

Non-government Senators' Dissenting Report

Executive Summary

Non-government Senators summarise the key aspects of this inquiry as follows:

- As a result of 3 years of collective bargaining, and following recommendations from the Fair Work Commission, agreement has been reached between the Board of the Country Fire Authority (CFA) and the United Firefighters Union of Australia (UFU) on the Operational Staff Enterprise Agreement 2016 (EBA).
- Clause 7A of the agreement makes it clear that the role of volunteers is not altered by the agreement. Nothing in the agreement shall prevent volunteers in the CFA from providing the services normally provided by such volunteers without remuneration.
- The Volunteer Fire Brigades Victoria (VFBV) have claimed that the agreement affects volunteers and as such breaches the *Country Fire Authority Act 1958* (CFA Act) and the Volunteers Charter that comprise part of the Act.
- The VFBV has referred the agreement to the Supreme Court of Victoria. The VFBV chief executive Andrew Ford said at the time 'the issue will now be dealt with where it should be dealt with: in a fair and transparent process through the Supreme Court'.¹
- Prime Minister Malcolm Turnbull, on 22 August 2016 in the middle of the election campaign, announced legislation to change the *Fair Work Act 2009* (Fair Work Act) to 'protect' CFA volunteers from the firefighters union.²
- The agreement became a political football with the Prime Minister, government ministers, and coalition backbenchers misrepresenting the implications and effects of the agreement.
- Expert evidence from Professor Andrew Stewart to the Senate Education and Employment Legislation Committee (the committee) inquiry raised a number of significant issues arising from the bill.
- Professor Stewart told the committee that an EBA made under the Fair Work Act is 'subject to, and thus cannot override, the provisions of certain state (or territory) laws' including matters relating to provision of essential services or to situations of emergency including directions to perform work (including to perform work at a particular time or place, or in a particular way), and

1 'CFA dispute: Victorian volunteer firefighters win bid to halt workplace deal vote', *ABC News*, 17 August 2016, <http://www.abc.net.au/news/2016-08-17/volunteer-firefighters-win-bid-to-halt-cfa-workplace-deal-vote/7751714> (accessed 9 October 2016).

2 Prime Minister the Hon Malcolm Turnbull, 'Fair Work Amendment to protect Victorian volunteer firefighters', *Media Release*, 22 August 2016, <https://www.liberal.org.au/latest-news/2016/08/22/fair-work-amendment-protect-victorian-volunteer-firefighters> (accessed 10 October 2016).

directions not to perform work (including not to perform work at a particular time or place or in a particular way).³

- Professor Stewart found it 'hard to identify many *specific* examples of the current or proposed enterprise agreement being used to prevent the CFA from discharging its statutory responsibilities'.⁴
- Professor Stewart stated that 'if a Chief Officer gives directions, or establishes standard operating procedures [under the CFA Act], as to the chain of command for the performance of emergency work by firefighters, those directions or procedures must prevail over anything to the contrary in an enterprise agreement'.⁵
- Professor Stewart raised a number of problems in relation to interpretation issues associated with the bill, including one interpretation that 'any attempt to reserve particular work (including management) for paid employees would be unlawful'.⁶
- Professor Stewart raised issues of constitutionality including that 'the Commonwealth cannot legislate in such a way as to "significantly impair, curtail or weaken" the capacity of the states to function as autonomous and independent entities'.⁷
- Professor Stewart concluded that the risk inherent in the bill is that 'the scope for disputation, uncertainty, delay and expense is considerable'.⁸
- The CFA Chief [Fire] Officer Mr Steve Warrington was unequivocal in his view that the proposed EBA would not impact the CFA's firefighting abilities. He stated that 'I am really confident that, during a fire, operations will not be compromised'.⁹
- The Chief Officer also indicated 'the instrument provided to me, in writing from the [CFA Board] Chair, gives me assurances that the powers of the Chief Officer are not being compromised by this EBA, and I can continue to exercise those powers with certainty and clarification'.¹⁰

3 Professor Andrew Stewart, answer to question on notice, pp. 1–2; see also Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 42.

4 Professor Andrew Stewart, answer to question on notice, p. 2.

5 Professor Andrew Stewart, answer to question on notice, p. 3.

6 Professor Andrew Stewart, *Submission 17*, p. 3.

7 Professor Andrew Stewart, *Submission 17*, p. 4.

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

9 Mr Steve Warrington, Chief Officer, Country Fire Authority, *Committee Hansard*, 28 September 2016, p. 90.

10 Mr Steve Warrington, Chief Officer, Country Fire Authority, *Committee Hansard*, 28 September 2016, p. 95.

- On the evidence before the committee the bill would simply add layers of uncertainty, complexity and delay to any future bargaining process. Bargaining would become even more complex, with the capacity for legal appeals to the High Court including on issues of constitutionality. Volunteers will not be affected by the proposed EBA and the security and well-being of Victorians will not be compromised. However interminable legal arguments arising from the bill would exacerbate division and divert resources from firefighting. On this basis and on the evidence before the committee the bill should not be passed.

Introduction

1.1 In 2011, the Senate Education and Employment Legislation Committee (the committee) recognised the vital and dangerous role performed by firefighters in ensuring community safety. The unanimous conclusion of that committee's report was:

The community holds a deep respect and gratitude for those who serve to protect and assist. If we are honest, however, along with this respect and gratitude comes a generous dose of expectation. We expect firefighters to come to our assistance when our homes, schools, hospitals and businesses are ablaze. We expect that a firefighter will enter a burning building when every human instinct tells us to leave. We expect they will search for those trapped inside and bring them out alive. We expect them to do what they can to minimise loss of life and damage to property. While everyone else is fleeing danger, it is the firefighter's duty to tackle it head-on, to enter an extreme and dangerous environment, armed with the best protective gear available.

It is a duty firefighters take seriously, aware of the inherent risks to their own health and safety. This awareness on their part does not mitigate the community's responsibility towards them.¹¹

1.2 And yet a mere five years later, the majority report in this inquiry has failed to recognise or counter the profound misinformation that has been propagated about the proposed enterprise bargaining agreement (EBA) between the Victorian Country Fire Authority (CFA) and the United Firefighters Union (UFU), or indeed to condemn the gross politicisation of the EBA dispute and the consequent and potentially irreparable damage that has been done to the reputation of the CFA, career firefighters, and the morale of the firefighting community more broadly.

