

The Senate

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Education and Employment  
Legislation Committee

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Fair Work Amendment (Respect for  
Emergency Services Volunteers) Bill 2016  
[Provisions]

October 2016

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Ms Amy Walters, Research Officer

Mr Abe Williamson, Administrative Officer

PO Box 6100  
Parliament House  
Canberra ACT 2600

Ph: 02 6277 3521  
Fax: 02 6277 5706  
E-mail: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)



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# Chapter 1

## Introduction

### Reference

1.1 On 31 August 2016 the Prime Minister, the Hon. Malcolm Turnbull MP, introduced the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 (the bill) in the House of Representatives.<sup>1</sup> On 1 September 2016 the Senate referred the provisions of the bill to the Senate Education and Employment Legislation Committee for inquiry and report by 10 October 2016.<sup>2</sup>

### Conduct of the inquiry

1.2 Details of the inquiry were made available on the committee's website. The committee also wrote to key stakeholders, groups, organisations and individuals to invite submissions.

1.3 The committee received 334 submissions as detailed in Appendix 1.

1.4 Public hearings were held in Macedon in regional Victoria on 19 September 2016 and Melbourne on 28 September 2016. Witness lists for the hearings are available in Appendix 2.

### Terminology

1.5 The enterprise bargaining agreement (EBA) between the Country Fire Authority (CFA) in Victoria and the United Firefighters Union (UFU) refers to paid firefighters as 'professional firefighters'. However, the committee is mindful of the view put by volunteer firefighters that they also consider themselves to be professional firefighters. To distinguish between the two groups of firefighters, this report refers to either career (paid) firefighters or volunteer firefighters.

### Context

1.6 The *Fair Work Act 2009* (FW Act) and the Fair Work Regulations 2009 provide the legislative framework underpinning the national workplace relations system, which covers the majority of Australian employers and employees. Part of that framework is to provide for the making of enterprise agreements through collective bargaining.<sup>3</sup>

1.7 In approving an EBA made under the FW Act, the Fair Work Commission (FWC) must be satisfied that it does not contain any unlawful terms. Unlawful terms

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1 *Votes and Proceedings No. 2*, 31 August 2016, p. 48.

2 *Journals of the Senate No. 3*, 1 September 2016, p. 92.

3 Department of Employment, *Submission 2*, p. 3.

of an enterprise agreement are legally ineffective but do not render the agreement invalid.<sup>4</sup>

1.8 The FWC is currently able to inform itself on any matter before it, including by inviting oral and written submissions. However, the FW Act does not entitle a volunteer body to make a submission about a matter involving an enterprise agreement that is before the FWC, even if the matter could affect the volunteers represented by that body.<sup>5</sup>

1.9 The CFA and the UFU have been involved in a protracted enterprise bargaining dispute for over three years. The current enterprise agreement nominally expired on 30 September 2013.<sup>6</sup>

1.10 The negotiations on the proposed EBA are complicated by the fact that the CFA is comprised overwhelmingly of a volunteer workforce (approximately 97 per cent). Moreover, the rights of those volunteers are explicitly recognised in Victorian legislation through the Volunteer Charter that is enshrined in the *Country Fire Authority Act 1958 (Vic)* (CFA Act).<sup>7</sup>

1.11 The former CFA Board was concerned that the proposed EBA would:

- be inconsistent with the CFA Act under which the CFA is required to operate, thereby placing the CFA in breach of its statutory obligations;
- undermine volunteers and the volunteer culture of the CFA and thereby adversely impact the predominantly volunteer firefighting capacity of the CFA;
- adversely affect how the CFA manages its large contingent of volunteer firefighters; and
- be discriminatory.<sup>8</sup>

1.12 On 1 June 2016, the FWC made recommendations intended to resolve the dispute. Commissioner Roe specifically noted that the requirement to dispatch seven career firefighters<sup>9</sup> to an incident only applied to the limited number of integrated fire stations (see chapter three).<sup>10</sup>

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4 Department of Employment, *Submission 2*, pp. 4–5.

5 Department of Employment, *Submission 2*, p. 5.

6 Department of Employment, *Submission 2*, p. 3.

7 *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).

8 Department of Employment, *Submission 2*, p. 3.

9 As noted above, the term 'career firefighter' refers to what the EBA terms 'professional firefighter'.

10 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> (accessed 22 September 2016).

1.13 On 6 June 2016, the CFA Board was unable to approve the proposed EBA (including the recommendations made by the FWC).<sup>11</sup>

1.14 On 10 June 2016 the Victorian government accepted the FWC's recommendations as a basis for agreement and inserted additional clauses into the EBA to protect the position of volunteer firefighters.<sup>12</sup>

1.15 On 10 June 2016 the Victorian government began the process of dismissing the Board after it refused to support the proposed EBA. The Victorian Minister for Emergency Services resigned on 10 June 2016, the CFA Chief Executive Officer resigned on 17 June 2016, and the CFA Chief (Fire) Officer resigned on 30 June 2016.<sup>13</sup>

1.16 A new CFA Board was appointed with five members nominated by the government and four members nominated by Volunteer Fire Brigades Victoria (VFBV). The new CFA Board reached agreement with the UFU after some minor changes were made to the proposed EBA.<sup>14</sup>

1.17 The proposed EBA has not progressed further as the CFA has deferred putting it to a vote while proceedings continue in the Victorian Supreme Court in relation to an application by VFBV. Hearings in relation to this matter will commence on 22 September 2016.

1.18 The proceeding in the Supreme Court is primarily concerned with the question of whether the CFA Board has complied with its obligations under the Victorian CFA Act. It is not a proceeding that will consider the lawfulness of the proposed EBA in so far as it is a valid agreement under the Commonwealth FW Act.<sup>15</sup>

## **Purpose and overview of the bill**

1.19 In his second reading speech the Prime Minister stated that the bill was a response by the federal government to protect volunteer firefighters in Victoria from a union takeover. The Prime Minister further stated that the Victorian state government had taken sides against the volunteers.<sup>16</sup>

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11 Department of Employment, *Submission 2*, p. 3.

12 The Hon. James Merlino MP, Deputy Premier of Victoria and Emergency Services Minister, 'Statement on the CFA Board', *Media Release*, 10 June 2016, <https://284532a540b00726ab7e-ff7c063c60e1f1cafc9413f00ac5293c.ssl.cf4.rackcdn.com/wp-content/uploads/2016/06/160610-Statement-On-The-CFA-Board.pdf> (accessed 22 September 2016).

13 Department of Employment, *Submission 2*, p. 3.

14 Department of Employment, *Submission 2*, p. 3.

15 Department of Employment, *Submission 2*, pp. 3–4.

16 Prime Minister, the Hon Malcolm Turnbull MP, Second reading speech, *House of Representatives Hansard*, 31 August 2016, pp. 24–26, [http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/f706773d-28cd-4fb7-b62a-9ed884a645d8/0045/hansard\\_frag.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/f706773d-28cd-4fb7-b62a-9ed884a645d8/0045/hansard_frag.pdf;fileType=application%2Fpdf), (accessed 22 September 2016).

### ***Objectionable emergency management term***

1.20 The bill seeks to amend the FW Act to protect emergency services bodies and their volunteers. It does this by providing that a term which meets the definition of an 'objectionable emergency management term' is not to be included in an enterprise agreement, or that it has no effect, if it undermines the capacity of volunteer emergency services bodies to properly manage their volunteer operations, or terms that are inconsistent with State or Territory laws that regulate such bodies.<sup>17</sup>

1.21 The bill amends the definition of unlawful terms in enterprise agreements to include an 'objectionable emergency management term' that cannot be included in an agreement covering a designated emergency management body.<sup>18</sup>

1.22 A designated emergency management body is defined as:

- a body that is, or is a part of, a fire-fighting body or a State Emergency Service of a State or Territory (however described), or is a recognised emergency management body that is prescribed by the regulations; and
- a body that is, or is a part of a body that is, established for a public purpose by or under a Commonwealth, State or Territory law.<sup>19</sup>

1.23 The bill also provides that regulations may be made to provide that a body is not an emergency management body.<sup>20</sup>

1.24 An enterprise agreement that covers a designated emergency management body cannot include an objectionable emergency management term—that is, a term that has, or is likely to have, the effect of:

- restricting or limiting the body's ability to engage or deploy its volunteers; provide support or equipment to those volunteers; manage its relationship with, or work with, any recognised emergency management body in relation to those volunteers; otherwise manage its operations in relation to those volunteers; or
- requiring the body to consult, or reach agreement with, any other person or body before taking any action for the purposes of engaging or deploying its volunteers; providing support or equipment to those volunteers; managing its relationship with, or working with, any recognised emergency management body in relation to those volunteers; otherwise managing its operations in relation to those volunteers; or
- restricting or limiting the body's ability to recognise, value, respect or promote the contribution of its volunteers to the well-being and safety of the community; or

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

18 *Explanatory Memorandum*, p. i.

