensive table which sets out 46 specific instances where EBA clauses constrain CFA decision making and erode the CFA's ability to meet its consultation obligations to volunteers consistent with the CFA Act and Volunteer Charter.<sup>37</sup> Examples include issues such as constraints relating to Brigade Administrative Support Officers (BASOs), cross crewing, part-time employees, training and professional development and uniforms. Many of these issues are discussed below.

3.46 In June 2016, the former Chief Officer of the Victorian Metropolitan Fire and Emergency Services Board (MFB), Mr Peter Rau, wrote to the Victorian Emergency Services Minister, the Hon James Merlino MP, raising similar concerns about the MFB-UFU enterprise agreement. In particular Mr Rau highlighted the current UFU veto power in the MFB-UFU enterprise agreement:

The current Enterprise Agreement and its power of veto over my statutory responsibilities is unworkable and undermines community safety.

I have considered the proposed UFU agreement for the CFA. This proposal would, if applied to the MFB, exacerbate the failings of the current MFB agreement. It would be inappropriate for the MFB to adopt these arrangements. 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. Such an arrangement is not compatible with effective and

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34 See for example Volunteer Fire Brigades Victoria, *Submission 55*; Victorian Farmers Federation, *Submission 3*; Mr John Peberdy, *Submission 4*; Mr Michael Tudball, *Submission 5*; Mr Brad Battin MP, *Submission 15*.

35 Volunteer Fire Brigades Victoria, *Submission 55*, p. 23.

36 Volunteer Fire Brigades Victoria, *Submission 55*, p. 23.

37 Volunteer Fire Brigades Victoria, *Submission 55*, p. 50.

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timely decision making relating to emergency management and public safety.<sup>38</sup>

3.47 The VFF was highly critical of clauses in the EBA related to staff, resources, new trucks, other appliances, and policy that required referral to a consultation committee made up of equal numbers of employer and employee representatives appointed by the CFA and UFU respectively. The VFF noted that all 'Clause 21 referrals' require the consultative committee to reach consensus before the changes can proceed. If the CFA and the UFU are unable to reach agreement, the matter is referred to the FWC.<sup>39</sup>

3.48 Clause 16.1 of the proposed EBA states that:

Given the agreed impact of such programs and roles [Volunteer Support Program/Officers] on persons covered by this Agreement, the parties have agreed that the CFA will consult and reach agreement with the UFU under clause 21 on the structure of any Volunteer Support Programs impacting on employees and/or any implementation of Volunteer Support Officers (or person(s) engaged in any similar classification or position howsoever named) impacting on employees, prior to any such decision or implementation.<sup>40</sup>

3.49 The VFF pointed out that under clause 16.1, the CFA cannot change volunteer support programs/officers without consulting and securing agreement from the UFU.<sup>41</sup>

3.50 Clause 21 of the EBA sets out the terms under which consultation is to be conducted including the establishment of a Consultation Committee (clause 21.2). Clause 21A sets out the terms for the operation of the Dispute Resolution Officer:

Any dispute from a party regarding consultation shall be dealt with in accordance with this clause and the dispute resolution clause of this agreement. The Dispute Resolution Officer is responsible for ensuring consultation proceeds pursuant to this Agreement in a fair, timely and effective manner. The Dispute Resolution Officer is to act independently of the parties.

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38 Correspondence, Mr Peter Rau, former Chief Officer of the Victorian Metropolitan Fire and Emergency Services Board, to the Victorian Emergency Services Minister, the Hon James Merlino MP, 30 June 2016, [http://media.heraldsun.com.au/PDF/2016/Aug/1009\\_001.pdf](http://media.heraldsun.com.au/PDF/2016/Aug/1009_001.pdf), (accessed 4 October 2016).

39 Victorian Farmers Federation, *Submission 3*, p. 3.

40 United Firefighters Union Victoria Branch, *Submission 83*, Attachment 6, Country Fire Authority / United Firefighters Union of Australia Operational Staff Enterprise Agreement 2016, Clause 16.1.

41 Victorian Farmers Federation, *Submission 3*, p. 3.

3.51 Clause 22 (Introduction of Change) states:

Where the employer wishes to implement change in matters affecting the application or operation of the agreement or pertaining to the employment relationship in any of the workplaces covered by this agreement, the provisions of clause 21 will apply.

3.52 As the VFF pointed out, the operation of clauses 21 and 22 effectively mean that consultation must occur 'on all aspects including but not limited to the design and specification, infrastructure, staffing levels and conditions, training and allowances related to the appliance'.<sup>42</sup>

3.53 In summary, the VFBV argued that the requirement for the CFA to obtain the UFU's agreement on a raft of matters in the EBA amounted to excessive and unaccountable union control and 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.<sup>43</sup>

3.54 The UFU disagreed with the VFBV's characterisation of the process and argued that consultation process in the EBA was one of resolution:

The Agreement will not give the UFU a veto over CFA decisions but provides for a robust consultation process that enables firefighters to have critical input into the decisions that directly affect their workplace and their safety.<sup>44</sup>

3.55 Mr Peter Marshall, National Secretary of the UFU, told the committee that such a process was not usual in an EBA:

There is a process of resolution and consultation on important issues, given the nature of our industry, which not unusual. Our industry is a very dangerous one. To say that we have to be consulted on every facet of operational activities is just simply not true.<sup>45</sup>

3.56 Furthermore, career firefighters from integrated stations argued that union concerns over consult and agree requirements stemmed from legitimate concerns over firefighter safety. Career firefighters objected to the portrayal of the consultation requirements as a veto power. Career firefighter Mr Alan Thistlethwaite from Greenvale, argued that the veto contained in the EBA was not absolute:

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42 Victorian Farmers Federation, *Submission 3*, p. 5.

43 Volunteer Fire Brigades Victoria, *Submission 55*, p. 21, emphasis original.

44 United Firefighters Union Victoria Branch, *Submission 83*, p. 16.

45 Mr Peter Marshall, National Secretary United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 67.

...It is portrayed as a veto but that is not a veto, and we all know that is not a veto because it states in there that it requires agreement, and if it cannot be agreed to then it goes to a committee or a distribution officer so that that decision can then be made. It is about firefighter safety, the community's safety and ensuring that we have the best possible procedures and best possible equipment that can be out there. I cannot see how anybody can be against that and say that our safety is not important.<sup>46</sup>

3.57 If a dispute cannot be resolved through the extensive processes set out in the EBA, ultimately it may be referred by the UFU or the CFA to the FWC. The FWC may utilise all its powers in conciliation and arbitration to settle the dispute.<sup>47</sup>

3.58 The explanations by the UFU and career firefighters did little to allay the concerns of individual volunteer firefighters. Volunteer firefighters viewed the UFU demands for consultation on matters that will directly impact volunteers as unreasonable. For example, Mr Chris Rutherford, a CFA volunteer firefighter and SES rescue responder, submitted that:

Requiring union agreement for all workplace changes including those that directly affects volunteers is unreasonable in my opinion as it will make the already complex task of tasking and crewing for large scale deployments even more complicated as it will require agreement from the union before something can be done... I don't see a problem with the union fighting to benefit career firefighters as that is the role of the union but I feel that it would be very dangerous and restrictive to give them that same power over volunteers who have at no time accepted the union for representation.<sup>48</sup>

3.59 Other volunteer representatives told the committee that the EBA's numerous 'consult and agree' clauses give the UFU an effective veto power over the operational responsibilities of the CFA. For instance, Mr David Blackburn, a CFA volunteer in the Woorndoo brigade in the Westmere group for 40 years, explained the impact of the 'consult and agree' clauses:

The current version makes reference to 50 clauses that consultation and agreement must be reached by UFU and CFA with regard to change in the organisation. Basically, these clauses have veto rights by UFU over CFA. With regard to organisational and operational issues, this is ridiculous and dangerous and undermines volunteers...<sup>49</sup>

3.60 Volunteers also expressed concern that the proposed EBA would damage the integrity of their organisation:

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46 Mr Alan Thistlethwaite, career firefighter, Greenvale, *Committee Hansard*, 19 September 2016, p. 24.

47 Clause 26.2.6 of the proposed EBA.

48 Mr Chris Rutherford, *Submission 62*, p. 1.

49 Mr David Blackburn, volunteer firefighter, Ararat district, *Committee Hansard*, 19 September 2016, p. 38.

CFA volunteers are often the first responders to hundreds of incidents annually across the state, 24 hours a day, seven days a week. Volunteers are well equipped to apply professional firefighting skills at these incidents, as they are often remote from the resources of manned CFA stations and district headquarters...Volunteers are an essential integrated force of disciplined, experienced, diverse and professional firefighters. We have become involved in this current issue not to gain status or power or with any pecuniary motivation whatsoever but really to protect the power and integrity of the CFA CEO, chief officer and board of this great organisation to allow it to function without industrial interference.<sup>50</sup>

3.61 Mr Lachlan Gales from the Wangaratta district stressed to the committee the concern volunteers had about being effectively left out of decision making:

The issue with agreement between consultation with volunteers and CFA is that we do not have an arrangement with the CFA that says that decisions will not be made without our agreement. This EBA puts in place a system where decisions will not be made without the agreement of the union. We do not have that right.<sup>51</sup>

3.62 This issue goes to whether volunteers effectively have a say in important CFA operational matters.

3.63 In regards to the committee system put in place by the EBA, Mr Gales told the committee that:

...any findings or preferences of that committee will be effectively overridden if the union choose to take a different path, because they have, or will have, an agreement that says they must agree. So they will have a power of veto which we just do not have.<sup>52</sup>

### **Content of the proposed EBA**

3.64 One of the key areas of contention is the scope of the EBA between the CFA and the UFU. While the UFU argued that the EBA was an appropriate document to achieve the recommendations of the 2009 Royal Commission,<sup>53</sup> the CFA and volunteers maintained that the EBA included areas which impact on their work.