1.3 Senior representatives of the CFA were very clear in their evidence that the dispute is causing enormous damage to the organisation and that they want to resolve the dispute. Indeed, as the evidence later in this report makes clear, the CFA had come to an agreement with the UFU on the EBA, and the Board had instructed the Chief Executive Officer to put the EBA to the CFA's employees. The resolution of the dispute is currently stalled by the injunction taken out in the Supreme Court of Victoria by the Volunteer Fire Brigades Victoria (VFBV) to prevent the CFA from putting the EBA to its employees.

1.4 Furthermore, the Coalition government has unnecessarily inflamed the dispute for its own political ends by bringing forward a bill that is not only an unnecessary and unwarranted intrusion into state matters, but a bill that will serve to deepen an already unfortunate divide between career and some volunteer firefighters predominately from rural brigades that are not deployed with career firefighters. It will also extend a dispute that had effectively been resolved by the CFA and the UFU.

11 Senate Education, Employment and Workplace Relations Legislation Committee, *Safety, Rehabilitation and Compensation Amendment (Fair Protection for Firefighters) Bill 2011 Report*, September 2011, p. 45.

1.5 Indeed, Professor Andrew Stewart, an expert in industrial relations law from the University of Adelaide, told the committee that the bill was a recipe for increased complexity, uncertainty, and disputation. Furthermore, he was of the view that the bill would require the Fair Work Commission to move into the highly problematic area of attempting to form judgments about how an organisation such as the CFA should construct a 'proper' balance between paid and volunteer firefighters. Moreover, the bill would require the Fair Work Commission to determine matters that properly reside within the authority of the CFA and the state government of Victoria to resolve.¹²

1.6 This dissenting report covers some of the key issues that arose during the inquiry. But first, it makes some comments that are pertinent to the conduct and timeframe of the inquiry.

Inquiry process

1.7 This inquiry, although premised on unnecessary legislation, could have been an opportunity to bring transparency to the EBA process. The committee could have used this inquiry to draw attention to the reputational damage that has been inflicted on the CFA and career firefighters by misinformation and political interference.

1.8 Instead, the committee's inquiry has been flawed. The firefighting dispute in Victoria is both complex and contentious. Yet the timeframe set for the inquiry of just over one month was patently unreasonable. Those interested in making submissions had a mere 7 business days to do so. And the committee's hearings, conducted in Macedon and Melbourne, were held so close to the date for reporting as to give the committee little time to adequately consider the evidence gathered.

1.9 The committee spoke to 65 witnesses in two days of hearings, with the majority of witnesses appearing at the hearing in Macedon hearing. The notion that these two hearings alone allowed for a full and fair presentation of evidence is scarcely tenable.

1.10 Furthermore, a large number of senators from across the political spectrum expressed considerable interest in this inquiry. In total 17 Senators attended the hearings across the two public hearings. The number of senators attending was a clear and welcome indication of this interest but, because of the packed hearing schedules, the practical outcome of the increased interest was a reduction in the time available for senators to effectively question witnesses.

1.11 That said, non-government senators join with the rest of the committee in thanking all those who contributed to the inquiry and particularly those witnesses who travelled a considerable distance to participate in the hearings.

Political interference

1.12 The EBA between the CFA and the UFU has been the subject of gross politicisation. This politicisation has resulted in:

- the unfair vilification of career firefighters throughout the media; and

12 Professor Andrew Stewart, response to question on notice, p. 3.

- the development of misconceptions within the volunteer firefighting ranks about the impact of the proposed EBA.

1.13 In addition, the politicisation of the entire process is amply demonstrated by the CFA hiring a renowned Chicago-based 'union busting' company to provide 'strategic' advice on the dispute and to provide options to weaken the firefighters bargaining position by, according to media reports, introducing individual contracts.¹³

Vilification of career firefighters

1.14 A major concern throughout the bargaining process—and indeed throughout the inquiry—has been the politicisation of the issues at hand. Perhaps the most unfortunate aspect of this politicisation has been the vilification of career firefighters and the immeasurable trauma inflicted on career firefighters and their families as a result of wilful misrepresentation during the dispute, particularly in certain segments of the media.

1.15 Mr Thistlethwaite, a career firefighter from Greenvale, told the committee of his personal experience of abuse:

I can tell you about a personal experience of mine. I was playing lawn bowls, and there was a person playing next to me who knew I was a career firefighter. He came up to me and he started abusing me, using the language that you saw in that letter [a volunteers' fund raising flyer], calling me a thug, a scumbag and a mercenary taking money from volunteers. That is the sort of behaviour that I have had to deal with, that other career firefighters have had to deal with and that my family has had to deal with.¹⁴

1.16 The catalogue of abuse suffered by career firefighters was confirmed in evidence by Mr Peter Marshall, National Secretary of the UFU. He told the committee that the EBA dispute had severely damaged the reputation of career firefighters:

[Career firefighters'] reputation has been sorely damaged. Their children have suffered at school as a result of this irresponsible public media campaign and, now, political campaign. Most of these articles were run during the federal election. A career firefighter actually collecting money for volunteers was handed a bullet on one occasion. Children at schools have been abused and harangued because of this particular campaign. As I say, it is based on many misleading statements and blatant untruths. I do not see a change since 2011 when the Australian parliament recognised career firefighters as people who actually put their lives on the line and forego quantity and quality of life in the pursuit of protecting others, but who are being denigrated now... That damage will take a long time to repair. It is unfair on these people who, as we speak, may be going into a normal house

13 See Nick Toscano and Richard Willington, 'Firefighter stoush: Secret report for CFA reveals anti-union ambitions', *The Age*, 6 September 2016, <http://www.theage.com.au/victoria/firefighter-stoush-secret-report-for-cfa-reveals-antiunion-ambitions-20160905-gr9dte.html> (accessed 7 October 2016).