19 *Explanatory Memorandum*, p. i.

20 Department of Employment, *Submission 2*, p. 6.

- requiring or permitting the body to act other than in accordance with a law of a State or Territory, so far as the law confers or imposes on the body a power, function, or duty that affects or could affect its volunteers.<sup>21</sup>

1.25 The bill therefore applies to fire-fighting, State Emergency Service bodies and other prescribed emergency management bodies that are covered by the FW Act, established for a public purpose under a statute, use volunteers, and have made, or are seeking to make, an enterprise agreement that includes an objectionable emergency management term.<sup>22</sup>

1.26 This means that the bill will apply to the Victorian CFA and Victorian State Emergency Service because Victoria is the only state that has referred power to the Commonwealth on workplace relations matters relating to state public sector employers and employees. The bill will also apply to State Emergency Services in the Australian Capital Territory and Northern Territory. However, the bill may not apply to fire-fighting bodies or emergency services in other States as, to the extent these bodies are not constitutional ('or trading') corporations, these bodies are not covered by the FW Act because, unlike Victoria, other States have not referred their industrial relations powers over their public sectors to the Commonwealth.<sup>23</sup>

1.27 The bill is not legally retrospective but does alter how agreements in force prior to commencement will operate in the future. Clause 14 provides that the amendments will apply to new and existing enterprise agreements. At the approval stage of an EBA, if the FWC finds that an agreement includes an 'objectionable emergency management term', the FWC would not be able to approve that agreement with that term. Subclause 14(3) provides that if an existing enterprise agreement has a term that is found to be an 'objectionable emergency management term' that term would have no effect from the time the provisions commence, but the enterprise agreement would otherwise continue to operate.<sup>24</sup>

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

1.28 New sections 254A and 281AA provide an entitlement to certain volunteer bodies to make submissions to the FWC in relation to matters about enterprise agreements or workplace determinations that affect, or could affect, the volunteers of a designated emergency management body.<sup>25</sup>

1.29 The bill provides that, in order to be able to make a submission, a body must be either:

- a body corporate that has a history of representing the interests of the volunteers of the designated emergency management body; or

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21 *Explanatory Memorandum*, p. i.

22 Department of Employment, *Submission 2*, p. 6.

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

24 Department of Employment, *Submission 2*, p. 6.

25 *Explanatory Memorandum*, p. i.

- a body prescribed for this purpose by the regulations.<sup>26</sup>

## **Structure of the report**

1.30 Chapter two provides a background to the firefighters' dispute in Victoria. The chapter outlines the key players in the dispute, relevant sections of the CFA Act, and provides a timeline of the firefighting dispute in Victoria.

1.31 Chapter three discusses the contested elements of the proposed CFA-UFU EBA and the key issues that the bill seeks to address.

## **Compatibility with human rights**

1.32 The bill engages the following human rights: the right to work, the right to just and favourable conditions of work, the right to equality and non-discrimination, the right to freedom of association, and the right to form and join trade unions.<sup>27</sup>

1.33 The bills' statement of compatibility with human rights states that the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>28</sup>

## **Scrutiny of Bills Committee**

1.34 The Senate Standing Committee for the Scrutiny of Bills had not reported on the bill at the time that this report was tabled.

## **Financial Impact Statement**

1.35 The explanatory memorandum states that the bill will have no financial implications.<sup>29</sup>

## **Acknowledgement**

1.36 The committee thanks those individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at hearings. The committee particularly thanks those on-the-ground firefighters, both volunteer and career, that appeared before the committee in Macedon.

## **Notes on references**

1.37 References in this report to the Hansard for the public hearings are to the Proof Hansard. Please note that page numbers may vary between the proof and official transcripts.

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26 *Explanatory Memorandum*, p. i.

27 Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016, Statement of compatibility with human rights, p. v.

28 Statement of compatibility with human rights, p. iv.

29 *Explanatory Memorandum*, p. iii.

# Chapter 2

## Introduction

2.1 This chapter provides a background to the firefighters' dispute in Victoria. It begins by outlining the key players in the dispute, provides an excerpt of the Volunteer Charter enshrined in the *Country Fire Authority Act 1958 (Vic)* (CFA Act), and sets out a brief timeline of the key events in the dispute.

## Key players in the Victorian firefighting dispute

2.2 The key players in the dispute are:

- the Country Fire Authority (CFA);
- the United Firefighters Union (UFU); and
- firefighting volunteers represented by Volunteer Fire Brigades Victoria (VFBV).

## *Country Fire Authority*

2.3 The CFA is a statutory body established under the CFA Act. It delivers prevention, preparedness, response, recovery and organisational support services for fires and other emergencies in outer metropolitan suburbs, regional and rural areas of Victoria.<sup>1</sup>

2.4 The CFA has 1220 brigades that service over one million homes, protecting 3.3 million Victorians.<sup>2</sup> It is responsible for fire and emergency services (outside the metropolitan fire district) on private property throughout Victoria including:

- 60 per cent of Melbourne's suburbs;
- all provincial cities and towns; and
- all country areas.<sup>3</sup>

2.5 As at 30 June 2016, the CFA's workforce included 1086 career firefighters and more than 57 116 volunteers (of whom 35 796 are operational firefighters).<sup>4</sup>

2.6 The vast majority of the 1220 CFA fire stations are staffed entirely by volunteers. However, 35 non-metropolitan fire stations in peri-urban areas of

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1 Victorian Government, *Submission 1*, p. 8.

2 Victorian Government, *Submission 1*, p. 8.

3 Volunteer Fire Brigades Victoria, 'About CFA volunteers', [www.vfbv.com.au/index.php/about/ourvolunteers/aboutvolunteers](http://www.vfbv.com.au/index.php/about/ourvolunteers/aboutvolunteers), (accessed 22 September 2016).

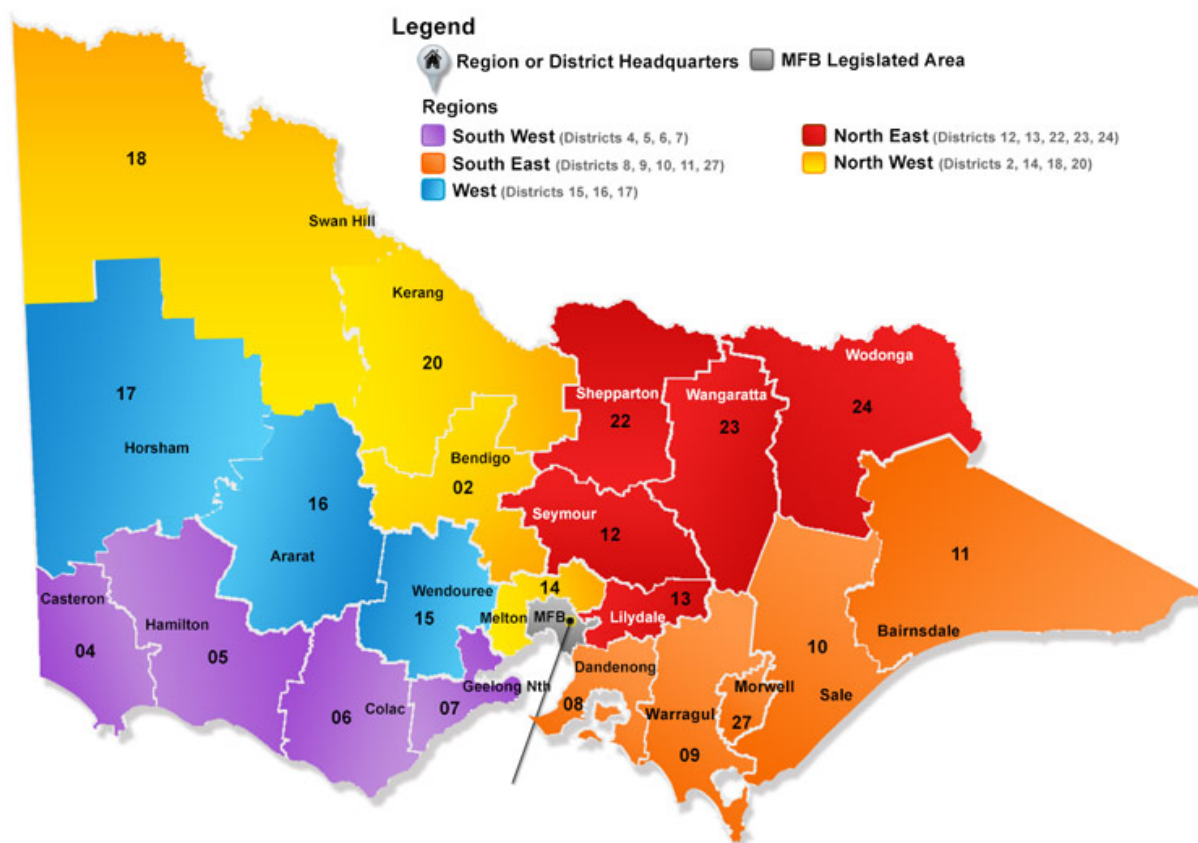
4 Victorian Government, *Submission 1*, p. 8.