3.65 Mr Marshall told the committee that the EBA represented a long process in which the UFU had sought to create common ground between the CFA and the career firefighters:

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50 Mr Bill Stockdale, private capacity, *Committee Hansard*, 19 September 2016, p. 3.

51 Mr Lachlan Gales, volunteer firefighter, Wangaratta District, *Committee Hansard*, 19 September 2016, p. 12.

52 Mr Lachlan Gales, volunteer firefighter, Wangaratta District, *Committee Hansard*, 19 September 2016, p. 12.

53 Mr Peter Marshall, National Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 76.

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...Essentially, in Victoria there are two main fire services, and then there is Department of Environment, Land, Water and Planning (DELWP). The royal commission was extremely scathing on the fact that that assets paid by the community were not utilised to their full potential because of 'differences in processes and procedures'.... For the very first time in these enterprise agreements, in the command and control structure for career officers the classification titles will be the same—from recruit firefighter up to commander, and the senior ranks above them. We are talking about career personnel, because this does not have any impact on volunteers. The classifications above that will be referred to Fair Work for harmonisation of that classification. So when you are on the fireground you will be able to identify a commander as opposed to an operations officer, who are essentially the same thing but are a different classification and are identified differently.<sup>54</sup>

3.66 The VFBV was critical of the UFU's argument that the EBA represented a more consistent approach. Mr Andrew Ford, Chief Executive Officer of the VFBV lamented the inclusion of many extraneous matters within the EBA beyond clauses covering career firefighters' pay and conditions:

We have said all along that if this EBA extracted those matters that were not about pay and conditions, extracted particularly those matters that impact on the chief officer's decision making about resources and support to volunteers, extracted those things that are not even about the operational employees covered by the EBA—those support programs, for example—and dealt with them through the CFA Act, dealt with them through the normal process where volunteers have a voice, dealt with the issues of service gaps through the normal CFA operational planning, dealt with the issues of procedure and policy through the normal standard operating procedures work in consultation, where volunteers and paid people can be involved together, and left the EBA to the pay and conditions, it would have been signed off in January.<sup>55</sup>

3.67 Mr Ford went on to contest the argument put by several career firefighting representatives that there was no alternative avenue other than the EBA to address these important matters:

I heard that [at the hearing in Macedon] last week. It will be in the transcript. I remember those words. People said, 'We've got no other mechanism to fix this problem and we have, out of desperation, brought it to the EBA because it can make things happen.' The concern I have with that is that, if an issue should be fixed in resource planning by the chief officer or a capacity gap should be fixed by the resource support and capacity building by the organisation and the chief officer, that should

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54 Mr Peter Marshall, National Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, pp. 76–77.

55 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, p. 8.

happen. It should happen outside of the EBA, in the organisation, and it should happen in a range of ways. The answer to every capacity gap is not more paid firefighters. It will be at times. I myself, in my past role with CFA, have been involved in actually implementing additional paid firefighters to almost half a dozen volunteer stations, so I am well aware of the times when you will need to have paid firefighters. The point I am making is that that happens as part of normal operational management and resource planning in CFA, not a pay deal, not an EBA. So that issue should certainly be fixed inside CFA and outside of the EBA.<sup>56</sup>

3.68 Senator Back summed up witnesses' concerns about the inclusion of aspects of what should be included in standard operating procedures in the EBA:

I have been agonising over this for some period of time, but what is clear to me from most of the examples that most of you have given, starting with you, Mr Dowie, in terms of the incident control the other day, and Mr Shawcross in terms of the letter that you showed me, is that this has nothing to do with enterprise bargaining. These are standard operating procedures. Mr Spicer, you eloquently and correctly explained to us why we need the seven personnel. These are all in standard operating procedures. In terms of the hierarchy of call-out, in terms of the mistake made—as evidenced in this letter; the fact that the correct group were not called out—that has nothing to do with enterprise bargaining.<sup>57</sup>

3.69 Concern was expressed that one of the main reasons the EBA was so large was that it appeared to contain several clauses that were more appropriate to an operations manual than an EBA. Furthermore, as set out in the following paragraphs, many of these particular operational type clauses caused particular concern for volunteer firefighters. Many volunteer firefighters provided examples of what they saw as the overreach of the EBA into the command structure of the CFA.

3.70 Mr Walter Aich, a volunteer firefighter from the Warragul district, told the committee that he was concerned that the EBA aims to have an impact outside of its stated scope:

I believe that the proposed EBA that led to this bill being introduced will negatively impact the other workers sharing this workplace—namely, the around 35 000 unpaid CFA firefighters—and have impact outside the scope of an EBA in that it seeks to covers workers from other awards, like BASOs [Brigade Administrative Support Program] and volunteer support officers and also has a potential impact on other emergency services like the SES. I believe that this EBA seeks to pre-empt government policy regarding the way different emergency services operate and cooperate.<sup>58</sup>

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56 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, p. 14.

57 Senator Chris Back, *Committee Hansard*, 19 September 2016, p. 30.

58 Mr Walter Aich, volunteer firefighter, Warragul District, *Committee Hansard*, 19 September 2016, p. 32.



3.71 Mr Aich also raised concerns regarding the EBA's impact on the CFA's command structure, particularly in operational situations:

I believe that the EBA impacts on the CFA's and, more importantly, the Chief Officer's ability to manage human and physical resources by imposing a consultation process that gives the UFU effective veto power over a range of matters, which go to operating procedures and fireground practices as well as resource development and distribution of employment, and by seeking to change the way that CFA volunteers are supported and work with their communities. I believe that the EBA does not give sufficient importance to the key role unpaid firefighters play in integrated stations and the need to manage that relationship carefully.<sup>59</sup>

3.72 The likelihood of the EBA acting to constrain CFA operational decisions was frequently raised by witnesses at the Macedon hearing. Mr Neil Beer, a CFA member, explained the practical effect of the EBA's constraint on command and control in the CFA:

It has already been mentioned about the chief officer's powers, particularly under command and control. Emergency services operations can be very complex and require the need for quick decision making to suit the requirements of an incident. Under the EBA, one of the important matters is the restriction of the chief officers to allocate resources. This is completely impractical and fraught with danger. We are an organisation with approximately 60 000 members and our expertise at combating incidents on a daily basis, as well as major long-term campaigns over many years, is well known and proven. The authority of the chief officer must be reinstated. I cannot stress this strongly enough.<sup>60</sup>

3.73 Mr Greg McManus, a volunteer firefighter from the North Geelong district agreed with the assessment of Mr Beer. Mr McManus noted that:

One of the key things being called out is the power of the chief officer to make decisions about the deployment of equipment and resources and personnel, and to do that in a flexible manner. In fact, many of you may know that the Victorian Fire Services Review, which was handed down late last year, actually talked about having flexibility and having a more modern way to deploy resources, particularly staff as support volunteers.<sup>61</sup>

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59 Mr Walter Aich, volunteer firefighter, Warragul District, *Committee Hansard*, 19 September 2016, p. 32.

60 Mr Neil Beer, private capacity, *Committee Hansard*, 19 September 2016, pp. 8–9.

61 Mr Greg McManus, volunteer firefighter, North Geelong District, *Committee Hansard*, 19 September 2016, p. 7.

## **Limitations on the role of volunteers imposed by the EBA**

### ***Work organisation and incident control***

3.74 Volunteer firefighters expressed considerable concern about the impact that the proposed EBA would have on the work performed by volunteers and the existing chain of command within the CFA. Volunteer firefighters were particularly concerned about clauses in the EBA that appeared to prevent career firefighters from reporting to volunteer firefighters.

3.75 Clause 35.4 (previously 36.4) currently states:

All employees covered by this agreement shall only report to operational employees under this agreement or at the rank of DCO [Deputy Chief Officer] or CO [Chief Officer] when responding to fire alarms or incidents under this agreement except in the case where the incident is a level 3 multi-agency incident or to a CFA/MFB [Metropolitan Fire Board] incident controller at an incident.