14 Mr Alan Thistlethwaite, career firefighter, Greenvale, *Committee Hansard*, 19 September 2016, p. 27.

fire that is around 1400 degrees Celsius. They may actually have to come in here and extract us out of this building, knowing that, perhaps, they will be injured, or even worse, in the process.¹⁵

1.17 A document tabled by Mr Marshall showed that the dispute has been front page news in the *Herald Sun* on numerous occasions since June 2015, with headlines such as 'Union Chief Bullied Me', 'Fire Storm' and 'Hands Off Our Heroes'.¹⁶ Mr Marshall highlighted the frequency of the coverage as well as its negative impact on career firefighters:

...what has, essentially, has been the front page of the *Herald Sun* since June to April 2015. As you can see, there are 19 front pages alone in relation to this enterprise agreement claim and 33 front pages since the 27 April. Chair, the point I raise to you is this: career firefighters have been labelled as thugs, bullies, misogynists based on untrue documents that have been released to the press... Their reputation has been sorely damaged.¹⁷

1.18 Mr Marshall said that 'it is so easy to slur people, as the *Herald Sun* has done over 29 articles.'¹⁸ He drew the committee's attention to the fact that this vilification has had a significant detrimental impact not just on the firefighters themselves, but also on their partners and children:

...I have never seen something affect them as much as that [*Herald Sun* campaign]. That actually translated into their homes, their children being abused, their being heckled down the street as a result of that irresponsible advertising campaign. I can give you letters from wives and I can give you evidence from members who have been traumatically damaged, not for any reason other than that they are a professional person who puts their life on the line to look after the community. One minute they are up here; the next minute they are thugs, misogynists and a whole range of other things that were actually being said in those articles. It has had a detrimental effect I have never seen in 31 years.¹⁹

1.19 However, Mr Marshall also pointed out that the involvement of the federal government in the dispute had exacerbated the harm done to career firefighters:

If there had not been a federal election, this dispute would have been resolved and would have been confined to the barriers of Victoria. This became a political football in the federal election, and there were many

15 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, pp. 64–65.

16 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, p. 2 (tabled 28 September 2016).

17 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 64.

18 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 70.

19 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 70.

untruths said about things, as you can see by the acceleration of those articles. We do not say this lightly, but the firefighters dispute and the allegations against the union and its members got more coverage than the Iraq war, and we find that reprehensible given these people save lives on a daily basis. We are not denigrating the military people; we have the highest respect for them. There are some terrible things that happen in the world, but if you have a look at that one would think that career firefighters in Victoria are the devil incarnate.²⁰

Misconceptions over the proposed EBA

1.20 It is clear from the evidence presented to the committee that significant misconceptions exist over the proposed EBA and its application. Mr Marshall suggested that this confusion was exacerbated by numerous inaccurate media reports, particularly in the *Herald Sun*, that implied the UFU was seeking to take over the CFA and that 'the information and the media saturation had got to the point where people did not know what to believe'.²¹

1.21 An example of the above was Minister Cash's opinion piece in the *Herald Sun* on 22 August 2016, where she claimed that seven paid firefighters had to be present before CFA personnel are able to be deployed to a fire and that paid firefighters are to report only to other paid firefighters.²²

1.22 Given this was a considered opinion piece such blatant misrepresentation is objectionable and designed to create mistrust and division between volunteers and career firefighters and diminish the standing of career firefighters.

1.23 Mr Marshall contended that once volunteers closely examined the proposed EBA, many of the misconceptions and fears over its effect were allayed:

When you sit down with some volunteers—I am not saying all, because in all groups there are people you will never sway—and you take them through the actual document and all the clauses, they say, 'I did not know that; I was not told that.' For example, the allegation which was on the front page of the *Herald Sun* and also on the VFBV's website that for every fire in country Victoria you will have to wait until seven career firefighters turn up was just not true, and the agreement never said that. So when we take people through that they say, 'We did not know that'.²³

1.24 The perpetuation of misinformation was also identified by on-the-ground career and volunteer firefighters as being a major challenge, especially for those

20 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 80.

21 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, pp. 74 and 75.

22 Senator the Hon Michaelia Cash, Federal Minister for Employment, 'CFA volunteers deserve federal support', *Herald Sun*, 22 August 2016, p. 23.

23 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 74.

volunteers who did not work at an integrated station. Mr Raj Faour, a volunteer firefighter with an integrated brigade at Hallam, reflected positively on the camaraderie that existed between the volunteer and career firefighters at his station.²⁴ He expressed sadness at how the bargaining process had unfolded, and noted that volunteers working at integrated stations had benefitted greatly from being able to clarify information:

So it saddens me to see this situation turning into a huge political game. There is a lot of misinformation that is being pushed onto many volunteers out there who do not have the exposure to these integrated brigades or the firefighters. If I was in doubt of anything, I would always go up and I would research it. I would ask, whether it is a UFU delegate at our brigade, whether it is Steve, whether it is another friend of mine who might be up north.²⁵

1.25 Similarly, Mr Luke Symeoy, a volunteer firefighter with an integrated brigade at Craigieburn observed that once the correct information was shared, volunteers in his brigade had concluded that the proposed EBA would have positive benefits for the community:

Right across the board there has been a lot of misinformation. People do not know what the truth is. People have not had the opportunity to find out what the truth is because of being in remote areas and all that sort of stuff and not being able to get to an integrated station and talk to the guys that have been there. We have been lucky enough to have the opportunity to ask questions and be told what the EBA is all about. By doing that, the brigade has come to the conclusion that the EBA has got nothing to do with volunteers. Basically what is going to come out of this is: we are going to be benefitted better; the community is going to be benefitted better.²⁶

1.26 Mr Symeoy concluded forcefully on the critical importance of disseminating accurate information to resolve the situation as soon as possible:

Everyone gets misinformed. Everyone starts to worry that someone is going to come into their catchment and takeover and push that person aside. It is not going to happen. This has been going on for a long time... This is where we need to get this over the line and we need to fix it now because, unfortunately, people's lives, other than the firefighters, their families and also everybody else, are going to disrepute here and it is not fair on anyone. We need to fix this. We need to get the right information out to everybody.²⁷

24 Mr Raj Faour, volunteer, Hallam, *Committee Hansard*, 19 September 2016, p. 21

25 Mr Raj Faour, volunteer, Hallam, *Committee Hansard*, 19 September 2016, p. 21

26 Mr Luke Symeoy, volunteer, Craigieburn, *Committee Hansard*, 19 September 2016, p. 22.

27 Mr Luke Symeoy, volunteer, Craigieburn, *Committee Hansard*, 19 September 2016, p. 26.

CFA's engagement of a 'union busting' company

1.27 The third area that highlights the politicisation of the enterprise bargaining process is the engagement by the former CFA Executive of Seyfarth Shaw, a renowned Chicago-based union busting company, for advice on the enterprise bargaining process. On its face, the former CFA Executive's engagement of Seyfarth Shaw demonstrates an earlier lack of commitment in the CFA's approach to resolving the stalled bargaining process.