Victoria—outer metropolitan Melbourne and major regional cities where the service demands are higher than in less densely populated regional and rural areas—are integrated: that is, they are staffed by both career and volunteer personnel.<sup>5</sup>

2.7 The Country Fire Authority District Map in Figure 2.1 indicates the division of Victoria into CFA districts.

2.8 The integrated firestations to which clause 77.5 (previously clause 83.5) of the EBA applies (see chapter three) generally surround Melbourne in districts 2, 7, 8, 13, 14, 15, and 27. Integrated stations to which clause 77.5 will apply will include Shepparton and Mildura by no later than 1 January 2017 and Warrnambool by no later than 1 January 2018.

**Figure 2.1—Country Fire Authority District Map**



Source: Country Fire Authority, [www.cfa.vic.gov.au/contact/](http://www.cfa.vic.gov.au/contact/) (accessed 22 September 2016).

5 Victorian Government, *Submission 1*, p. 8.



**Figure 2.2—Volunteer and integrated brigades in Victoria<sup>6</sup>**



Source: Volunteer Fire Brigades Victoria, [www.vfbv.com.au](http://www.vfbv.com.au) (accessed 22 September 2016).

2.9 The CFA has a nine member board appointed by the Minister for Emergency Services.<sup>7</sup> Four of the members are nominated by the VFBV to ensure there is volunteer knowledge on the board.<sup>8</sup>

2.10 The committee heard evidence from current and former senior CFA officers at the public hearing in Melbourne.

### ***United Firefighters Union***

2.11 The UFU has eight branches in Tasmania, South Australia, Victoria, ACT, New South Wales, Western Australia, Queensland and an Aviation sector branch.<sup>9</sup>

2.12 The UFU represents just over 1000 career firefighters in the CFA in Victoria. In 2010 the Victoria Branch of the UFU negotiated the CFA UFU Operational Staff Agreement 2010 which was subsequently certified in accordance with the FW Act.

2.13 That agreement expired in 2013. For the past three years the Victorian Branch has been bargaining a new agreement with the CFA and the Victorian state government with the involvement of the FWC. The proposed EBA would cover approximately 1200 CFA operation staff including firefighters.<sup>10</sup>

2.14 The committee received submissions and heard evidence from both career and volunteer firefighters from the integrated brigades at the public hearing in Macedon, as well as from the UFU leadership at the public hearing in Melbourne.

6 Please note that the numbers of brigades shown in Figure 2.2 may not exactly match the figures provided in the Victorian Government submission. Figure 2.2 provides a valuable visual illustration of the breakdown of brigades in Victoria, but the numbers of brigades provided in the text of this chapter are drawn from the Victorian Government submission and should be taken as the most up-to-date data available.

7 *Country Fire Authority Act 1958 (Vic)*, s. 7.

8 *Country Fire Authority Act 1958 (Vic)*, ss. 7(4).

9 United Firefighters Union, *Submission 54*, p. 2.

10 Victorian Government, *Submission 1*, p. 8; United Firefighters Union, *Submission 54*, p. 2.

### ***Volunteer Fire Brigades Victoria***

2.15 The VFBV is established under the CFA Act to represent volunteers on all matters that affect their welfare and efficiency. Under the CFA Act, the VFBV nominates four members of the CFA Board.<sup>11</sup>

2.16 The committee received submissions and heard evidence from volunteer firefighters from across rural and regional Victoria at the public hearing in Macedon, as well as from the VFBV leadership at the hearing in Melbourne.

### ***The Country Fire Authority Act 1958 (Vic)***

2.17 The 2009 Victorian Bushfire Royal Commission recognised the contribution that volunteers made to the CFA:

The strength of the CFA volunteer base was evident on 7 February [2009]; this includes its surge capacity, the local knowledge of its members and its rapid response.<sup>12</sup>

2.18 As noted earlier, the CFA is constituted and operates under the *Country Fire Authority Act 1958 (Vic)* (CFA Act). The CFA Act also accords statutory recognition to the role and voice of volunteers in the CFA. In 2011, the Parliament of Victoria enacted the *Country Fire Authority (CFA) Amendment (Volunteer Charter) Act 2011 (Vic)* which amended the CFA Act by adding four new sections (6F, 6G, 6H and 6I) to the CFA Act to:

- 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.

2.19 Section 6F, 6G, 6H and 6I of the CFA Act are reproduced below:

#### **Section 6F**

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

#### **Section 6G**

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11 *Country Fire Authority Act 1958 (Vic)*, ss. 7(4).

12 Victorian Bushfires Royal Commission, *Final Report*, July 2010, p. 4, [www.royalcommission.vic.gov.au/finaldocuments/summary/PF/VBRC\\_Summary\\_PF.pdf](http://www.royalcommission.vic.gov.au/finaldocuments/summary/PF/VBRC_Summary_PF.pdf), (accessed 22 September 2016).

The Parliament recognises that the Volunteer Charter—

- a) is a statement of the commitment and principles that apply to the relationship between the Government of Victoria, the Authority and volunteer officers and members; and
- b) requires that the Authority recognise, value, respect and promote the contribution of volunteer officers and members to the well-being and safety of the community; and
- c) requires that the Government of Victoria and the Authority commit to consulting with Volunteer Fire Brigades Victoria Incorporated on behalf of volunteer officers and members on any matter that might reasonably be expected to affect them.

### **Section 6H**

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

### **Section 6I**

The Authority has a responsibility to develop policy and organisational arrangements that encourage, maintain and strengthen the capacity of volunteer officers and members to provide the Authority's services.<sup>13</sup>

## **Timeline of the firefighting dispute in Victoria**

2.20 The negotiations over the proposed Enterprise Bargaining Agreement (EBA) have been ongoing since March 2013. Table 2.1 provides a summary outline of key milestones in the firefighting dispute in Victoria.

**Table 2.1—Timeline of the firefighting dispute in Victoria**

<b>September 2013</b>	On 30 September 2013, the current EBA between the CFA and the UFU (agreed in 2010) reached its nominal expiry date but continues to operate.
<b>2014 Victorian state election</b>	Victorian Labor party promises to hire an additional 350 paid firefighters if elected to government.
<b>2013–2016</b>	Since March 2013, the CFA and UFU have been negotiating a new EBA.
<b>October 2015</b>	Negotiations between the UFU, CFA, and Victorian state Labor government break down.
<b>November 2015</b>	The Victorian government asks the FWC to intervene.
<b>1 June 2016</b>	The FWC makes recommendations intended to resolve the dispute. The FWC specifically notes that the requirement to dispatch seven

13 *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).