3.76 The VFBV expressed serious concerns about the negative impact of this clause upon the chain of command and control currently operating in the CFA because the clause limits the capacity of qualified volunteers to, amongst other things, control incidents. According to the VFBV, the effect would be to dismantle the CFA's integrated response to emergencies.<sup>62</sup>

3.77 The Victoria Emergency Service Association (VESA) pointed out that volunteers and staff in emergency service organisations train and operate under the current operational framework AIIMS (Australasian Interagency Incident Management System). VESA noted that AIIMS allows all agencies to work together cooperatively and be able to take on functional management of an event irrespective of which agency is in control or whether the responders are paid or volunteers.<sup>63</sup>

3.78 Mr Greg McManus, a volunteer firefighter from North Geelong, was also concerned about the EBA's intrusion into the organisation of the CFA, specifically in the command structure. He told the committee:

...clause 35, which is work organisation... is probably one of the most misunderstood and talked-about clauses. It goes to the fact of volunteers reporting to staff members or staff members reporting to volunteers on the fire ground. It talks about how, at level 3 incidents, staff members can report to volunteer incident controllers—and that is absolutely correct; it is right. But with a number of the incidents that people have spoken about here—and I hope the committee matters can understand this—most of these incidents are multitiered in their management structure, so, while you may have a volunteer incident controller, and staff members will report to them

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62 Volunteer Fire Brigades Victoria, *Submission 55*, p. 26.

63 Victoria Emergency Service Association, *Submission 19*, pp. 1–2.

as per the agreement, there may be two or three levels of management underneath that. You might have divisional commanders, sector commanders, strike team leaders. All of those—and many of the panel members here, including me, are qualified to do those roles. If I were a sector commander, for example, staff, according to this agreement, would not report to me, simply because I am a volunteer. I am fully qualified, fully trained and have done the role a lot of times, but that is what the agreement says. It is easy to say that they will report to volunteer incident controllers, but to have the staff going around the levels of management up to the incident controller completely breaks down the incident management structure. Having that discrimination against volunteers, of not being able to have them report to you simply because they are volunteers—even though they have the qualifications, skills and, in many cases as cited here, the local experience and knowledge—takes away from the ability of volunteers to work in a fully integrated way, as they should.<sup>64</sup>

3.79 Mr Lachlan Gales, a volunteer from the Wangaratta district, observed that the EBA clause which dictates reporting arrangements, and effectively sidelines volunteers, was criticised by the FWC:

What I would like to point out is that, when this agreement [the EBA] went to the Fair Work Commissioner with clause 35.4, he amended it; one of his seven recommendations was to amend it. His recommendation was to include a line that said 'except in the case where an incident is a level 3 multi-agency incident or to a CFA/MFB incident controller'. Prior to the Fair Work Commissioner's amendment, this clause read, 'All employees covered by this agreement shall only report to operational employees.' So the Fair Work Commissioner saw that that was a flaw and he added to it, but the Fair Work Commissioner did not fully understand—or it would seem he did not fully understand—the depth of the hierarchy of control we have. There are many, many positions of rank—or not rank but many, many positions of responsibility—within incidents beyond those members. So this, coupled with other clauses in the agreement, can effectively sideline volunteers from having command roles wherever operational members—sorry, career members—are on the scene.<sup>65</sup>

3.80 Mr Ford pointed out that in an integrated organisation such as the CFA, the notion that clauses in the EBA only affected career firefighters or integrated stations was wrong:

No brigade in CFA operates in isolation. Whenever there is an incident, depending on the incident, there will be multiple brigades, so an integrated brigade will give support to and be supported by volunteer brigades. If you

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64 Mr Greg McManus, volunteer firefighter, North Geelong District, *Committee Hansard*, 19 September 2016, p. 7.

65 Mr Lachlan Gales, volunteer firefighter, Wangaratta District, *Committee Hansard*, 19 September 2016, p. 11.

change the construct of the nature of CFA's integrated approach, you impact on volunteers.<sup>66</sup>

3.81 For example, Mr Ford stated that the incident reporting requirements in the EBA would destroy the CFA:

There is a clause in the EBA that says that paid firefighters or paid employees will not report to volunteers other than to the incident controller at level 3 incidents. The reality is that the chain of command at an incident is much more than the incident controller. There will be officers, paid or volunteer, working as divisional commanders, sector commanders, strike team leaders and crew leaders. If you break that chain of command and arbitrarily say that paid people will not report to volunteers, no matter what their qualifications and experience, you have deconstructed, you have dismantled, the CFA.<sup>67</sup>

3.82 Mr Ford also outlined how the EBA would have a negative impact on volunteers and volunteer support programs:

The community support facilitator program, which is a non-operational position that has existed in the past to build volunteer and community capacity, is disallowed by the EBA.

The brigade administrative support program is another core volunteer support program. It understands that the work of fire brigades is not just responding to incidents. It is running the fire brigade. It is being prepared. It is organising training. It is recording training. It is maintaining, preparing, acquiring and practising on equipment. It is working with communities. It is doing pre-incident plans and so forth. The brigade administrative support officer has become a critical support to volunteers who are finding that workload burdensome when they need to be able to put all their energy into other aspects of their work. That program is impacted by the EBA.

There is another support program, the volunteer support officer program, which, again, is a program aimed at assisting brigades with volunteer recruitment and retention and with engagement in the community. Where there is a gap in a brigade's response capability, it helps the brigade bridge that gap, plan training, target recruitment and target people to be available at certain times of the day. That program is directly impacted by the EBA.<sup>68</sup>

### ***Dispatch of seven career firefighters***

3.83 One of the clauses in the EBA that has attracted attention is clause 77.5 (previously clause 83.5) which relates to the dispatch of seven career firefighters from

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66 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, p. 8.

67 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, p. 8.

68 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, p. 8.

integrated stations to a fire ground incident before commencement of safe firefighting operations. On 1 June 2016, Commissioner Roe of the FWC emphasised that clause 77.5 (previously clause 83.5) only applied to integrated fire stations made a non-binding final recommendation on the EBA:

- Clause 83.5—the CFA will ensure a minimum of seven professional firefighters are dispatched to fire ground incidents before commencement of safe firefighting operations (applies to integrated stations in Districts 2, 7, 8, 13, 14, 15 and 27)
- the changes to clause 83.5 only relate to integrated stations and to the work of professional firefighters. The role of volunteers in remote and regional areas and in integrated stations is not altered by this Agreement.<sup>69</sup>

3.84 Clause 77.5 is densely worded and a clearer interpretation of the clause is given in the Joint Statement of Intent by the CFA and UFU.<sup>70</sup> It sets out the application of the clause and clarifies that the clause does not require seven career firefighters to be physically present at a fireground before firefighting operations can commence:

**Seven on the fire ground**

6. It is the mutual intention of the parties that clause 77.5, 43.2.7 and 44.13 of the Agreement operates in the following manner:

- a. The clause only relates to integrated stations in districts 2, 7, 8, 13, 14, 15 and 27, and to Warrnambool, Shepparton and Mildura once the additional resources to achieve seven professional firefighter positions per shift in Schedule 1 are in place.
- b. The requirement only applies to professional firefighters, it does not prevent volunteers from providing the services normally provided by volunteers.
- c. In the integrated stations where the provision applies it requires a minimum of seven professional firefighters to be dispatched to fire ground incidents before commencement of safe firefighting operations. It does not require seven professional firefighters to be physically at the fire ground before the commencement of firefighting operations.
- d. Incident controllers maintain their discretion as to the management of resources in the interests of public safety after undertaking a risk assessment/sizeup upon arrival at the fire/incident.<sup>71</sup>

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69 Fair Work Commission, Final recommendation, United Firefighters' Union of Australia v Country Fire Authority, 1 June 2016, Melbourne, pp. 2–3,  
<http://cfaonline.cfa.vic.gov.au/mycfa/Show?pageId=publicDisplayDoc&docId=026463>

70 The Joint Statement of Intent was released on 12 August 2016.

71 Joint Statement of Intent by the Country Fire Authority and the United Firefighters Union of Australia,  
<http://news.cfa.vic.gov.au/attachments/article/7676/Joint%20Statement%20of%20Intent.pdf>  
 (accessed 22 September 2016).

3.85 Given how contentious clause 77.5 has been, the committee was interested to hear the rationale behind this requirement. Mr Peter Spicer, Senior Station Officer at Craigieburn and a career firefighter, described to the committee at its hearing in Macedon on 19 September how he saw the need for seven professional firefighters to attend an incident:

Let us say we are going to a house fire. The house is going; it is alight and there are people reported inside. As an incident controller my first tasking will be for two crew wearing breathing apparatus to take a hose line, make an entry and start a search. There are my first two. I am the third—so we are now up to three—because I am the incident controller. When I am sending two people into that environment it is a totally uncontrolled environment. It is not like anybody else's workplace. It is totally uncontrolled. My job is to try and bring some control back to that and get rid of the variables.