1.28 Ms Lucinda Nolan, the former Chief Executive Officer (CEO) of the CFA, explained that she engaged Seyfarth Shaw to get strategic advice about the enterprise bargaining process and the options available to the CFA:

This was about where we were at. It was advice from the players around that table about how we should best proceed as the CFA. I wanted to get independent advice to make sure that I was fully informed about what all of our options were that may not have come out within those discussions. That is why I used Seyfarth Shaw.²⁸

1.29 Ms Nolan advised that Seyfarth Shaw was selected on the basis of its expertise in matters of complex enterprise bargaining agreements, rather than anything to do with the firms' reputations:

Senator CAMERON: Wouldn't you take steps, if you are spending public money, to know some basis of the company that you are spending the public money on?

Ms Nolan: I did, and the people that recommended them said that they were experienced in complex EBs.

Senator CAMERON: So that was all you were told?

Ms Nolan: That is all I can remember at this stage.

Senator CAMERON: All you can remember?

Ms Nolan: There was certainly nothing about union busting. It was around a legal firm that had dealt with significantly complex EBs, which was what I was looking for in terms of this.²⁹

1.30 Ms Nolan denied knowing of the firms 'union busting' reputation until her appearance before the Victorian Parliament's inquiry into Fire Season Preparedness:

Senator MARSHALL: You engaged them because you knew they were specialists in what we call union busting?

Ms Nolan: No, not at all.

Senator MARSHALL: You didn't?

Ms Nolan: I did not know that until I went to the state inquiry.³⁰

28 Ms Lucinda Nolan, Private capacity, *Committee Hansard*, 28 September 2016, p. 22.

29 Exchange between Senator Cameron and Ms Lucinda Nolan, Private capacity, *Committee Hansard*, 28 September 2016, p. 31.

1.31 Ms Nolan provided further clarification as to her own knowledge of the firm's reputation and her reason for engaging them:

I am still not aware of their background—only the questions I was asked at the state inquiry. My understanding was that we asked around—I cannot remember, to be honest, who actually put them forward, but a number of names were put forward—who could provide very strong strategic advice around all of our options that could resolve this EB. Whether they came from our legal advisers or whether they came from someone from my organisational leadership team, I am not sure. As I said, I do not have access to my notes. They would be in the notes around where that recommendation came from. I had some initial discussions with them. I gave them some terms of reference about what I was looking for, which was around giving me as many options that we have to resolve this EB.³¹

1.32 When asked about his perceptions of the hiring of Seyfarth Shaw, Mr Marshall questioned the appropriateness of seeking advice from Seyfarth Shaw given the reputation of the firm and the circumstances of the dispute:

It did not surprise me when the revelation was made that that firm was engaged. If anyone wants to do a cursory google, they have been involved in union busting and are designated as a union-busting firm in the United States. In fact, they have been involved in firefighter disputes. But it does not surprise me with the CFA, and you have to ask that question about that sort of advice in the context of good-faith bargaining. Why did they get that advice? I understand they say it was just seeing what our options are. Not once was that advice talked about in the Fair Work process, and there was no disclosure.³²

1.33 Ms Nolan refuted claims that the hiring of Seyfarth Shaw was based on anything other than the firm's experience in relation to complex enterprise bargaining agreements, but acknowledged that engaging them may not have been the wisest course of action given their reputation:

Ms Nolan: These people [Seyfarth Shaw] are experienced. We put out the terms of reference—what we were looking for—and they responded with their quote.

Senator CAMERON: If you had been advised of their anti-union history, would you have engaged them?

Ms Nolan: Probably not, to be honest, because it is a red rag to a bull, so that takes away from the intent about the advice that I was seeking. I was not seeking to inflame the union. I was seeking to actually work in a consultative way, and this was really around my fiduciary responsibilities

30 Exchange between Senator Marshall and Ms Lucinda Nolan, Private capacity, *Committee Hansard*, 28 September 2016, p. 22. Ms Nolan appeared before the Victorian committee on 6 September 2016.

31 Ms Lucinda Nolan, Private capacity, *Committee Hansard*, 28 September 2016, p. 23.

32 Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union, *Committee Hansard*, 28 September 2016, p. 78.

as CEO to make sure that I had considered every available option so that we would get the best result for the CFA.³³

1.34 Non-government senators are of the view that the evidence from Ms Nolan on this issue was evasive and disingenuous. It beggars belief that the former CEO of the CFA cannot remember who advised her to hire a Chicago-based union busting legal firm during a protracted industrial dispute with career firefighters. It also beggars belief that Ms Nolan could provide no information of any substance in relation to what has been reported in the media as *a secret union busting agenda*.³⁴ Ms Nolan's evidence must, therefore, be treated with significant scepticism as to its veracity.

1.35 At the time of writing this report the committee is still waiting on requested documentation including the terms of reference and instructions to Seyfarth Shaw; and answers to questions taken on notice by the CFA in relation to this matter.

1.36 The credibility of former CFA Board members Mr Peberdy and Mr Tudball was highly questionable given they were members of the Board at the time Seyfarth Shaw were engaged, and were part of the Board that was dismissed in June 2016 in part for the continued operation of the contaminated CFA Fiskville training ground. A Victorian Parliament Inquiry found CFA Board members and management knew of contaminated soil and water yet continued to operate the training ground:

Senator MARSHALL: Did the board ever consider that they should stop sending people to Fiskville until they could be assured that it was, in fact, safe? Was that ever a consideration of the board?

Mr Peberdy: The consideration of the board was: was Fiskville safe? It was not that it was not safe. The consideration was: was it safe?—

Senator MARSHALL: So you always considered it in the negative?

Mr Peberdy: We were of the view that whilst there was evidence of PFOS and so on there, as has been found at most firegrounds around the world, that is also—

Senator MARSHALL: That is your justification?