	career firefighters to an incident only applies to the limited number of integrated fire stations.
<b>6 June 2016</b>	<p>The CFA rejects the proposed EBA.</p> <p>The CFA argues the EBA would give the UFU the power to veto operational decisions by the Chief Officer and undermine the role of volunteers.</p> <p>The CFA receives legal advice that certain clauses in the EBA appeared to be unlawful in terms of the CFA Act, and that the EBA was discriminatory.</p>
<b>10 June 2016</b>	<p>The VFBV successfully applies for a Supreme Court interim injunction to prevent the CFA putting the EBA to career firefighters (until 23 June).</p> <p>The court order also stipulates the parties are to meet on 20 June to talk about issues in the proposed pay agreement that might impact volunteers.</p>
<b>10 June 2016</b>	<p>The Victorian Government accepts the FWC's recommendations as a basis for agreement and inserts additional clauses protecting the position of volunteer firefighters.</p> <p>The Victorian Government appoints Emergency Services Commissioner Craig Lapsley to oversee implementation of the agreement particularly in relation to volunteers.</p>
<b>10 June 2016</b>	<p>Victorian Emergency Services Minister, the Hon. Jane Garrett MP resigns. Ms Garrett expresses concerns the new agreement would encroach on management decision-making and the role of volunteers. Ms Garrett does not accept the state government's proposals (based on the recommendations from the FWC) to end the dispute.</p> <p>The Victorian government begins the process of dismissing the CFA Board over its refusal to agree to the new EBA.</p>
<b>17 June 2016</b>	<p>The Victorian government appoints five new members to CFA Board. The VFBV nominates the remaining four Board members.</p> <p>The new Chair, Mr Greg Smith, is a former FWC deputy president and had portfolio responsibility for the CFA.</p>
<b>17 June 2016</b>	The CFA CEO Lucinda Nolan resigns.
<b>19 June 2016</b>	Four volunteer representatives nominated by the VFBV appointed to the CFA Board.
<b>20 June 2016</b>	The Victorian Supreme Court issues orders requiring the CFA and the VFBV to meet and discuss the volunteer firefighters' concerns with the proposed agreement on 8 July. This prevents the CFA putting the agreement to a ballot of employees until 23 July.
<b>28 June 2016</b>	The CFA Chief [Fire] Officer Joe Buffone resigns.

<b>July 2016</b>	<p>The new CFA Board and the UFU produce a joint statement of intent affirming the agreement:</p> <ul style="list-style-type: none"> <li>• only applies to the small number of integrated fire stations with paid and volunteer firefighters;</li> <li>• does not require seven paid firefighters on the ground before firefighting begins; and</li> <li>• incident controllers maintain their authority in deploying resources.</li> </ul>
<b>12 August 2016</b>	The new CFA Board endorses the EBA and authorises the CEO to put it a vote.
<b>13 August 2016</b>	<p>The VFBV again rejects the agreement and claims the EBA contains clauses contrary to the CFA Act.</p> <p>The VFBV seeks a further court injunction to secure an undertaking from the CFA that the EBA will not be put to a ballot until the Supreme Court makes a decision on the agreement's legality in a trial beginning 22 September 2016.</p>
<b>2016 Federal election</b>	The Coalition expresses strong support for the CFA and the VFBV during the election period.
<b>31 August 2016</b>	The Coalition Government introduces the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016.

Sources: Victorian Government, *Submission 1*, p. 8; Department of Employment, *Submission 2*, pp. 3–4; United Firefighters Union, *Submission 54*; Fair Work Commission, Final recommendation, *United Firefighters' Union of Australia v Country Fire Authority*, 1 June 2016; Julian Teicher, Professor of Human Resources and Employment, School of Business and Law, CQ University, 'Turnbull steps in as promised, but don't expect a swift end to firefighter dispute', *The Conversation*, 25 August 2016; Julian Teicher, 'What's the Victorian government's dispute with the CFA about? And how will it affect the election?', *The Conversation*, 29 June 2016; Workplace Express, 'Court restrains CFA from proceeding with agreement', 17 August 2016; Workplace Express, 'New flare-up looms in CFA dispute', 9 August 2016.

## Agencies responsible for delivering firefighting services across Australia

2.21 Individual state and territory governments are responsible for delivering emergency services. While all Australian jurisdictions have their own rural fire service:

Most jurisdictions divide responsibilities for delivery of fire services between several agencies based on the discrete function of the organisation and the geographical area, although the structure and responsibilities of individual agencies varies across jurisdictions.<sup>14</sup>

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14 Colleen Bryant, *Understanding bushfire: trends in deliberate vegetation fires in Australia*, Australian Institute of Criminology, January 2008, p. 7, [www.aic.gov.au/media\\_library/publications/tbp/tbp027/tbp027.pdf](http://www.aic.gov.au/media_library/publications/tbp/tbp027/tbp027.pdf) (accessed 22 September 2016).

2.22 The major agencies responsible for firefighting across Australian jurisdictions are summarised in Table 2.2.

**Table 2.2—Agencies responsible for firefighting across Australia**

Jurisdiction	Urban	Rural	Land management agency
	Principally attend fire incidents within major urban centres	Principally attend fire incidents in rural areas	Attend fire incidents in National Parks and state forests
Queensland	Queensland Fire and Rescue Service incorporates both urban and rural fire services (Queensland Rural Fire Service); is staffed by largely permanent and volunteer staff		Queensland Parks and Wildlife Service is responsible for managing parks and forests reserves
			Forestry Plantations Queensland is responsible for managing softwood and hardwood forest plantations from the former Department of Primary Industry – Forestry
			Department of Natural Resources and Water (Forest Products) subsequent to the South East Queensland Regional Forests Agreement (December 1999); is responsible for native forests set aside for logging
South Australia	Metropolitan Fire Service provides fire services to major urban centres in South Australia; permanent and retained firefighters working from fire stations		Department of Environment and Heritage is responsible for fires that are on, or threaten, national parks and other conservation areas in South Australia
	Country Fire Service – provides fire services in rural areas as well as in smaller urban centres in South Australia; draws on volunteer firefighters		Forests SA manages state-owned forest resources
Western Australia	Fire and Emergency Services Authority (FESA) provides and coordinates fire services across WA. The Operations Services division within FESA incorporates two components – the Fire and Rescue Service of Western Australia (career and volunteer) and bushfire brigades (volunteer). Career firefighters within the Fire and Rescue Service operate from stations in metropolitan Perth and some major regional centres. The remainder of the state outside national parks and forests is covered by the Volunteer Fire and Rescue Service and volunteer Emergency Service Units (ESU), which are an amalgamation of the FRS, Bush Fire Service (BFS) and State Emergency Service (SES)		Department of Environment and Conservation is responsible for fires that are on, or threaten, national parks and forests in WA
Tasmania	Tasmania Fire Service provides coverage for both urban and rural areas, excluding national parks and state forests; comprises both career and volunteer firefighters		Tasmania Parks and Wildlife Service is responsible for managing national parks and other conservation reserves
			Forestry Tasmania is responsible for managing the state forests
Northern Territory	NT Fire and Rescue Service comprises both urban stations and volunteer/community fire units; includes permanent staff, part-time auxiliaries and volunteers; principally operates in urban/community settlements	Bushfires Council responds only to grass fires and bushfires on land outside the Fire and Rescue Service response areas	
Australian Capital Territory	ACT Fire Brigade principally provides fire services in urban areas; comprises career firefighters	ACT Rural Fire Service is principally responsible for suppressing bush and grass fires within rural and remote areas of the ACT; incorporates one brigade staffed by ACT land management agencies	

Jurisdiction	Urban	Rural	Land management agency
	Principally attend fire incidents within major urban centres	Principally attend fire incidents in rural areas	Attend fire incidents in National Parks and state forests
New South Wales	NSW Fire Brigades provides urban fire services to major metropolitan and regional urban centres; principally permanent and retained firefighters working from fire stations but also includes community fire units and their members	NSW Rural Fire Service provides fire services to most of regional New South Wales outside major urban centres, but does provide firefighting services in more than 1,200 towns and villages; fire-fighting duties principally lie with volunteers	Forests NSW is responsible for managing public native forests as well as hardwood and softwood planted forests
			National Parks and Wildlife Service is responsible for managing National Parks and other conservation reserves
Victoria	Metropolitan Fire and Emergency Services Board provides urban fire services coverage from the Melbourne CBD to the middle and outer suburbs; principally permanent and retained firefighters working from fire stations		Department of Sustainability and Environment is responsible for public lands
	Country Fire Authority provides urban and rural fire services coverage for all parts of Victoria other than the Melbourne Metropolitan Fire District and public lands; this includes outer metropolitan Melbourne and regional centres; incorporates some career firefighters who work from urban stations but is heavily reliant on volunteers in regional Victoria		

Source: Colleen Bryant, *Understanding bushfire: trends in deliberate vegetation fires in Australia*, Australian Institute of Criminology, January 2008, in National Farmers Federation, *Submission 7*, pp. 8–9.