I want another two breathing-apparatus operators on standby, outside the house, ready to assist those operators inside should the ceiling collapse, should fire increase and they get trapped or whatever that might be. It is a safety requirement that I have another two operators. Now we are up to five. These people are going inside with a hose line and they are going to put out the fire. They need a pump operator to provide water. There is my No. 6. The seventh guy should be, probably, managing BA control, knowing who is in and who is out, how long they have been gone and where they are. He will be doing that but he will also be running around, essentially, as a gopher outside the building. He will be getting a ladder off the truck. He will be running another hose line. He will be getting equipment for the guys inside as they need it. That is how we come to our seven.<sup>72</sup>

3.86 Mr Spicer explained that the need to have all seven firefighters be professionals rather than volunteers, arose from practical considerations. Mr Spicer argued that while volunteers are often qualified in the tasks required in a scenario like a house fire, it is not possible to predict whether the volunteers who attend the incident will be those qualified or not:

What we do not have is a guarantee that when I go out there with my crew of three I am going to get an additional four people who are qualified in those things to an incident. The only way I can be guaranteed I am going to get that No. 7 at the fireground when I get there or shortly after I get there is by despatching seven career firefighters. Even assuming that the volunteer brigade responding with me turns out with a full crew of four people on their truck, there is still no guarantee of the skills mix I am going to get. They may be BA qualified, they may not be. They may be pump operators, they may not be. We just do not know. As I said earlier, it is about removing those variables. Sure, I can use those people. If the volunteers turn up and they are breathing-apparatus qualified I will task them and I

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72 Mr Peter Spicer, Senior Station Officer Craigieburn, *Committee Hansard*, 19 September 2016, p. 19.

will use them in my fire suppression. But if they are not, my plan just went out the window and I have got two guys inside potentially compromised by a structural collapse or increasing fire activity, and I have no way to get them out—because the people who have turned up may not be qualified to do that.<sup>73</sup>

3.87 This sentiment underpins the view held by many volunteer firefighters that they are being treated as second class citizens. See also paragraphs 3.16–3.19.

### ***Provision of support and equipment***

3.88 The VFVBV noted that the EBA undermines key volunteer roles in the CFA:

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.<sup>74</sup>

3.89 Mr Aich, from the Warragul district, told the committee that the EBA would lead to discrimination against volunteers:

I believe that this EBA would introduce or strengthen elements of a previous EBA that will allow discrimination against unpaid or volunteer firefighters by, for example, stipulating different clothing and protective gear and by interfering with the specialist role that volunteers can take. It is also extremely ambiguous around the relationship between unpaid and paid firefighters within fireground command structures. I have not experienced it but it has been reported to me that even under existing arrangements a number of unpaid firefighters were told that their instructions would be refused simply because they were unpaid firefighters.<sup>75</sup>

3.90 Mr Greg McManus told the committee of an example in which the EBA had already caused significant problems for volunteers. He explained that the Lara Brigade, currently a fully volunteer brigade, is to have paid staff included as at 1 July 2018. Chief amongst the concerns of the Lara Brigade was the complete lack of consultation regarding the change in staffing. Mr McManus told the committee that

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73 Mr Peter Spicer, Senior Station Officer Craigieburn, *Committee Hansard*, 19 September 2016, pp. 19–20.

74 Volunteer Fire Brigades Victoria, *Submission 55*, p. 25.

75 Mr Walter Aich, volunteer firefighter, Warragul District, *Committee Hansard*, 19 September 2016, p. 32.

now the Lara Brigade faced many unanswered questions regarding equipment, command and control structures, operational decisions, and station logistics:

While there may be reasons to use staff or not use staff, what we need to understand is that that is not really the point about what this clause is about. There needs to be the ability to deploy resources in a flexible and creative way, as specified by the chief when he sees fit, taking into account all factors, including building the capability of the volunteer brigade in question. This takes away that flexibility. It takes away the ability of the chief officer to make that decision. What it says is that staff will move in on a certain date, in a certain way, and that the rostering will be done without flexibility and without consultation with the brigade...

We have not been consulted, as a brigade, about that change. In fact, what has happened is the opposite over the last few months. We have had several meetings with Deputy Chief Officer John Haynes of the CFA. We have talked about various service delivery options that enhance volunteer support and enhance the use of volunteers. Some of those options actually talk about the use of paid personnel to support us, but the decision to implement clause 44 in schedule 1 actually specifies that it be done in a very cookie-cutter way, without the flexibility of the chief to do that. That, for us, is a very clear example of where a change will be made. That is why, I guess, our brigade has been somewhat surprised, and we have members of parliament and Minister Merlino and Premier Andrews standing up on stage saying, 'No volunteers will be affected by this.' I am not sure how that can be, when our brigade will have paid personnel move in—our captain will be removed and be replaced by a paid firefighter—without any consultation or agreement from us. There are lot of changes that will happen to the brigade as a result of that.

I am glad that in the next group of panels you will have paid staff members and volunteers from integrated brigades, because I think there are some really great stories to share about the success of integrated brigades. But unfortunately that is not always the case. There are clauses in the document—for those that have read it, schedule 1 has a thing about lockup arrangements. It actually specifies in the station what rooms and what doors volunteers are and are not allowed to go into. We actually paid for some of that station ourselves. We had sausage sizzles and tin rattles. It also talks about cross-crewing. If and when staff are to be moved into our station, we could have fully qualified people who are currently qualified to operate vehicles and equipment but, because of the cross-crewing clause, they will not be allowed to get on vehicles with staff members...<sup>76</sup>

3.91 In his letter to the Victorian Emergency Services Minister, the former Chief Officer of the MFB raised concerns about the MFB-UFU enterprise agreement negotiations, which are similarly troubled to those between the CFA and UFU.

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76 Mr Greg McManus, volunteer firefighter, North Geelong District, *Committee Hansard*, 19 September 2016, p. 7.



Mr Rau outlined a number of serious examples of when the MFB was unable to roll out new equipment due to UFU refusals:

I wish to draw to your attention some examples under the current MFB enterprise agreement that have led to unacceptable situations:

1. For over two years, the MFB was unable to deploy new advanced appliances because the UFU refused to agree to their deployment. This came to a head during a week-long heatwave when I needed these appliances to be deployed to meet the MFB's responsibilities, in particular, the MFB's responsibilities to support Ambulance Victoria. In this instance I had a direct request for support from Ambulance Victoria (at SEMT) for additional MFB resources to deliver pre-hospital emergency medical response. Over a two day period consultation occurred with the union to try and resolve the matter. Due to the inability to reach agreement we sought the assistance of the Fair Work Commission (FWC) and as such, in the middle of the heatwave, two Deputy Chief Officers spent a further afternoon and evening at the FWC seeking a resolution to release these appliances into operations the following day, distracting us from critical operational activities.<sup>77</sup>

### **Cost of the proposed EBA**

3.92 The EBA sets out the requirement for the CFA to employ an additional 509 career firefighters by 30 June 2019:

The CFA will establish 509 additional career firefighter positions in accordance with the minimum staffing set out in the Charts in Schedule 1 as applicable from time to time. The CFA will deploy an additional 509 career firefighters into these substantive established positions between the date this agreement commences and 30 June 2019.<sup>78</sup>

3.93 The EBA also states that all employees covered by the terms of this agreement shall receive the following increase in wages:<sup>79</sup>

**Table 3.1—Wage increases under the proposed EBA**

1 November 2015	5% increase
1 May 2016	5% increase
1 November 2016	1.5% increase
1 May 2017	1.5% increase

77 Correspondence, Mr Peter Rau, former Chief Officer of the Victorian Metropolitan Fire and Emergency Services Board, to the Victorian Emergency Services Minister, the Hon James Merlino MP, 30 June 2016, [http://media.heraldsun.com.au/PDF/2016/Aug/1009\\_001.pdf](http://media.heraldsun.com.au/PDF/2016/Aug/1009_001.pdf), (accessed 4 October 2016).

78 Clause 44.20.2, *2016 CFA UFU Operational Staff Enterprise Agreement 2016 – FINAL*, p. 67.

79 Clause 89.1, *2016 CFA UFU Operational Staff Enterprise Agreement 2016 – FINAL*, p. 109.

1 May 2018	3% increase
1 May 2019	3% increase

Source: United Firefighters Union, *Submission 83*, Attachment 6, Country Fire Authority / United Firefighters Union of Australia Operational Staff Enterprise Agreement 2016, Clause 89.1.

3.94 Several submitters argued that the volunteer-based model is the only financially sustainable model available for emergency management in Australia.<sup>80</sup> These submitters were troubled by the overall cost of the EBA and the additional financial burden that it would impose on all landholders and businesses through the Fire Services Property Levy (FSPL).<sup>81</sup>

3.95 The National Farmers Federation (NFF) noted that the FSPL that Victorian farmers, households and businesses pay to fund the CFA is calculated on a combined fixed and variable basis, according to land value. A farmer whose property has a capital improved value of \$1 000 000 would pay roughly \$473 each year.<sup>82</sup>

3.96 Many active CFA volunteers are members of the VFF.<sup>83</sup> The VFF argued that the EBA should not be finalised until the full cost of the EBA had been subjected to independent assessment and the results made public. The VFF argued that the assessment should consider not only the impacts of additional staffing and wage increases including the cost of increased allowances, penalties and resources needed to employ the existing UFU members, but also the additional 509 paid firefighters that the EBA requires the CFA to employ by 30 June 2019.<sup>84</sup>

3.97 Mr Tudball stated the former CFA Board had serious misgivings about the financial implications of the EBA on the CFA and its ability to maintain infrastructure such as fire stations and fire trucks. Mr Tudball cautioned that the funding shortfall would impact on volunteer services and community engagement.<sup>85</sup>

3.98 Mr Tudball submitted that the CFA Board advised the former Victorian Minister for Emergency Services on 10 June 2016 that the CFA's Chief Financial Officer estimated that the EBA would cost the CFA \$627 million over the 4 years of

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80 For example see Mr John Peberdy, *Submission 4*, p. 5; Mr Michael Tudball, *Submission 5*, p. 2; Victorian Farmers Federation, *Submission 3*, p. 2.