Mr Peberdy: No, what I am saying is there is a level where it is safe and where it is unsafe. We did not have evidence to suggest that Fiskville was unsafe.

Senator MARSHALL: Mr Tudball, do you have any comments on that?

Mr Tudball: I think Mr Peberdy has answered. I was not aware we were here for the Fiskville inquiry again, and I have not prepared for it.

33 Exchange between Senator Cameron and Ms Lucinda Nolan, Private capacity, *Committee Hansard*, 28 September 2016, p. 29.

34 See Nick Toscano and Richard Willington, 'Firefighter stoush: Secret report for CFA reveals anti-union ambitions', *The Age*, 6 September 2016, <http://www.theage.com.au/victoria/firefighter-stoush-secret-report-for-cfa-reveals-antiunion-ambitions-20160905-gr9dtc.html> (accessed 7 October 2016).

Senator MARSHALL: It is one of the reasons you were dismissed from the board.

Mr Tudball: Apparently.³⁵

1.37 Non-government members of the committee are deeply suspicious of the politicisation of this dispute by the Liberal Party in Victoria in order to take advantage of this issue for the 2016 federal election.

1.38 The Liberal Party registered a 'Hands off the CFA' website in April 2016. Members of the public registered their interest in the website and that personal information was later used to solicit financial support for the campaign — which was a Liberal Party campaign.³⁶

Productive relationships between career and volunteer firefighters at integrated stations

1.39 The committee also heard evidence from volunteer firefighters from integrated stations that they did not support the bill because the EBA had nothing to do with volunteers. Furthermore, the good relationships between volunteer and career firefighters at integrated stations had led to improvements in skills and equipment. For example, Mr Luke Symeoy from Craigieburn, told the committee:

On behalf of my brigade: we do not want this bill to go ahead. We want this settled. I would like this settled. The fire season is coming up and we do not need this. This has gone on for too long. The EBA has got nothing to do with volunteers. If anything, it is going to better us and better our skills and better our equipment, because half the equipment that we have got today we would not have if it were not for staff. That is the honest truth. I can stand here and put my hand on my heart and tell you that.³⁷

1.40 Other volunteers were saddened that the political intervention and misinformation about the EBA were driving a wedge between volunteers and career firefighters. Mr Raj Faour, a volunteer from Hallam, told the committee:

You probably hear a lot in the media, and the VFBV love to speak about 60,000 volunteers and how they represent the 60,000 volunteers. **Well, I am one—and one of many—who stands before you today and tells you that we are not represented by the VFBV.** We see all these things that are happening. We see a huge wedge and divide that is being driven between the volunteers and the staff, and unfortunately there seems to be a lot of detachment from certain brigades which seem to be further out in the state and do not have much to do with staff firefighters. I jump on the truck with my comrades here, because they do not stop me from getting on the truck. They actually welcome me getting onto the truck. When I get to the station, they are like, 'Raj, are you available? Are you jumping on with us?'. My

35 Exchange between Senator Marshall and Mr Peberdy and Mr Tudball, *Committee Hansard*, 28 September 2016, p. 46.

36 Vincent O'Grady, *Submission 319*.

37 Mr Luke Symeoy, volunteer, Craigieburn, *Committee Hansard*, 19 September 2016, p. 23.

first answer is, 'Boys, I'm with you 100 per cent.'...Just to show you the camaraderie between the volunteers and the staff at our station: when I am free at lunchtime, I am down at the station and I share a meal. We sit down in the mess and we eat together. We have coffees together. We have a fishing club together—we all fish together. So it saddens me to see this situation turning into a huge political game. **There is a lot of misinformation that is being pushed onto many volunteers out there who do not have the exposure to these integrated brigades or the firefighters.** If I was in doubt of anything, I would always go up and I would research it. I would ask, whether it is a UFU delegate at our brigade, whether it is Steve, whether it is another friend of mine who might be up north.³⁸

EBA negotiation process

1.41 The length of time taken to negotiate the EBA was cited favourably by those arguing in favour of the bill. Proponents of the bill argued that the EBA process had been complex; had trampled the rights of volunteers; and that the EBA itself now covered areas which should fall under standard operating procedures.

1.42 These arguments are examples of the misinformation about the EBA which has so damaged goodwill in the firefighting community. This section provides evidence from the committee's hearings which demonstrates the reality of the EBA negotiation process.

Timing

1.43 The former CEO of the CFA, Ms Nolan, told the committee that complexity and the involvement of many different individuals were the chief causes of delay in the EBA bargaining process.³⁹

1.44 It is important to note that the previous CFA Board and CEO continued to attempt to frustrate bargaining as outlined in the Final Recommendation of Commissioner Roe. The Commissioner expressed frustration about the CFA seeking to re-agitate matters previously agreed.⁴⁰

1.45 In contrast to Ms Nolan's evidence, other witnesses were certain that prior to the political interference in the EBA process, the EBA was on the point of being finalised. Ms Frances Diver, the CFA's new CEO explained how within eight weeks, she had worked with the CFA Board to resolve issues related to the EBA. Ms Diver told the committee that the process had involved discussions with the UFU, advice to the CFA Chief Officer, Mr Warrington, regarding the interaction between his powers and the EBA, and consultation with volunteers:

38 Mr Raj Faour, volunteer, Hallam, *Committee Hansard*, 19 September 2016, p. 21. Emphasis added.

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

40 Fair Work Commission, Final Recommendation, United Firefighters' Union of Australia v Country Fire Authority, 1 June 2016, Melbourne, p. 2,

In my perspective, what we did was: the board came in, we consulted very heavily both externally and internally, we consulted with the volunteers association, we took on board their feedback, we went back to the UFU, we negotiated hard, we got some concessions, we got some additional assurances by way of clarification and we got some legal advice that provided the CFA board—so it was a board decision, obviously, not my decision—that, in the interests of the overall organisation, we thought we could work through any of the issues in the enterprise agreement in terms of implementation. So the task in front of us was implementation.⁴¹

1.46 Unfortunately, as Ms Diver told the committee, legal action in the Supreme Court has put the process on hold.⁴²

Elements of the EBA

1.47 Mr Marshall told the committee that the EBA 'achieves the outcomes of the [2009 Victorian Bushfires] Royal Commission.'⁴³ He explained that:

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.