# 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 minimised 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.

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.



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.

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.

...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 VFBV 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.

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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.

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.

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.

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.

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



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.

# 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'.<sup>1</sup>
- 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.<sup>2</sup>
- 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

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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).<sup>3</sup>

- 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'.<sup>4</sup>
- 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'.<sup>5</sup>
- 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'.<sup>6</sup>
- 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'.<sup>7</sup>
- Professor Stewart concluded that the risk inherent in the bill is that 'the scope for disputation, uncertainty, delay and expense is considerable'.<sup>8</sup>
- 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 firefight, operations will not be compromised'.<sup>9</sup>
- 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'.<sup>10</sup>

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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.<sup>11</sup>

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.

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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.<sup>12</sup>

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

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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.<sup>13</sup>

### ***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.<sup>14</sup>

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

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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-gr9dtc.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.<sup>15</sup>

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'.<sup>16</sup> 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.<sup>17</sup>

1.18 Mr Marshall said that 'it is so easy to slur people, as the *Herald Sun* has done over 29 articles.'<sup>18</sup> 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.<sup>19</sup>

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

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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.<sup>20</sup>

### ***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'.<sup>21</sup>

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.<sup>22</sup>

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'.<sup>23</sup>

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

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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.<sup>24</sup> 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.<sup>25</sup>

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 benefited better; the community is going to be benefited better.<sup>26</sup>

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.<sup>27</sup>

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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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup>

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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.<sup>31</sup>

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.<sup>32</sup>

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.<sup>33</sup>

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*.<sup>34</sup> 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.

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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.<sup>35</sup>

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.<sup>36</sup>

### **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.<sup>37</sup>

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

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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.<sup>38</sup>

### **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.<sup>39</sup>

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.<sup>40</sup>

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:

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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.<sup>41</sup>

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

### *Elements of the EBA*

1.47 Mr Marshall told the committee that the EBA 'achieves the outcomes of the [2009 Victorian Bushfires] Royal Commission.'<sup>43</sup> 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

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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.<sup>44</sup>

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.<sup>45</sup>

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.<sup>46</sup>

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.

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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.<sup>47</sup>

### ***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.<sup>48</sup>

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

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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.<sup>49</sup>

### **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.<sup>50</sup>

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.<sup>51</sup>

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.<sup>52</sup>

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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'.<sup>53</sup>

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.<sup>54</sup>

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'.<sup>55</sup>

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.

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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](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.<sup>56</sup> 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.<sup>57</sup>

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.<sup>58</sup>

### ***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.<sup>59</sup>

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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.<sup>60</sup>

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.<sup>61</sup>

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'.<sup>62</sup>

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.<sup>63</sup>

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.<sup>64</sup>

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

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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.<sup>65</sup>

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.<sup>66</sup>

### **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.<sup>67</sup>

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.<sup>68</sup>

### **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:

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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.<sup>69</sup>

## 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.

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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.<sup>70</sup> 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**

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

# **Appendix 1**

## **Submissions and additional information received by the committee**

### **Submissions**

<b>Number</b>	<b>Submitter</b>
1	Victorian Government
2	Department of Employment
3	Victorian Farmers Federation
4	Mr John Peberdy
5	Mr Michael Tudball
6	Police Federation of Australia
7	National Farmers' Federation
8	Ryan Carlisle Thomas Lawyers
9	Australian Council of Trade Unions
10	Ai Group
11	Victorian Trades Hall Council
12	United Voice
13	Ambulance Employees Australia Victoria
14	Australian Nursing and Midwifery Federation (Victorian Branch)
15	Mr Brad Battin MP, Shadow Minister for Emergency Services
16	AMMA
17	Professor Andrew Stewart
18	Mr Roger Flavell, Council of Australian Volunteer Fire Associations Limited
19	Victoria Emergency Service Association
20	Ms Louise Staley MP, State Member for Ripon
21	Ms Roma Britnell MP, Statement Member for South West Coast
22	NSW Rural Fire Service Association
23	Corangamite Shire
24	Confidential
25	Mr Michael Carnell
26	Mr David Jarratt

27	Ms Samantha Rothman
28	Mr Brian Brewer
29	Mr Duncan Terry
30	Mr Randall Bacon
31	Mr Clinton Porter
32	Mr Grant Howell
33	Central Goldfields Shire Council
34	Mr Barry Roberts
35	Mr Craig Warren
36	Mr Bryan Pickthall
37	Confidential
38	Confidential
39	Mr John Phelps
40	Mr Ian Lewis
41	Mr Leonard Mainard
42	Leslie King
43	Mr Andrew Chatham
44	Hallam Fire Brigade
45	Rowville Fire Brigade
46	Greenvale Fire Brigade
47	Craigieburn Fire Brigade
48	Ballarat City Fire Brigade
49	Geelong City Fire Brigade
50	Melton Fire Brigade
51	Hoppers Crossing Fire Brigade
52	Cranbourne Fire Brigade
53	Corio Fire Brigade
54	United Firefighters Union of Australia
55	Volunteer Fire Brigades Victoria
56	Mr Tim Edwards
57	Mr Graeme Renwick
58	Mr Dale Bennett

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59	Mr Robert Bury
60	Mr Craig Allen
61	Kerry Clayton
62	Mr Chris Rutherford
63	Mr John Wilson
64	Mr Chris Jones
65	Mr Johnny Zaina
66	Mr Jay Martin
67	Mr Terry Robertson
68	Mr Nigel Holmes
69	Mr Alan Roberts
70	Mr Thomas Morley
71	Mr Stephen Hicks
72	Mr John Hansen
73	Mr Robert Fraser
74	Mr Jeremy Bergstrom
75	Mr Peter Rice AFSM
76	Lindsay McKenzie
77	Mr Ian Hamley
78	Confidential
79	Mr Ian Hiller
80	Mr Eddie Matt
81	Mr Graeme Rigg
82	Mr Barry Thomas
83	United Firefighters Union - Victorian Branch
84	United Firefighters Union of Australia, Union of Employees, Queensland
85	United Firefighters Union - ACT Branch
86	United Firefighters Union - TAS Branch
87	United Firefighters Union - SA Branch
88	United Firefighters Union - Aviation Branch
89	Australian Nursing and Midwifery Federation

90	Mr Ron Twining
91	Mr Andrew Smith
92	Mr Leo van Alphen
93	Ms Jacky Kelly
94	Mr Frank Whelan OAM
95	Ms Lynette Thomson
96	Mr John Drewett
97	Mr Kelvin Bateman
98	Mr Shane Roberts
99	Ms Jill Connor
100	Ms Margo Ashton
101	Ms Fiona Burns
102	Mr Klaus Mayer
103	Ms Miranda Bain
104	Ms Judy Clarke
105	Mr Bjorn Valsinger
106	Mr Max Green
107	Ms Sharron Jones
108	Mr Michael Coldham
109	Mrs Sarah Krumins
110	Mr Doug Pitches
111	Ms Robyn Langford
112	Mr Rob Beck
113	Mr Simon Potter
114	Mr Butch Ross
115	Mr John Hayes
116	Mr David Gerrard AFSM
117	Mr George Wright
118	Mr Michael Bourke
119	Mr Steven Forrest
120	Mr Max Mccaffrey
121	Mr John Ronald Rowe

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122	Mr Terry O'Brian
123	Mr Robert Bethell
124	Mr Murray Withington
125	Mr Gary Greer
126	Mr Don Barber
127	Mr Rick O'Haire
128	Mr John McLaren
129	Mrs Joy Howley
130	Mr Steven Old
131	Mr Keith Bunnett
132	Mr Graeme Milne
133	Mr John Seymour
134	Mr Denzil Kent
135	Mr Robert Woolley
136	Mr Alaine Kent
137	Mr Walter Aich
138	Mr John Cooper
139	Toni Munday
140	Mr Graham Thomson
141	Mr Russell Peucker
142	Mr Ben Reynolds
143	Ms Anne Dunn
144	Mr Ian Ashcroft
145	Mr David Gamble
146	Mr David Reid
147	Ms Robyn Gerrard
148	Mr Gary Cheesman
149	Ms Janette O'Keefe
150	Mr David Coad
151	Mr Paul Esmonde
152	Confidential
153	Mr John Davies