81 Mr Michael Tudball, *Submission 5*, p. 5; Victorian Farmers Federation, *Submission 3*, p. 2; National Farmers Federation, *Submission 7*, pp. 10–11.

82 National Farmers Federation, *Submission 7*, pp. 10–11.

83 Victorian Farmers Federation, *Submission 3*, p. 2.

84 Victorian Farmers Federation, *Submission 3*, p. 2.

85 Mr Michael Tudball, *Submission 5*, pp. 4–5.

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the agreement. According to Mr Tudball, more recent advice to the former Board indicated that the EBA would be between \$671 and \$755 million over 4 years.<sup>86</sup>

3.99 Similarly, the VFF was concerned that increasing the number of CFA career firefighter from about 600 to more than 1000 would lead to a 'blowout' in the CFA budget.<sup>87</sup>

3.100 The NFF argued that even though the Victorian Government has agreed to cover the base salary costs of the 509 new career firefighters, the CFA would have to cover a range of associated costs such as station and equipment upgrades, training, overtime and increased allowances 'including reimbursement of driving license costs, a minimum one hours' pay per after hours disturbance with double time after that, stamp duty reimbursement for employees promoted or transferred to a new location who purchase a new property within 4 years of moving; and gym membership where gym facilities are not provided'. The NFF stated that these unfunded additional costs would have to be recovered through an increase to the FSPL, meaning that the farm sector would be burdened with a large proportion of the costs involved in resolving the CFA dispute.<sup>88</sup>

3.101 Contrary to these concerns, Ms Francis Diver, Chief Executive Officer of the CFA told the committee that there has been an undertaking from the Victorian Government to cover the costs of implementing the EBA:

CFA has undertaken a process to cost the agreement, and that is costing the agreement with all the clarifications that we had from my appointment, which is very different to some earlier costs that the previous CFA board and management had made some assumptions about. For that costing, we have reached an agreed figure with Treasury, and Treasury has provided in writing—...The costs of the implementation of the enterprise agreement will be fully covered by government, and there will be no cross-subsidisation from volunteer initiatives. In addition to that, when the board resolved to authorise the agreement going to the vote, the board also resolved to ensure that there was no cross-subsidisation. Both at the government level funding will come, and at the board level there will be no cross-subsidisation.<sup>89</sup>

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86 Mr Michael Tudball, *Submission 5*, p. 5.

87 Victorian Farmers Federation, *Submission 3*, p. 2.

88 National Farmers Federation, *Submission 7*, pp. 10–11; Victorian Farmers Federation, *Submission 3*, p. 2.

89 Ms Francis Diver, Chief Executive Officer, CFA, *Committee Hansard*, 28 September 2016, pp. 95–96.

### **Potential inconsistency of the EBA with Equal Opportunities legislation**

3.102 Mr Tudball submitted that the former CFA Board had alerted the former Victorian Emergency Services Minister on 10 June 2016 that certain clauses in the EBA may be discriminatory:

The clear advice of Melina Richards SC, Crown Counsel of the State of Victoria with Rebecca Preston, Counsel is that the proposed EA includes discriminatory, unlawful terms. In particular, the advice is that there are a number of clauses that would place the CFA in breach of its obligations to provide reasonable accommodation of an employee's responsibilities as a parent or carer and to make reasonable adjustments for an employee with a disability. This advice has been shared with you.<sup>90</sup>

3.103 Ms Nolan told the committee that, based on legal advice provided to the CFA, the proposed EBA would exacerbate the lack of gender diversity within the CFA and would discriminate against people with carer responsibilities who are unable to work full-time.<sup>91</sup>

3.104 Similarly, the VFF argued that all clauses in the EBA that require the CFA to gain UFU approval on a case-by-case basis to employ casual and part-time staff should be removed because they act as a major barrier to women working as paid CFA firefighters.<sup>92</sup>

3.105 Mr Tudball noted that diversity is a matter the FWC must take into account in exercising its functions (s.578(c)) as well as being an objective of the FW Act (s.3c). However, the former CFA Board advised the former Victorian Emergency Services Minister that the Board itself was of the view that it must also be satisfied that the EBA was lawful:

It is of no comfort to the Board to suggest the Commission (Fair Work Commission) is the entity that 'must be satisfied' of the relevant requirements on approval. It is the view of the Board that it must be comfortable that the agreement is lawful and capable of being approved. In fact, the Board would have to disclose any contrary view it held.<sup>93</sup>

3.106 However, Professor Andrew Stewart noted that sections 194(a) and 195 of the FW Act already provide that an EBA cannot contain terms that discriminate against employees on the basis of gender, family or caring responsibilities. Therefore, to the

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90 Mr Michael Tudball, *Submission 5*, p. 3.

91 Ms Lucinda Nolan, private capacity, *Committee Hansard*, 28 September 2016, pp. 27 and 30.

92 Victorian Farmers Federation, *Submission 3*, p. 2.

93 Mr Michael Tudball, *Submission 5*, p. 4.

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extent that the proposed EBA between the UFU and the CFA might have discriminatory terms in it, the FWC would be required to reject it.<sup>94</sup>

### **Relationship of volunteers to their local communities**

3.107 Mr Peberdy drew attention to the unique relationship between volunteers and their community and the unique understanding and skill set that they possess:

[Volunteers] understand the environment in which they are living and how best to communicate with the locals. They have a vested interest in looking after their family, neighbours, property and the local environs.

This understanding is not picked up in a short space of time. It comes from living in the area and understanding how to deal with the challenges the environment. Many of the volunteers have skills developed through living off the land, or providing services to those who do.<sup>95</sup>

3.108 A similar point was made by the NFF which observed that there are 'approximately 220,000 volunteer rural firefighters in Australia and a further 5900 employees. In other words, more than 97% of rural firefighters are volunteers'.<sup>96</sup>

3.109 The NFF went on to state that:

Local fire brigades are an important part of life in rural communities. They are made up of farmers, their families and friends. Volunteers give up their time and sometimes risk their lives to help others in times of emergency. They are called on to respond to a range of emergency situations, including bush and grass fires, house and structure fires, storm damage, search and rescue, motor vehicle accidents, community education and bush fire mitigation. This important contribution is one that should be recognized and supported by all Australian governments. Volunteers deserve better than to be put in a position where third party interests can dictate what they can and cannot do to support their communities in times of crisis.<sup>97</sup>

3.110 The VFBV drew attention to the fact that the unique advantage of substantial numbers of emergency service volunteers was the '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'.<sup>98</sup>

3.111 Witnesses at the Macedon hearing emphasised the important relationship between the volunteer firefighters and their local communities. Mr Lachlan Gales, a

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94 Professor Andrew Stewart, *Submission 17*, p. 2; Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 37.

95 Mr John Peberdy, *Submission 4*, p. 5.

96 National Farmers Federation, *Submission 7*, p. 7.

97 National Farmers Federation, *Submission 7*, p. 7.

98 Volunteer Fire Brigades Victoria, *Submission 55*, p. 17.

volunteer firefighter from the Wangaratta district, stressed the importance of the volunteers in communities:

CFA brigades are the quintessential example of how the community can effectively join together for the greater good. People are attracted to CFA because it allows them to make a contribution knowing they have autonomy and influence within an organisation that was created by volunteers for volunteers. This EBA is in effect a grasping of our autonomy and influence by a minority group within the organisation for their own benefit. If adopted, it will weaken CFA and diminish volunteerism by creating an environment not conducive to attracting or retaining the resilient, engaged and motivated volunteers that our communities have relied on for decades.<sup>99</sup>

3.112 Mrs Sharron Jones, another volunteer firefighter from the Wangaratta district, echoed Mr Gales' comments:

In my own brigade, which is the Tolmie rural fire brigade, we are the community; we are the people who live in the community and we are the people who protect our community. We are the people who go out and inspect houses and give assistance with mitigation and so on. Our community is why we do this, and the community supports us entirely, so we are the community.<sup>100</sup>

3.113 Miss Eliza Sawyer, a volunteer firefighter from the Lilydale district, explained to the committee that as the fire prevention coordinator at the Macclesfield fire brigade, a large part of her role is community safety and education. The focus on education extends to providing Fire Safe Kids sessions at the local primary school, something Miss Sawyer described as creating an emotional connection between the community and the brigade.<sup>101</sup> Under the EBA, however, Miss Sawyer's ability to deliver community education programs will be restricted:

As per clause 17 of the EBA, our capacity to deliver community education will be prevented or restricted, despite us holding various qualifications in community education. I hold the Fire Safe Kids presenter qualification and burns table presenter qualification, which include nationally recognised units in public safety. We are experts in our own community and their needs. In line with the vision of the CFA, we take the community with us. Being a small rural community, I fail to see how our community will be better off with community education external to our local brigade. As a

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99 Mr Lachlan Gales, volunteer firefighter, Wangaratta district, *Committee Hansard*, 19 September 2016, p. 5.