On top of that, at the moment recruit firefighters in the MFB and CFA—I am talking about career firefighters; they have nothing to do with volunteers—are actually taught different syllabuses, terminologies, equipment procedures. So they are not interoperable. That was identified in the royal commission. As a result of this, for the very first time the MFB and CFA enterprise agreements are actually virtually the same. There will be one recruit course. The firefighters will come out as a firefighter for the state of Victoria. They will still be employed by CFA or MFB, but they will be interoperable. In other words, they will be able to utilise MFB equipment. The CFA will be able to use MFB equipment. For the very first time, there is now a secondment program, which we initially trialled in 2011, but it was stopped by the previous government. That secondment program embeds MFB career firefighters into the CFA structure and CFA career firefighters into the MFB structure to break down those parochial

41 Ms Frances Diver, Chief Executive Officer CFA, *Committee Hansard*, 28 September 2016, pp 90-91.

42 Ms Frances Diver, Chief Executive Officer CFA, *Committee Hansard*, 28 September 2016, pp 90-91.

43 Mr Peter Marshall, National Secretary UFU, *Committee Hansard*, 28 September 2016, p. 76-77.

barriers. And there is a transitional course. Again, there is no impact on volunteers in relation to this.⁴⁴

1.48 Career firefighters, like Mr Peter Spicer, Senior Station Officer at Craigieburn, felt that the EBA contained provisions essential for firefighter safety. He told the committee:

[The EBA] is not just about our pay and conditions. It is probably worth noting that we rejected an earlier pay offer which was higher than the one that is currently on the table. We rejected it because the other conditions that went with that did not provide the degree of firefighter safety that we require and it did not offer the additional safety that is offered in the proposed EBA now for community. One of the things that was mentioned briefly was road accident rescue, EMR. Those are things that are included in the proposed EBA that we will be providing to the community, which is obviously a positive thing.

Firefighter safety is always going to be top of our list. We cannot help anyone else if we are injured or do not get to the fire in the first place. I have a couple of points, and PPC was one that came up earlier, I know. I might just touch briefly on the PPC, if I can, and how we came to the position we had with the PPC. That was through our consultation and the fact that we did have a union representing us.

One of the early specifications for the structural gear that we wear now, from CFA, without going into too much technicality, had the layers within it the wrong way around and it was going to create danger for firefighters. There is a thermal barrier and a moisture barrier. The moisture barrier was on the wrong side, which would have allowed moisture into the clothing and then, in a hot environment, potential steam burns for firefighters. That was one of the things that we fought and fought and fought, and finally we got through. Now the gear that we wear is safe and, as we talked about, was also issued to volunteers, so we do have the same gear.⁴⁵

1.49 The repeated claims that the consultation provisions in the proposed Agreement constituted a veto for the UFU and a union take-over was not substantiated by the evidence.

1.50 The VFBV's written submission conceded the consultation provisions were a matter of a process.⁴⁶

1.51 The CFA Chief Officer, Mr Warrington, also confirmed that the consultation and dispute provisions do not constitute a 'veto':

The agreement provisions require agreement between the UFU and CFA. This does not constitute a veto power for either party.

44 Mr Peter Marshall, National Secretary UFU, *Committee Hansard*, 28 September 2016, p. 76-77.

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

46 Volunteer Fire Brigades Victoria, *Submission 55*, p. 20.

...

As I stated in my evidence before the committee, it has not been the experience of the CFA that I or the officers under my control have been 'locked away' at the FWC [Fair Work Commission], attempting to resolve a dispute whilst we are in an emergency situation. Further, the CFA has negotiated a joint statement of intent with the UFU which, among other things, records the parties' intention to resolve disputes as quickly and efficiently as practicable.⁴⁷

Volunteers and the EBA

1.52 While some volunteers told the committee that the EBA would unfairly impact their situation, it was clear from evidence that these concerns were the result of misinformation.

1.53 But in brigades where accurate information had been available, the opinion of volunteer firefighters was that volunteers need have no part in the EBA negotiations. Mr Justin Rees, First Lieutenant and volunteer firefighter at the Melton brigade, told the committee:

We, as a brigade, believe that the proposed EBA does not affect volunteers and we have formally expressed this to Volunteer Fire Brigades Victoria. However, the volunteer bill 2016, if implemented, will affect our relationship with our members, staff and volunteers and impact our service delivery. Encouraging volunteer organisations to intervene into the employment matters and conditions of people employed by emergency services is not appropriate. We need to be focused on supporting our community, protecting life and property and supporting our emergency service people—volunteer and career.⁴⁸

1.54 Professor Stewart, an expert in industrial relations law, was in agreement with Mr Rees' brigade regarding the need for volunteers to become involved in the EBA. Professor Stewart's view was that should the bill be passed, it would allow for intervention by volunteers and result in increased uncertainty and delays:

So, to the extent that the dispute at the CFA is about the right balance to be struck, there is a clear industrial issue there. Is it a legal issue? Not so much. What this bill will do is create a legal issue around the very specific question of how a body like the CFA manages its employees and its volunteers. Do employees have a legitimate interest in that? Yes. Do volunteers have a legitimate interest in that? Yes. Again I stress I am not here to talk about the rights and the wrongs. It seems to me from everything I have heard that there are clearly strongly held and potentially legitimate

47 Chief Officer Mr Steven Warrington, CFA combined response to questions on notice, Schedule C, p. 5, paragraphs (b) and (c).

48 Mr Justin Rees, First Lieutenant and volunteer firefighter, Melton Brigade, *Committee Hansard*, 19 September 2016, p. 59.

concerns on every side of this debate. The question is: does this bill help resolve the dispute? I would say no; it just adds uncertainty.⁴⁹

CFA consultation with volunteers

1.55 The view expressed by many volunteers that there is no consultation with them or their organisation by the CFA is another example of the clear and blatant misinformation being circulated.

1.56 The CFA has, does and will continue to consult with volunteer representatives through the CFA-VFBV joint consultation committees on matters including training, volunteerism, equipment, uniform and infrastructure, operations, community safety and communication and technology. These consultation processes are separate and independent of any consultation process with the UFU.⁵⁰

1.57 Further the VFBV has 4 representatives on the 9-member CFA Board.

The EBA and the CFA Act

1.58 The committee heard evidence from several witnesses that a raft of appropriate checks and balances already exist within the current legislative framework to ensure that the proposed EBA would not impact on the ability of the Chief [Fire] Officer to perform his or her duties under the CFA Act.