154	Mr Ian Walter
155	Mr Brendan Regan
156	Mr Bob Chanter
157	Mr Nicholas Barton
158	Confidential
159	Mr Lachlan Gales
160	Mr David Blackburn AFSM
161	Mr Ian Smith
162	Mr David Allen
163	Mr Peter Graham APM
164	Ms Mary Anne Egan
165	Confidential
166	Mr Anthony Wright
167	Mr Michael O'Mara
168	Mr Geoff Rowe
169	Mr Darren Collins
170	Leigh Sutton
171	Mr Peter Jenkin
172	Mr John Morris
173	Terry Hedt
174	Mr Phil Stewart
175	Mr Rick Coleman
176	Mr Anthony Carroll
177	Mr Ivan Lee
178	Wayne Bourke
179	Mr Tim Buckley
180	Benalla And District Fire Brigade Group
181	Mr Peter Sandy
182	Traralgon CFA
183	Mr Tim Elrington
184	Mr Michael Ashworth-King
185	Mr Rod Stebbing



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186	K. L Williams
187	Molyullah Rural Fire Brigade
188	Mr Glenn Charteris
189	Association of Volunteer Bush Fire Brigades WA
190	Mr Eric Collier
191	Fire Brigade Employees' Union NSW
192	Mr John Fleming
193	Mr John Allen
194	Mr Colin James
195	Mr Stewart Matulis
196	Ms Maree Jane
197	Mr Brendan Robertson
198	Mr Shane Cramer
199	Ms Marilyn Brend Robinson
200	Mr Shane Miller
201	Mr Derek Reed
202	Mr Bill Robinson
203	Ms Sarah Ottens
204	Mr Rhys Matulis
205	Ms Joan McGrath
206	Mr Andrew Bath
207	Mr Peter Frank Raisin
208	Mr Peter Grills
209	Mr Alan Wallace
210	Mr Paul Yandle
211	Mr Barry Wiseman
212	Mr Alan Stuart OAM
213	Ms Heather Stuart
214	Mr Colin & Robyn Coates
215	Mr Peter Tischler
216	Mr Rohan Bottoni
217	Mr Tim Hill

218	Ms Jody Yandle
219	Ms Christine Fyffe MP, Statement Member for Evelyn
220	Mr Gil Hopkins
221	Mr Doug McDougall
222	Ms Sue Horsley
223	Mr Greg Wickes
224	Mr Gerry Lavery
225	Mr Jason Ross
226	Ms Vickie Linaker
227	Ms Carmel Mitchell
228	Mr Adam Carrigg
229	Mr Michael Huxtable
230	Confidential
231	Mr Alex Felich
232	Mr Norman Riley
233	Mr Greg Walcott
234	Mr Rodney Franks
235	Mr Tom Spielvogel
236	Ms Melita Cordie
237	Ms Sherrie Cordie
238	Mr Peter Sharman
239	Ms Vivienne-Anne Wood
240	Mr Eric & Annette Deppeler
241	Mr Stewart McGregor
242	Mr Greg Goulet
243	Mr Peter Keays
244	Mr Rod Laidlaw
245	Mr Adrian & Mandy Straw
246	Mr Bill Stockdale
247	Mr Mark Dryden
248	Mr Patty O'Donoghue
249	Mr Eric Smith

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250	Mr Ian Ireland
251	Mr Trevor Harding
252	Mr Geoff & Debbie Browning
253	Mr Alan Boyd
254	Mr Richard Nankivell
255	Mr Geof Bassett
256	Mr Marc Burton-Walter
257	Ms Paula Stuart
258	VFBV District Council No.16
259	Mr Ron Schultz AFSM
260	Mr John Wilken
261	Mr Andrew Bennett
262	Confidential
263	Mr Ian Sichlau
264	Mr Geoff Howley
265	Mr Keith Clough
266	Ms Claire Griffiths
267	Mr Rob Auchterlonie
268	Mr Brendan Jenkins
269	Mr Geoffrey Barker
270	Mr Garry Nash
271	Mr Paul Marshall
272	Mr Michael Jones
273	Mr Neil Jones
274	Ms Jeanene Howard
275	Mr Colin Carter
276	Mr Kevin L'Huillier
277	Ms Jill Parker
278	Mr James Kelly
279	Mr Greg Cutting
280	Mr Frank Tobin

281	Mr Bruce Corbett AFSM, Tasmanian Retained Volunteer Firefighters Association
282	Mr Robert Atkins AFSM, Tasmanian Volunteer Fire Brigades Association
283	District 22 Volunteer Fire Brigades Victoria
284	Ms Kristian Pitches
285	Mr Richard Mansfield
286	Ms Maurie Killeen
287	Mr Paul Bannan
288	Mr Andrew Cooke
289	Mr Don Bigham
290	Ms Pat Bigham
291	Mr Greg Fithall
292	Mr Noel Nealon
293	Tatura Urban Fire Brigade
294	Mr Phillip Lind
295	Mr Adam Wightwick
296	Mr Kevin Forster
297	Ms Sue Bull
298	Lilydale Fire Brigade
299	Ocean Grove Fire Brigade
300	Ms Dianne English
301	Ms Casey Nunn
302	Volunteering Australia
303	Ms Rebekah Isaacs
304	Springvale Fire Brigade
305	Morwell Fire Brigade
306	Dandenong Fire Brigade
307	Bendigo Fire Brigade
308	Yellingbo Fire Brigade
309	Mr Rick Aitchison
310	Mr Graeme Luke
311	Ms Jan Cleary

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312	Mr David Farmer
313	Rural Fire Brigades Association Queensland Inc.
314	Mr Doug Steley
315	The Hon Gerry McCarthy MLA, Northern Territory Government
316	Mr Andrew Bishop
317	Confidential
318	Mr Andrew Currie
319	Mr Vincent O'Grady
320	Mr Stephen Hill
321	Mr Peter Smith
322	Confidential
323	Confidential
324	Confidential
325	Confidential
326	Confidential
327	Confidential
328	Confidential
329	Confidential
330	Confidential
331	Confidential
332	Confidential
333	Confidential
334	Confidential

### ***Additional information***

- 1 Country Fire Authority Board resolution and correspondence of 12 August 2016, relating to evidence provided by Ms Frances Diver at page 89 of proof Hansard transcript, Melbourne, 28 September 2016.
- 2 *2009 Victorian Bushfires Royal Commission: Organisational Structure, Submissions of Counsel Assisting*. Document referred to in answer to question on notice by Mr Geoffrey Barker, public hearing Macedon, Victoria, 19 September 2016.

### ***Answers to Questions on Notice***

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*Public hearing Melbourne, 28 September 2016*

- 1 Answer to Questions on Notice from Senator Cameron to the Department of Employment.
- 2 Answer to Question on Notice from Senator McKenzie to Professor Andrew Stewart.
- 3 Answers to Questions on Notice from Senator Cameron to the Country Fire Authority.
- 4 Answer to Question on Notice from Senator McKenzie to Mr Matt O'Connor of Industrial Relations Victoria.
- 5 Answer to Question on Notice from Senator Marshall to Mr Andrew Ford of Volunteer Fire Brigades Victoria.
- 6 Answer to Question on Notice from Senator Cameron to Mr Peter Marshall of the United Firefighters Union, public hearing Melbourne, 28 September 2016.

*Public hearing Macedon, Victoria, 19 September 2016*

- 7 Answer to Question on Notice from Senator McKenzie to Mr Luke Shearer.
- 8 Answer to Question on Notice from Senator Cameron to Mr Geoffrey Barker.

***Tabled documents****Public hearing Melbourne, 28 September 2016*

- 1 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Peter Marshall.
- 2 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Peter Marshall.
- 3 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Peter Marshall.
- 4 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Peter Marshall.
- 5 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Peter Marshall.
- 6 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Peter Marshall.

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7 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Peter Marshall.

8 Document tabled at a public hearing on 28 September 2016 in Melbourne Victoria by Mr Garth Head.

*Public hearing Macedon, 19 September 2016*

1 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr Mark Hooper.

2 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr Tim Van Den Driest.

3 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr Tim Van Den Driest.

4 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Senator Gavin Marshall.

5 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr John Dunn.

6 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr Owen O'Keefe.

7 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr Patrick Shawcross.

8 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr Rob Auchtelonie.