100 Mrs Sharron Jones, volunteer firefighter, Wangaratta district, *Committee Hansard*, 19 September 2016, p. 15.

101 Miss Eliza Sawyer, volunteer firefighter, Lilydale district, *Committee Hansard*, 19 September 2016, p. 8.

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result, I believe that our community will be left behind as we lose the connections that we have made with them over the years.<sup>102</sup>

### Scope of the bill

3.114 Under the bill, a designated emergency management body is defined as:

- (a) either:
  - (i) the body is, or is a part of, a fire-fighting body or a State Emergency Service of a State or Territory (however described); or
  - (ii) the body is a recognised emergency management body that is prescribed by the regulations for the purposes of this subparagraph; and
- (b) the body is, or is a part of a body that is, established for a public purpose by or under a law of the Commonwealth, a State or a Territory.<sup>103</sup>

3.115 Submitters in support of the amendments argued that the bill was necessary to ensure that the rights of paid firefighters and volunteers were equally represented. This view was articulated by Mr Ford, CEO of VFBV:

I try to imagine if the [amended] Fair Work Act had already been in place months ago. It would have laid a clearer path for everyone to work through, there would have been a fair playing field where volunteers had a voice on matters affecting them and there would have been a clear process to deal with differences ... in our mind the fix being proposed is pretty simple. It is innately fair, it is consistent with what everyone is either saying they want or claiming to be already reflected in the EBA.<sup>104</sup>

3.116 A number of volunteer firefighters also expressed strong support for the bill as drafted. For example, Mr Bill Stockdale, Secretary of Tatura fire brigade, said:

The district council strongly supports the passing of the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 as a safeguard for all rights of all volunteers in carrying out their vital community safety role unfettered by obstacles placed as a result of industrial agreements.<sup>105</sup>

3.117 Mrs Mary-Anne Egan, volunteer firefighter, Wangaratta district, also argued forcefully in support of the bill, suggesting that it would:

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102 Miss Eliza Sawyer, volunteer firefighter, Lilydale district, *Committee Hansard*, 19 September 2016, p. 8.

103 Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016, *Explanatory Memorandum*, p. i.

104 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, pp. 3-4.

105 Mr Bill Stockdale, Secretary of Tatura fire brigade, *Committee Hansard*, 19 September 2016, p. 2.

...give volunteer bodies a place at the table, in Victoria, where volunteer management and ops belong. Your bill offers us hope. It offers hope that the industrial agreements will not interfere with legislation which protects the rights of volunteers who give their services freely each and every day and night of the year if needed.<sup>106</sup>

3.118 However, some inquiry participants were concerned about the scope of the bill, arguing that there was uncertainty about the extent of its application. For example, the Victorian Government criticised the scope of the bill, suggesting that it:

...creates significant uncertainties. A number of clauses of the Bill are ambiguous and ill-defined, and on one reading, could apply to a wide range of matters in agreements. This is likely to lead to uncertainty for parties negotiating enterprise agreements as to which clauses may or may not be unlawful and result in delay in the bargaining process and lengthy and protracted litigation.<sup>107</sup>

3.119 Ryan Carlisle Thomas (RCT) Lawyers argued that while the Explanatory Memorandum states that the bill is intended to apply only to 'volunteer-based emergency management bodies', the bill's scope seems much wider because it refers to a 'State Emergency Service of a State or Territory (however described)'.<sup>108</sup>

3.120 The Police Federation of Australia (Police Federation) pointed out that only Victoria Police and the Australian Federal Police currently operate under the FW Act and that all other jurisdictions except the Northern Territory (NT) operate under various state acts.<sup>109</sup>

3.121 The Police Federation was greatly concerned that the bill would permit an emergency management body to be declared as such by regulation and that this could reduce the use of volunteers by police forces. The Police Federation observed that both the Australian Federal Police and Victorian Police use volunteers in a limited number of non-operational roles. The Police Federation noted that permitting volunteer bodies to make submissions to the FWC would be likely 'to hinder and restrict police forces from encouraging the use of volunteers'. Consequently, the Police Federation submitted that the bill should be amended to 'expressly state that the Commonwealth cannot declare a police force of any Australian jurisdiction' to be an emergency management body.<sup>110</sup>

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106 Mrs Mary-Anne Egan, volunteer firefighter, Wangaratta district, *Committee Hansard*, 19 September 2016, p. 38.

107 Victorian Government, *Submission 1*, p. 1.

108 Ryan Carlisle Thomas Lawyers, *Submission 8*, p. 14.

109 Police Federation of Australia, *Submission 6*, p. 1. The police force in the NT operates under an arbitral tribunal.

110 Police Federation of Australia, *Submission 6*, pp. 1–2.



3.122 The Ambulance Employees Australia Victoria (AEAV) also expressed concern over the 'ambiguous' scope of the bill:

The Bill provides no guidance, criteria or considerations as to which emergency service organisations will be covered by the legislation. The AEAU can only conclude that Ambulance Victoria will be considered a 'designated emergency management body'. The AEAU, as the Ambulance Union within Victoria, objects in the strongest terms to having individuals not covered by our enterprise agreements intervening in the setting of terms and conditions of its members.<sup>111</sup>

3.123 The perceived uncertain scope was also an issue for the Australian Nursing and Midwifery Federation (ANMF) Victorian Branch. The ANMF highlighted its concern that, if enacted, the bill would impact on the many volunteers within the Victorian health service:

...Victorian hospitals and health services would meet the description of a designated emergency management body given their role as part of the State Health Emergency Response Plan under which state health command can be implemented. Of course many hospitals have volunteers and thus the Bill might impact on a huge area of volunteerism and on employers' involved in enterprise bargaining with many thousands of employees. Similarly public hospital emergency departments may be caught by the definition simply because of their role in the provision of co-ordinated state emergency health services.<sup>112</sup>

3.124 The ANMF (National) also observed that it was unclear about the type of organisations that would be affected by the bill:

Of specific concern to the ANMF is that several elements of the definition of 'recognised emergency management body' could easily apply to various organisations in the health industry which employ nurses and midwives and engage volunteers, for example public hospitals, Australian Red Cross, etc.<sup>113</sup>

3.125 The use of regulations to include or exclude organisations from being impacted by the bill was a second area of concern. For example the ANMF Victorian Branch said:

The reliance on regulations to determine the application of the Bill, if passed, underscores the fact that it is selective and targeted at the CFA but in an attempt to appear to be of more general application the Bill has created uncertainty. The necessity of having Regulations to include, and then also exclude, agencies from the scope of the Bill underscores its uncertain reach. Of course this uncertainty is the result of the highly political motivation of the Bill itself.

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111 Ambulance Employees Australia Victoria, *Submission 13*, p. 3.

112 Australian Nursing & Midwifery Federation Victorian Branch, *Submission 14*, p. 3.

113 Australian Nursing & Midwifery Federation, *Submission 89*, p. 3.

3.126 The Australian Council of Trade Unions (ACTU) also expressed unease over the reliance on regulation to clarify the application of the bill:

... the scope of agreements it [the bill] applies to is uncertain and is subject to change by mere regulation. The cumulative effect of section 109(3)(d) of the Fair Work Act and the proposed section 195A(4) is that the only requirement confining the scope of operation of the Bill is that the relevant employer is a body, or part of body, that is established for a public purpose by or under a law of the Commonwealth, a State or Territory. The remainder is entirely left up to regulations and thereby lacks any effective Parliamentary scrutiny. Beyond the current discussion about the CFA, we simply do not know which public instrumentalities will be declared to be covered by these provisions.<sup>114</sup>

3.127 In response to concerns about the scope of the bill, the Commonwealth Department of Employment advised the committee that the bill was 'deliberately narrow in its application' and would only cover certain public sector organisations in Victoria, the ACT and the Northern Territory. In other states, these bodies are covered by state workplace relations law, and the Commonwealth does not have constitutional power to cover them unless they are constitutional corporations.<sup>115</sup>

3.128 The Department also specifically addressed the concerns raised by the Police Federation and the Australian Nursing and Midwifery Federation (ANMF) with respect to the scope of the bill:

To be clear, police forces and hospital workers are not covered by the legislation. Neither fall within the meaning of 'designated emergency management bodies', to which the amendments will apply, as set out at proposed section 195A(4)(a)(i), as they are not firefighting or State Emergency Service bodies. There is no intention to prescribe these bodies by regulation.<sup>116</sup>

### ***Committee view***

3.129 The committee notes the concerns expressed by employee organisations including the police and health services unions that the bill may have unintended consequences for their operational practices and use of volunteers. The committee also notes the unease expressed over the use of regulation to clarify the application of the bill.

3.130 The committee is reassured that the Department of Employment has drafted the bill to be deliberately narrow in its application, and is convinced that neither police

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114 Australian Council of Trade Unions, *Submission 9*, p. 2.