1.59 For example Chief Officer Warrington told the committee quite clearly that his powers under the CFA Act were not compromised by the EBA:

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.⁵¹

1.60 This view was supported by Professor Stewart who told the committee that the FW Act provides that an EBA cannot override state or territory laws dealing with essential services or emergency management:

Federal enterprise agreements...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.⁵²

49 Professor Andrew Stewart, private capacity, *Committee Hansard*, 28 September 2016, pp. 38–39.

50 Ms Frances Diver, Chief Executive Officer CFA, *Committee Hansard*, 28 September 2016, p. 98.

51 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.

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

1.61 The current CFA Board has released a Board Resolution which explicitly states that 'the *Fair Work Act 2009 (Vic)* operates so as to ensure that nothing in the Agreement [proposed EBA] can inhibit the Chief Officer from giving directions about the performance of work in an emergency situation'.⁵³

1.62 As Chair of the CFA Board, Mr Greg Smith wrote to the CFA Chief [Fire] Officer, Mr Warrington, and set out in the plainest possible language that the proposed EBA will not affect the operation of certain Victorian laws:

The purpose of this letter is to advise you that, if the agreement becomes operative, this will not and cannot affect the operation of certain Victorian laws and your powers and obligations under those laws. The principal legislation to bear in mind is the *Equal Opportunity Act 2010* and the *Occupational Health & Safety Act 2004*. You must at all times ensure that we comply with those laws.

It is also relevant to note that the *Fair Work Act 2009* and any award or agreement made under it cannot interfere with or detract from your powers and obligations under the *Country Fire Authority Act 1958* concerning directions to perform work relating to the provision of essential services or in situations of emergency. In that regard, I draw your attention specifically to your powers under section 27 of the CFA Act which places all officers and members of CFA brigades under your order and control.⁵⁴

1.63 The evidence presented above clearly contradicts the erroneous and malicious assertions propagated during the course of this inquiry by former CFA Board members, the former CEO of the CFA, and by the VFBV that the EBA would somehow cause the CFA to be in breach of the CFA Act and would prevent the Chief [Fire] Officer from carrying out their duties under the CFA Act.

1.64 Furthermore, the question of whether the EBA contravenes elements of state law is currently before the Supreme Court of Victoria. As Professor Stewart told the committee, 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'.⁵⁵

1.65 The fact that there already exists a capacity for these matters to be put before a superior court renders obsolete one of the key reasons for this bill put forward by the government, namely to prevent an EBA from allegedly being able to override relevant state legislation.

53 CFA Board Resolution, p. 1, <http://news.cfa.vic.gov.au/attachments/article/7676/CFA%20Board%20Resolution.pdf> (accessed 4 October 2016).

54 Letter to Mr Steve Warrington, Chief Officer CFA from Mr Greg Smith, Chairman, CFA, Additional information No. 1, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/EmergencyServicesBill/Additional_Documents

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

Uncertain scope of the bill

1.66 Numerous organisations expressed great concern during the inquiry about the inherent ambiguity in the legislation and the consequent uncertain scope of the bill. The Australian Nursing and Midwifery Federation (ANMF) pointed out that, on the face of the bill, public hospitals and the Australian Red Cross could fall within the scope of the bill.⁵⁶ Likewise it appears that the police force in Victoria and the Australian Federal Police might fall within the terms of the bill.

1.67 The Police Federation of Australia and the ANMF drew attention to the adverse consequences that the bill, if enacted, could have on the use of volunteers by the police and within the health services sector.⁵⁷

1.68 The bill provides for the deeming of employers as 'emergency management bodies' whether or not those organisations (public or private) would be described as such. The submission from Ryan Carlisle Thomas Lawyers pointed out further uncertainty in the scope and nature of organisations that may be captured by this bill:

At a policy level the bill has the appearance of a 'private bill' in essentially targeting a single entity, namely the Country Fire Authority. The bill has a veneer of general application. The uncertainty about its general application is reflected in the necessary use of Regulations to determine:

- (a) what are designated emergency management bodies and thus caught by the bill (new section 195A(4)(a)(ii);
- (b) what are not designated emergency management bodies (new section 195A(5); and
- (c) what are volunteer bodies (new section 254(A)(2)(b).

It is submitted the use of Regulations to determine the actual scope and application of the bill is an inappropriate use of Regulations in such a case.⁵⁸

Reliance on regulation to determining the scope of the bill

1.69 Significant unease was expressed by both the Australian Council of Trade Unions (ACTU) and by the ANMF over the reliance on regulation to determine the scope of the bill. The ACTU pointed out that relying on regulation to clarify the inherent uncertainty in the bill had the effect of evading proper parliamentary scrutiny of the full consequences of the legislation.⁵⁹

56 Australian Nursing & Midwifery Federation, *Submission 89*, p. 3; Australian Nursing & Midwifery Federation Victorian Branch, *Submission 14*, p. 3

57 Police Federation of Australia, *Submission 6*, p. 1; Australian Nursing & Midwifery Federation, *Submission 89*, p. 3; Australian Nursing & Midwifery Federation Victorian Branch, *Submission 14*, p. 3.

58 Ryan Carlisle Thomas, *Submission 8*, p. 13.

59 Australian Council of Trade Unions, *Submission 9*; Australian Nursing & Midwifery Federation Victorian Branch, *Submission 14*.

Entitlement for volunteers to make submissions to the Fair Work Commission

1.70 Submitters such as Professor Stewart and Ryan Carlisle Thomas Lawyers observed that the bill grants an extraordinary and unprecedented power to volunteer organisations to intervene in the bargaining process between an employer and their paid employees.⁶⁰

1.71 Furthermore, several submitters and witnesses pointed out that the bill strips the discretion that the Fair Work Commission currently has to determine who to hear from and who not to hear from in relation to a specific bargaining dispute.⁶¹

1.72 As a consequence, Ryan Carlisle Thomas Lawyers pointed out that the bill would not only allow 'a stranger to the bargaining process to intrude into the bargaining between the industrial parties', but would also require the Fair Work Commission and bargaining representatives 'to address submissions made regardless of merit and proper interest'.⁶²

1.73 The granting of this extraordinary and unprecedented legal right to volunteer bodies caused deep concern to several employee organisations. For example, Ambulance Employees Australia Victoria objected strongly to the fact that the bill would allow individuals not covered by an EBA to intervene in the setting of terms and conditions for paid employees.⁶³

1.74 Beyond this, however, the bill sets up a recipe for greater uncertainty and the ability for third parties to prolong the dispute between the CFA and the UFU. Bear in mind too that the dispute between the CFA and the UFU has now been resolved to the extent that the CFA Board had, prior to the Supreme Court injunction instigated by the VFBV, instructed its CEO to put the EBA to its employees for a vote.