9 Document tabled at a public hearing on 19 September 2016 in Macedon Victoria by Mr Bill Stockdale.





## **Appendix 2**

### **Public Hearings**

***Macedon (Victoria) 19 September 2016***

**Committee Members in attendance:** Senators McKenzie, Marshall, Back, Cameron, Hanson, Hume, Lambie, Roberts.

**Witnesses**

**Mr Walter Aich, volunteer firefighter, Warragul district**

**Mr Rob Auchterlonie, volunteer firefighter, Warragul district**

**Mr Geoffrey Barker, leading firefighter, Cranbourne Fire Station**

**Mr Neil Beer, private capacity**

**Mr David Blackburn, volunteer firefighter, Ararat district**

**Mr Brian Brewer, volunteer firefighter, Warragul district**

**Mr James Butler, career firefighter, Senior Station Officer, Ballarat city**

**Mr John Dunn, volunteer firefighter, Shepparton district**

**Mr Jeremy Egan, 1<sup>st</sup> Lieutenant, Geelong City Fire Brigade,**

**Mrs Mary-Anne Egan, volunteer firefighter, Wangaratta district**

**Mr Chris Egglestone, volunteer firefighter, Wendouree district**

**Mr Justin Elliot, leading firefighter, Morwell Fire Station**

**Mrs Dianne English, volunteer (Craigieburn Secretary), Craigieburn**

**Mr Raj Faour, volunteer, Hallam**

**Mr Lachlan Gales, volunteer firefighter, Wangaratta district**

**Mr David Gamble, volunteer firefighter, Seymour district**

**Mr Alan Gorman, volunteer firefighter, Wendouree district**

**Mr Mark Hooper, volunteer firefighter, Kerang district**

**Ms Rebekah Isaacs, volunteer firefighter, Melton district**

**Mrs Sharron Jones, volunteer firefighter, Senior Station Officer, Hallam**

**Mr Stephen Keating, career firefighter, Senior Station Officer, Hallam**

**Mrs Sarah Krumins, Volunteer Firefighter, Lilydale district**

**Mr Gerry Lavery, volunteer firefighter, Wendouree district**

**Mr Bill Maltby, volunteer firefighter, Bendigo district**

**Mr Adam Matthews, Leading Firefighter, Hoppers Crossing Fire Brigade**

**Mr Greg McManus, Volunteer Firefighter, North Geelong district**

**Mr Robert McVey, Leading Firefighter, Country Fire Authority, Geelong City Fire Brigade**

**Mr Owen O'Keefe, volunteer firefighter, Hamilton district**

**Mr Des Phelan, volunteer firefighter, Wendouree district**

**Mr Peter Quill, Volunteer Firefighter, Cranbourne Fire Brigade**

**Mr John Radford, Operations Officer, Country Fire Authority district 27, Traralgon Fire Station**

**Mr Justin Rees, 1st Lieutenant and Volunteer Firefighter, Melton Fire Brigade**

**Mr David Rush, private capacity**

**Miss Eliza Sawyer, Volunteer Firefighter, Lilydale district**

**Mr Patrick Shawcross, Career Firefighter, Ballarat City**

**Mr Luke Shearer, Station Officer, Melton Fire Station**

**Mr Peter Spicer, Career Firefighter, Senior Station Officer, Craigieburn**

**Mr Bill Stockdale, private capacity**

**Mr Luke Symeoy, Volunteer, Craigieburn**

**Mr Alan Thistlethwaite, Career Firefighter, Greenvale**

**Mr Timothy Van Den Driest, Career Firefighter, Senior Station Officer, Rowville**

**Mr Thomas Walter, Career Firefighter, Greenvale**

**Mr John Zaina, volunteer firefighter, Wendouree district**

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**Melbourne, Victoria, 28 September 2016**

**Committee Members in attendance:** Senators McKenzie, Marshall, Cameron, Hinch, Hume, Lambie, Paterson, Rhiannon, Roberts.

**Witnesses**

**Volunteer Fire Brigades Victoria**

Mr Andrew Ford, Chief Executive Officer, Volunteer Fire Brigades Victoria

Mr Nev Jones, State President, Volunteer Fire Brigades Victoria

Mr Adam Barnett, Executive Officer, Volunteer Fire Brigades Victoria

Mr Garth Head, Consultant, Volunteer Fire Brigades Victoria

**Ms Lucinda Nolan, Former Chief Executive Officer, Country Fire Authority, private capacity**

**Professor Andrew John Stewart, private capacity**

**Mr John Peberdy, private capacity**

**Mr Michael Tudball, private capacity**

**Ambulance Employees Australia Victoria**

Mr Steve McGhie, Secretary, Ambulance Employees Australia Victoria

**United Firefighters Union National Branch and United Firefighters Union Victoria Branch**

Mr Peter Marshall, National Secretary and Victorian Branch Secretary, United Firefighters Union

Ms Michelle Baldini, Industrial Officer, United Firefighters Union Victoria Branch

Mr Barry Thomas, private capacity

**Country Fire Authority**

Ms Frances Marie Diver, Chief Executive Officer, Country Fire Authority

Mr Steve Mark Warrington, Chief Officer, Country Fire Authority

**Victorian Government**

Mr Matt O'Connor, Deputy Secretary, Industrial Relations Victoria, Department of Economic Development, Jobs, Transport and Resources

**Department of Employment**

Mr Jeremy O'Sullivan, Chief Counsel, Workplace Relations Legal, Department of Employment

Ms Natalie Radcliffe, Principal Government Lawyer, Department of Employment

Ms Jody Anderson, Branch Manager, Workplace Relations Policy Group

Dr Alison Morehad, Group Manager, Workplace Relations Policy Group, Department of Employment

# Appendix 3

## Examples of Clauses Constraining CFA Decision Making

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

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

Clause		Topic	Term used
1	11.29	FSCC modules	"..course structure agreed between the parties"
2	12.13	Rank & Promotional Structures	"..other than by agreement of the parties."
3	14.3	Community Support Facilitators	"..shall not pursue any claims in relation to CSF's or any alternative classification performing similar duties not provided for in this agreement"
4	15.1	Brigade Administrative Support Programs/Officers (BASO)	"..and reach agreement with the UFU on any change...to the structure of any Brigade Administrative Support Programs..."
5	16.1	Volunteer Support program/Officers	"...will consult and reach agreement with the UFU...on the structure of any Volunteer Support Programs..."
6	23	Legislation and Reform	"Any position...put to government...must be consistent with the outcomes of consultation."
7	30.2	Bushfires Royal Commission Report	"..and reach agreement in relation to any matter that arises out of the Royal Commission's report..."

Clause		Topic	Term used
8	35.2.1	Work Organisation	"...except where agreed..." "FWC cannot determine that any employee should or will carry out such work."
9	41.1	CFA Policies	"...may only be made or varied by agreement."
10	44.1	Minimum Staffing Levels	"The parties have agreed...Charts in Schedule 1..."
11	44.3	Minimum Staffing Levels	.An alteration to the number and rank of employees...by agreement between the parties."
12	44.14	Appliance Crewing	"...ensuring that there are four professional career firefighters on all appliances except as where agreed..."
13	44.15	Cross Crewing	There will be no cross crewing of appliances unless otherwise agreed..."
14	44.20.3	Schedule 1 dates	"The commencement date of operations for the charts in Schedule 1 can be extended...only by agreement..."
15	46.4	On Shift Relievers	"The home location for any employee... cannot be changed without agreement.  "No other...reliever other than district-based or station-base unless by agreement..."
16	48.3.1	Secondment & Lateral Entry	"...in agreement with the UFU, will offer agreed secondment program training for a minimum 12 CFA...and a minimum 12 MFB..."  "...Other fire services may be considered on a case by case basis if agreed..."
17	48.3.9	Secondment & Lateral Entry	"Any further extensions [beyond one year secondment] will be by agreement of the parties."