115 Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Commonwealth Department of Employment, *Committee Hansard*, 28 September 2016, p. 105.

116 Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Commonwealth Department of Employment, *Committee Hansard*, 28 September 2016, p. 105.

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forces nor hospital services fall within the meaning of 'designated emergency management bodies'.

3.131 Nevertheless, in light of the concerns expressed, the committee believes the government should proceed cautiously and with full consultation before considering any future extension of the bill through regulation.

### **Entitlement for volunteer bodies to make submissions**

3.132 The Victoria Emergency Service Association (VESA) considered that 'volunteers currently have few rights, are not recognised for their professional expertise, and are not given the respect they warrant for the work they undertake for the community'. VESA observed that, in many instances, SES volunteers have to accept directives through a chain of command and that volunteers may be subject to unfair treatment from paid employees.<sup>117</sup>

3.133 Consequently, VESA saw the provision for volunteer representative bodies to appear before the FWC as a 'significant step towards recognising the rights of volunteers'.<sup>118</sup>

3.134 The inability of affected volunteer representative bodies to make submissions to the FWC on matters impacting their members was a matter of significant concern for the Volunteer Fire Brigades Victoria (VFBV), as outlined by Mr Ford:

We find it hard to understand that an EBA can be adopted by the FWC under the current Commonwealth Fair Work Act with a raft of clauses that reach beyond the intended realm of the Fair Work Act and beyond the realm of employees' pay and conditions into areas that clearly impact on volunteers. Then when volunteers say, 'Hang on, how about a fair go here for volunteers? Hang on, you've gone too far. Could you leave those things that are beyond the pay and conditions out of the EBA and let them be dealt with by due process consistent with the CFA Act but also gives a voice to the volunteers,' we are told that we are sticking our nose into someone else's business. We are told that now these things are in the Fair Work process, even though they impact on volunteers in our own organisation built by volunteers on issues that directly impact on volunteers and on volunteer rights, we have no rights to have a say or for volunteer rights to be fairly considered.<sup>119</sup>

3.135 Mr Ford concluded that VFBV was 'not asking for anything other than respect and effective protection of volunteers' roles and rights'.<sup>120</sup>

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117 Victoria Emergency Service Association, *Submission 19*, p. 1.

118 Victoria Emergency Service Association, *Submission 19*, p. 1.

119 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, p. 2.

120 Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria, *Committee Hansard*, 28 September 2016, p. 2.

3.136 A number of volunteer firefighters expressed concern that volunteer organisations have not been permitted to make submissions to the FWC on the impact of matters affecting their members. For example, Mr Robert Cooke highlighted the unfairness of the situation:

When the EBA went to the Fair Work Commission, they could only hear one side of the argument. The legislation that is there precluded them from hearing from the CFA, because it is a volunteer organisation, and that is what we need changed. This EBA needs to be annulled, and they need to start again. Then we will get back to an even playing field.

If I was the commissioner and that was put in front of me, I would go to the government and say, 'The law isn't right. I can only hear one side of the argument. I cannot hear the other side of it and I am called a fair work commissioner. How is that fair?'<sup>121</sup>

3.137 Dr Morehead advised that the bill addresses these concerns by enabling certain volunteer bodies to make submissions in matters before the FWC that relate to enterprise agreements and workplace determinations, and that affect or could affect the volunteers of a designated emergency management body.<sup>122</sup>

3.138 Dr Morehead explained that the reason for including this right in the bill was to ensure that volunteer organisations can:

... have a say and present their views and concerns in matters before the FWC about, for example, any clause in a proposed enterprise agreement which could potentially impact on volunteers. Previously, CFA volunteers tried to be represented at the FWC conciliation proceedings in May 2016 so they could put their concerns on record. However, Commissioner Roe determined that the volunteers did not have sufficient standing to be heard. This amendment ensures that volunteers will be able to make submissions in the future.<sup>123</sup>

3.139 RCT Lawyers observed that if a volunteer association currently had a proper interest in a matter arising from the FWC it might apply to be heard. However, RCT Lawyers argued that inserting a statutory entitlement to make a submission was flawed because it removed the FWC's discretion on who to hear from, required the FWC and bargaining representatives 'to address submissions made regardless of merit and proper interest', provided 'for a stranger to the bargaining process to intrude into the bargaining between the industrial parties', and would add complexity to an enterprise bargaining process.<sup>124</sup>

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121 Mr Robert Cooke, volunteer firefighter, Wendouree district, *Committee Hansard*, 19 September 2016, p. 36.

122 Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, *Committee Hansard*, 28 September 2016, pp. 104-105.

123 Dr Alison Morehead, Group Manager, Workplace Relations Policy Group, Department of Employment, *Committee Hansard*, 28 September 2016, pp. 104-105.

124 Ryan Carlisle Thomas Lawyers, *Submission 8*, p. 6.

3.140 Similarly, Professor Stewart noted that the FWC currently has the 'general discretion' to hear from affected parties such as volunteer organisations and observed that the creation of a statutory right for volunteer organisations to be heard '...goes beyond a right that is simply not available to anyone else'.<sup>125</sup>

3.141 Professor Stewart emphasised the unusualness of granting a statutory right to be heard to volunteer organisations when that same right was not afforded to any other stakeholder, including the relevant minister:

What this bill would do is remove any discretion from the FWC but only in relation to volunteer organisations, so the Victorian government would not have a right to have a say, the federal minister would not have a right, volunteers would not have a right but organisations, as long as they are incorporated or mentioned in the regulations, would.<sup>126</sup>

3.142 The ACTU described the provision of statutory right to be heard as 'puzzling',<sup>127</sup> contending that there are a number of problems with the proposal:

These provisions are curious primarily because they are not in any way linked or limited to the issue of the presence or otherwise of 'objectionable emergency management terms' in agreements or workplace determinations. They effectively require the FWC to consider submissions that may extend to matters that are entirely irrelevant to the questions at issue in a given matter before the Commission – for example a volunteer association's views on whether or not a majority support determination ought to be issued. This may create unnecessary delay and cost.<sup>128</sup>

### **Constitutionality of the bill**

3.143 Some submitters questioned the basis on which the Commonwealth was able to legislate in an area that restricted the ability of a state government to conclude an industrial agreement with its employees.

3.144 The Prime Minister acknowledged that while the states are responsible on a constitutional and practical basis for the provision of firefighting services, the state government of Victoria had 'abdicated its authority on this matter and capitulated to the Union'.<sup>129</sup>

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125 Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 39.

126 Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 39.

127 Australian Council of Trade Unions, *Submission 9*, p. 3.

128 Australian Council of Trade Unions, *Submission 9*, p. 3.

129 Prime Minister, the Hon Malcolm Turnbull MP, Second reading speech, *House of Representatives Hansard*, 31 August 2016, p. 80.

3.145 RCT Lawyers noted that the bill imposed restrictions on a state agency's dealings with employees by removing agency discretion and the right to determine for itself appropriate arrangements.<sup>130</sup>

3.146 RCT Lawyers also noted that the Explanatory Memorandum refers to the Commonwealth's power to legislate being derived from the states' referral to the Commonwealth of 'workplace relations matters' in section 51(xxxvii) of the Constitution. In the case of Victoria the referral is given effect by the *Fair Work (Commonwealth Powers) Act 2009 (Vic)* and Division 2A of Part 1-3 of the FW Act. However, given the referral of legislative power relates to the terms and conditions of employment contained in enterprise level agreements, RCT Lawyers noted it was doubtful whether the referral of legislative power would be supported in circumstances where the objective of the bill was not directed to employees but rather was to protect the role of emergency service volunteers.<sup>131</sup>

3.147 Professor Andrew Stewart began by observing that the provisions of the bill could only come into play in the dispute between the CFA and the UFU if three conditions were satisfied, namely that the EBA:

- had the support of both the CFA board and a majority of the CFA employees to be covered by the agreement;
- had been found by the Victorian Supreme Court to be consistent with the legislation governing the CFA (since otherwise the Court would presumably not have lifted the injunction that at the time of writing is restraining the CFA Board from concluding any agreement); and
- met the other requirements of the FW Act, including that the agreement not contain terms that discriminate against employees on the basis of gender, family or caring responsibilities, etc. (see FW Act ss 194(a), 195).<sup>132</sup>

3.148 With respect to the second dot point above, Professor Stewart therefore noted that the question of whether an EBA contravenes elements of state law is a matter 'that not only can be put before a state court but has been put before a state court' and that the CFA Board can only put the proposed EBA to its employees 'if the Victorian Supreme Court is satisfied that the CFA board can lawfully agree to the agreement'.<sup>133</sup>

3.149 On the question of constitutionality of the bill, Professor Stewart observed that there was an argument the bill was unconstitutional:

The High Court has said in a series of decisions that it is perfectly okay for federal law to regulate the wages and employment conditions of state government workers or state government agency workers but there are limits. One of the limits articulated in a 1995 decision involving the

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130 Ryan Carlisle Thomas Lawyers, *Submission 8*, p. 9.