1.75 However, as Professor Stewart remarked, because the bill provides for a volunteer organisation to make a submission to the Fair Work Commission that some aspect of the EBA may have some impact on volunteers, the bill sets up a scenario for potentially endless disputation.⁶⁴

1.76 Furthermore, as Professor Stewart pointed out, the bill would add a further layer of complexity to the bargaining negotiations because the Fair Work Commission would then need to begin forming potentially problematic judgments about how an

60 Ryan Carlisle Thomas Lawyers, *Submission 8*; Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 39.

61 Ryan Carlisle Thomas Lawyers, *Submission 8*, p. 6; Professor Andrew Stewart, *Committee Hansard*, 28 September 2016, p. 39; Australian Council of Trade Unions, *Submission 9*, p. 3.

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

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

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

organisation such as the CFA should be run in terms of, for example, the allocation of work or resources between paid employees and volunteers.⁶⁵

1.77 Professor Stewart was not alone in his comments. Mr Matt O'Connor, Deputy Secretary from the Victorian Department of Economic Development, Jobs, Transport and Resources agreed with Professor Stewart's assessment of the bill:

One has only to read the concepts that are included under the definition of 'objectionable emergency management term' to form the impression that they potentially cover a wide gamut of matters, or at least are ambiguous in their terms. They are provisions that would require the Fair Work Commission to form opinions about a range of matters and in our view have the potential to slow down the approval process, firstly, and to open up avenues of appeal down the track. So we do have major concerns with the legislation. That is probably our major concern with it.⁶⁶

Constitutionality of the bill

1.78 Professor Stewart stated quite forcefully 'that there will be an obvious argument' that the bill is 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 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.⁶⁷

1.79 Beyond this, Professor Stewart noted that regardless of whether a constitutional challenge was successful or not, there was a 'clear potential' for the matter to eventually end up in the High Court, resulting in further uncertainty in dealing with matters which the bill is supposedly designed to address.⁶⁸

Retrospectivity of the application of the bill

1.80 The bill will apply to Agreements that are already in place and certified by the Fair Work Commission. Current agreements will be judged against these new regulations and 'objectionable term' tests. In this regard, Professor Stewart noted:

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

66 Mr Matt O'Connor, Deputy Secretary, Victorian Department of Economic Development, Jobs, Transport and Resources, *Committee Hansard*, 28 September 2016, p. 100.

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

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

...if passed, the new FW Act provisions could be used to challenge terms in enterprise agreements that had already been approved by the Fair Work Commission (FWC): see cl 14 of the bill. It is true that the amendments are not in a technical sense 'retrospective', since they would not render any provisions invalid as from before the time the amendments took effect. But the amendments would have the potential effect of changing the operation or effect of agreements that had already come into force, and that may indeed have been negotiated long before this legislation was ever conceived.⁶⁹

Conclusion

1.81 This bill is an ill-construed, rushed, and partisan intervention into state matters for purely political reasons.

1.82 It bears repeating that the dispute between the CFA and the UFU over the EBA had effectively been resolved when the CFA Board, having consulted widely and reviewed all the evidence available to it, instructed its CEO to put the proposed EBA to its employees for a vote.

1.83 Yet the actions of the Coalition government during and since the federal election campaign seem designed to inflame the dispute for purely political gain at the expense of the CFA, and career and volunteer firefighters on the ground.

1.84 Non-government senators object in the strongest possible terms to the obscene vilification of career firefighters, brave men and women who routinely risk their lives on behalf of others to keep the community safe.

1.85 Non-government senators also recognise the enormous damage that the politicisation of this issue by the Prime Minister and Federal Employment Minister has wrought on structural relationships within the CFA.

1.86 Non-government senators also register their deep unease about the impact that misinformed commentary has had on public perceptions of the dispute and the reputation of the CFA as an organisation.

1.87 Non-government senators are firmly of the view that the CFA dispute is a state matter and should be resolved at a state level. Commonwealth intervention such as the proposed bill is ill-judged, unwarranted, and certainly not in the interest of the overall fire service.

1.88 Non-government senators praise the outstanding contribution of both volunteer and career firefighters to the CFA and remain of the view that the restoration of a productive and harmonious working relationship between CFA management and career and volunteer firefighters is of paramount importance.

1.89 The most pressing item of business at this juncture is for the EBA to be put to employees in order for the dispute to be resolved, and for career and volunteer firefighters to continue working together to promote and provide community safety.

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

1.90 Yet the bill contributes nothing towards the process of resolving this dispute. Instead, the bill adds another layer of complexity and, by virtue of the appeal mechanisms that it seeks to set in place, virtually guarantees that the dispute will be needlessly prolonged. This is a dangerous ploy by the Coalition government on the eve of the fire season.

1.91 Non-government senators draw attention to the concerns expressed by a great many submitters regarding the inherent uncertainty about the scope of the bill and the reliance on regulations to try to clarify the scope of the bill.

1.92 Beyond all this, non-government senators note the uncertainty surrounding the constitutionality of the bill. The Commonwealth Department of Employment stated that it had received legal advice from the Australian Government Solicitor which purportedly stated that the bill was within Commonwealth constitutional power.⁷⁰ The government's refusal to divulge that legal advice creates the impression that the legal advice may not be as conclusive as the Prime Minister has previously claimed.

1.93 In summary, the bill is an unnecessary and counterproductive intrusion into state matters and will have the disastrous effect of prolonging a dispute that has already been resolved between the parties to the agreement.

Recommendation 1

1.94 Non-government senators recommend that the bill not be passed.

Senator Gavin Marshall
Deputy Chair

Senator Doug Cameron
Participating member

Senator Lee Rhiannon
Substitute member

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