Clause		Topic	Term used
18	48.4.3	Secondment & Lateral Entry	"...must be from the MFB or from another fire service that has been agreed between the CFA and UFU..."
19	48.6.4.1	Lateral Entry	"...the position may only be filled, by a career firefighter of the MFB unless otherwise agreed..." &
20	48.6.4.2	Lateral Entry	"...(a recruit course agreed between the CFA and UFU)."
21	48.6.4.4	Lateral Entry	"...undertake a short course...These requirements will be as determined by the CFA and UFU as agreed."
22	48.7.3	Lateral Entry	"Firefighting Services other than the CFA and MFB can be considered...but such consideration must be by agreement..."
23	50.3	Part-time/Casual	"The CFA will not employ an employee on a part-time or casual basis...unless in each case there is agreement..."
24	50.6.5.1	Part-time	"work and be rostered on hours negotiated and agreed in writing"
25	58.2	Disputes Panel	"Where agreed between the UFU and CFA the Disputes Panel may consider...any other matter agreed by the parties"
26	58.8	Disputes Panel	"the Minister will accept a recommendation...who shall become the chairperson of the Disputes Panel..."
27	58.14	Disputes Panel	"Both parties agree to abide by the Disputes Panel's determinations."
28	60.1.1	Peer Support	"Peer support employees under this agreement will be drawn from professional firefighters."
29	60.1.6	Peer Support	"...and agreed psychologists and doctors"
30	67.1	Marine Capability	"...parties agree...to implement an enhanced Marine capability and capacity within the organisation."

Clause		Topic	Term used
31	70.2	Health and Safety	"The parties agree to apply and to review the OHS agreement..."
32	73.2	Gambling, Drug and Alcohol Rehabilitation	"The protocol will be developed and agreed..."
33	77.2	Training and Professional Development	"In all training matters, the parties agree..."
34	77.4	Training Locations	"Training will only take place at agreed recognised training locations..."
35	77.8	Number of Courses	"The CFA will provide a minimum number of courses per year of the agreement unless otherwise agreed..."
36	83.4	Uniforms, Appliances and Equipment	<p>"The CFA and UFU must agree on all aspects of the:</p> <p>83.4.1 articles of clothing;</p> <p>83.4.2 equipment, including personal protective equipment;</p> <p>83.4.3 technology;</p> <p>83.4.4 station wear; and</p> <p>83.4.5 appliances."</p>
37	83.7	Uniforms, Appliances and Equipment	"Changes to...will be by agreement only..."
38	83.10	Uniforms, Appliances and Equipment	"...consult and agree with the UFU..."
39	83.13	Uniforms, Appliances and Equipment	"...prior to the development/building or tendering of the appliance/s consultation will occur and CFA will reach agreement..."
40	87.6	Amenities	"Where the employer seeks to make changes to any amenities or access to communications...such changes will only occur by agreement..."




Clause		Topic	Term used
41	88.4	Infrastructure	"The Infrastructure Agreement may only be varied or departed from where this is agreement..."
42	88.6.2	New Work Locations	"...will adhere to and apply the Infrastructure Agreement for the design and specification of appliances and equipment...except as agreed..."
43	88.6.3	New Work Locations	"Deployment of staff to a particular work location shall not occur...unless agreed between the parties."
44	88.7.3	Existing Work Locations	"Any modifications to existing work locations...except as agreed..."
45	88.7.4	Existing Work Locations	"Any modifications will be by agreement between..."
46	88.12	Existing Work Locations	"No employee will be relocated or directed to relocate into any permanent premises...prior to there being agreement reached between..."



# Appendix 4

## Volunteer Charter<sup>1</sup>



**PREAMBLE**  
 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. The Charter is a statement of principle that will apply to the relationship between CFA, the State of Victoria, and CFA's Volunteers.

**THIS VOLUNTEER CHARTER...**

- It is an agreed commitment by the State of Victoria, CFA and VFBV on behalf of CFA Volunteers to each other;
- Ensures the State of Victoria and CFA will commit to consultation with Volunteers about all matters which might reasonably be expected to affect Volunteers;
- Provides the framework for the three-way relationship between the parties, requiring the success of the relationship and the outcomes from the Charter to be judged against the following principles:
  - Is it fair?
  - Is it just?
  - Is it reasonable?
  - Does it discriminate against Volunteers?
  - Is the outcome practicable and sustainable?
  - Is it in the best interest of the safety of the Victorian community?
- Is the framework for an enduring commitment between the parties. The Charter shall be reviewed as required by the parties or at the end of four years from its date of commencement.

**VOLUNTEERS IN CFA...**

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

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

To:

- Provide their services for the protection of life and property, prevention and suppression of fires and undertake other relevant duties to create a safer community in a mutual, respectful and active partnership with people employed by CFA, other organisations and the community;
- Operate safely and undertake appropriate training and planning to ensure their personal safety and enhance the delivery of services in creating a safer community;
- Exercise the powers vested in them by the Country Fire Authority Act 1958 and Regulations in the best interests of the community;
- Recognise and support the elected VFBV representatives and the consultative mechanisms as agreed with CFA; and
- Be committed to working in harmony and consultation with CFA and seek to resolve differences of opinion internally in the first instance.

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

To:

- Recognise, value, respect and promote CFA Volunteers who come from widely divergent communities with differing needs and characteristics, as core partners with people employed by CFA;
- Recognise and acknowledge that a primary responsibility of CFA and people employed by CFA is to nurture and encourage Volunteers and to facilitate and develop their skills and competencies;

- Do not contribute their time for financial reward but do expect to gain satisfaction from service, achievement, personal development and camaraderie.
- Recognise and acknowledge the value of the time that Volunteers provide to CFA and ensure that Volunteer time is used to maximum advantage;
- Acknowledge that policy development and change should always be considered in terms of its potential to support and facilitate the Volunteer contribution and the particular situation of local brigades;
- Recognise that VFBV represents Volunteers in general and ensure there is meaningful consultation, allowing enough time for real involvement, with the elected representatives of Volunteers on all matters which may impact upon Volunteers before the adoption or implementation of any new or changed policies, procedures or approaches;
- Ensure that Volunteer views, opinions and concerns are fully considered before adopting any new or changed policies, procedures or approaches which impact on them as CFA Volunteers;
- Provide the resources necessary to enable new or changed policies, procedures or approaches which impact on them as CFA Volunteers to be implemented efficiently and effectively;
- Provide adequate resources to enable Volunteers in CFA to deliver agreed services;
- Provide administrative, operational and infrastructure support to enable Volunteers to perform their roles safely and effectively within available resources;
- Recognise and respect the needs of Volunteers that are derived from their volunteer service and provide effective and comprehensive support services within available resources including but not limited to:
  - Where appropriate providing protection against the financial consequences of extended litigation and arranging adequate legal representation with respect to proceedings involving Volunteers arising out of CFA activities;
  - OH&S support and development of the safest possible working environment for Volunteers;
- Procedures to address issues of discrimination in a fair, just and timely manner;
- Counselling and welfare support;
- Training;
- Support and assistance for Volunteers in applying for employment as CFA employees; and
- Compensation for accidents, injuries and losses.

**THE GOVERNMENT OF VICTORIA RECOGNISES AND ACKNOWLEDGES THE VOLUNTEERS' COMMITMENT. THE STATE OF VICTORIA WILL PROVIDE SUPPORT TO THE VOLUNTEERS SUBJECT TO THE FOLLOWING PRINCIPLES...**


To:

- Recognise, value, respect and promote CFA Volunteers, their families and employers for their contributions to the well-being and safety of the people of Victoria;
- Ensure that CFA legislation appropriately recognises the needs and interests of Volunteers in the delivery of services and protects Volunteers who provide their services in good faith and their dependants from financial losses and other liabilities; and
- Consult with the elected representatives of Volunteers on all matters which may impact upon Volunteers including proposed legislation and the adequacy of resources to enable Volunteers in CFA to deliver the agreed services.


**THE COMMITMENT...**


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

This Charter is dated the 27th day of February 2011 and re-affirms the enduring commitment between the parties to each other evidenced by the Volunteer Charter made on 22nd December 2001.




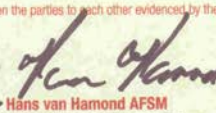
**Ted Baillieu MP**  
Premier on behalf of the State of Victoria






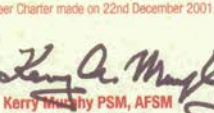
**Peter Ryan MP**  
Minister for Police and Emergency Services on behalf of the State of Victoria






**Hans van Hamond AFSM**  
President, Volunteer Fire Brigades Victoria





**Kerry Murphy PSM, AFSM**  
Chairman, Country Fire Authority



1 Country Fire Authority, Volunteer Charter:  
[http://www.ufba.org.nz/images/documents/Victoria\\_CFA\\_Volunteer\\_Charter.pdf](http://www.ufba.org.nz/images/documents/Victoria_CFA_Volunteer_Charter.pdf)