131 Ryan Carlisle Thomas Lawyers, *Submission 8*, p. 10.

132 Professor Andrew Stewart, *Submission 17*, p. 2.

133 Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 37.

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Australian Education Union and also the Victorian government, as it happens, was that the Commonwealth cannot tell a state who or how many people it employs to do work. There is an argument that would be exactly what the Commonwealth would be doing with this legislation; it would be having a federal body, the Fair Work Commission, in effect overwriting the decisions of a state government body like the CFA when it decides how it wants to structure its relations with both its employees and its volunteers.<sup>134</sup>

3.150 Mr Jeremy O'Sullivan, Chief Counsel Workplace Relations Legal at the Commonwealth Department of Employment (the Department) refuted the proposition that the prospects of a constitutional challenge were high.<sup>135</sup> He advised the committee that the government had legal advice from the Australian Government Solicitor that the bill was 'within Commonwealth constitutional power'. Mr O'Sullivan also pointed out that in drafting the bill the Department had 'carefully considered the implied constitutional limits on the power of the Commonwealth to legislate with respect to state public sector employment'.<sup>136</sup>

### ***Committee view***

3.151 The committee notes that the potential constitutionality of the bill has been raised by some submitters. The committee heard from the Commonwealth Department of Employment that the Department had given due consideration to the implied constitutional limits on the power of the Commonwealth to legislate with respect to state public sector employment. Furthermore, the committee heard that the Department had expert legal advice from the Australian Government Solicitor that the bill was within power. On the basis of the evidence provided by the Department of Employment, the committee is therefore persuaded that the bill is constitutionally valid.

### **Overall committee view**

3.152 It is abundantly clear from the evidence presented to the committee in Macedon that both volunteer and career firefighters display an incredible level of professionalism and commitment in carrying out their roles. On behalf of the wider community, the committee commends both volunteer and career firefighters and thanks them for their dedication to keep the community safe.

3.153 With these remarks in mind, the committee considers it highly regrettable that the dispute in Victoria has driven a wedge between volunteer and career firefighters when both parties are integral to firefighting efforts across Victoria.

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134 Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 38.

135 Mr Jeremy O'Sullivan, Chief Counsel, Workplace Relations Legal, Commonwealth Department of Employment, *Committee Hansard*, 28 September 2016, p. 111.

136 Mr Jeremy O'Sullivan, Chief Counsel, Workplace Relations Legal, Commonwealth Department of Employment, *Committee Hansard*, 28 September 2016, p. 110.

3.154 The committee acknowledges the legitimate safety concerns raised by career firefighters at the integrated stations arising from incidents such as the Fiskville Training Centre over which the CFA had responsibility. The committee also heard from career firefighters that there had been a distinct unwillingness over many years by the CFA to negotiate in good faith over safety concerns and the development of an agreed set of safety and Standard Operating Procedures (SOPs). In this regard, the committee notes that the inquiry currently being conducted by the Environment and Planning Committee of the Victorian Parliament into Fire Season Preparedness has also heard evidence of a poor culture at the CFA and an inability by the CFA to make substantive progress on important issues.

3.155 Nevertheless, from the evidence presented to the committee, it is clear that many of the clauses in the proposed EBA are best characterised as SOPs. The committee heard from career firefighters at the Macedon hearing that the EBA may not be the most appropriate place for SOPs. The committee is firmly of the view that a preferable outcome would be to have a stand-alone document that contained an agreed set of SOPs.

3.156 The committee further notes that the key areas of contention in the EBA for both the volunteers and the former CFA board and management do not relate to wages, but rather relate to those clauses in the EBA that are best characterised as SOPs.

3.157 The committee is therefore of the view that it is incumbent on both the CFA management and board to redouble its efforts to successfully develop a set of SOPs that are agreeable to both career and volunteer firefighters. The committee is firmly of the view that these SOPs should sit outside of any EBA negotiated between the UFU and CFA.

3.158 Given the above, and while cognisant of the frustration faced by career firefighters, and aware of the overarching importance of firefighter and community safety, the committee nevertheless considers that the UFU has pursued a highly inappropriate strategy by inserting clauses into an EBA that in effect amount to SOPs. This has proven to be highly counter-productive and has contributed enormously to the divisive nature of the dispute.

3.159 At this point, it is appropriate to acknowledge that the CFA Act places particular responsibilities on the board and management of the CFA. Furthermore, the CFA Act also accords explicit statutory recognition of the fact 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.

3.160 The committee further recognises that the Volunteer Charter is acknowledged by the CFA Act and is a statement of the commitment and principles that apply to the relationship between the Government of Victoria, the CFA, and its volunteers. The CFA Act recognises that the Volunteer Charter requires, amongst other things, that the Government of Victoria and the CFA commit to consulting with the VFBV on behalf



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of volunteer officers and members on any matter that might reasonably be expected to affect them.

3.161 The uncompromising insistence by the UFU leadership that the CFA agree to a raft of clauses in the EBA that would be better dealt with elsewhere led to the resignations of the CFA Chief Executive Officer, the CFA Chief [Fire] Officer, the Minister for Emergency Services, and the removal of the entire CFA Board.

3.162 In effect, the insistence that the CFA agree to the UFU position on the EBA placed the former CFA board, management and Minister for Emergency Services in an invidious position. This occurred because the proposed EBA would adversely affect how the CFA manages its large contingent of volunteer firefighters and would be inconsistent with the current Victorian emergency management legislation under which the CFA is required to operate. The proposed EBA would therefore place the CFA in breach of its statutory obligations.

3.163 Moreover, the terms of the proposed EBA would have a significant adverse impact on CFA volunteers by, amongst other things, restricting the types of work ordinarily performed by volunteer firefighters. In addition, the requirement under the proposed EBA for the CFA to reach agreement with the UFU over a whole range of clauses, including many which directly affect volunteers and how the CFA manages its volunteer workforce, effectively excludes volunteers from negotiations, the results of which may have an adverse impact on them. The proposed EBA would therefore contravene the provisions of the Volunteers Charter that are acknowledged by the CFA Act.

3.164 Furthermore, the attempted resolution of the dispute by the FWC was, by the very nature of what the FWC is required to take notice of, incapable of considering both the legitimate concerns of affected stakeholders such as the overwhelmingly volunteer workforce of the CFA as well as the wider jurisdictional implications of the EBA for the CFA Act. In effect, the nature of the FWC as it currently operates effectively excludes CFA volunteers from having a voice in a forum where their particular interests are being affected. This is clearly unacceptable and will inevitably have devastating consequences for the continued participation of volunteers in the CFA.

3.165 It is therefore clear to the committee that the proposed EBA threatens the long-standing relationship between the CFA and the community. This would be a tragic outcome for what has been a world-renowned firefighting organisation that has, thus far, successfully integrated a large and devoted volunteer workforce with a small but dedicated contingent of career firefighters. Furthermore, the unravelling of the enormous volunteer commitment to the CFA would undermine the safety of large swathes of Victoria.

3.166 It is against this backdrop that the bill must be considered. Certainly, the committee considers that it would be preferable for the EBA to exclude clauses that are more accurately characterised as SOPs. Furthermore, the CFA, the UFU, and the

VFBV should engage in good faith negotiations to develop a separate document that sets out the SOPs for the CFA with a view to maximising firefighter and community safety.

3.167 Nevertheless, the committee must consider the circumstances before it. Firstly, the exclusion of volunteers from an EBA process that intimately affects them is at the heart of the firefighting dispute in Victoria. The bill corrects this anomaly by providing relevant volunteer bodies with a right to make a submission to the FWC on matters that affect the volunteers that they represent.

3.168 Secondly, the proposed EBA between the CFA and the UFU will undermine the ability of the CFA to properly manage its large and invaluable volunteer contingent. The bill addresses these perverse outcomes by preventing an EBA from including any term that would impact the capacity of emergency management bodies to properly manage their volunteer operations (including requiring the body to consult, or reach agreement with, any other person or body, or restricting or limiting the body's ability to recognise, value, respect or promote the contribution of its volunteers).

3.169 Thirdly, if approved, the EBA would leave the CFA in breach of its statutory obligations under Victorian law, namely the CFA Act. The bill addresses this outcome by precluding an EBA from including any terms that would override the provisions of state legislation governing emergency management bodies. The bill clarifies this position in a new note which reads 'a term of an enterprise agreement could be an unlawful term and of no effect if it requires or permits a designated emergency management body to act other than in accordance with a State or Territory law and this affects or could affect the body's volunteers'.<sup>137</sup>

3.170 Finally, the bill will render ineffective any terms such as those outlined above in an EBA, regardless of whether the agreement comes into effect before or after the bill is passed. This offers protection to volunteers who may suffer adverse consequences from an EBA that has already been agreed, but it still allows the EBA to otherwise continue to operate.

3.171 Having considered all the evidence before it, the committee is persuaded that the bill is a reasonable, necessary and proportionate response to the current anomalies in the *Fair Work Act 2009* and urges the Senate to pass the bill.

## **Recommendation 1**

**3.172 The committee recommends that the Senate pass the bill.**

**Senator Bridget McKenzie**  
**Chair**

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137 Clause 2, Schedule 1, Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016.