



**Metropolitan Fire and
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21 November 2016

Committee Secretary
Senate Education and Employment Committees
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Dear Committee Secretary,

RE: Inquiry into the provisions of the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016

We refer to the inquiry into the provisions of the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 being conducted by the Education and Employment Legislation Committee (**the Inquiry**).

In evidence to the Inquiry on 28 September 2016, the Metropolitan Fire and Emergency Services Board (**MFB**) understands the United Firefighters Union (**UFU**), through its National Secretary and Victorian Branch Secretary, Peter Marshall, asserted that a piece of equipment was bought by the MFB “outside the consultation process” that had four or five metres of escape ladder missing. The UFU asserted the equipment was purchased without the MFB having looked at the equipment and that such equipment was a risk to firefighter health and safety. The MFB understands that the UFU was referring to ladder platforms and the Ladder Platform Replacement Project when Mr Marshall made the submissions he did to the Inquiry.

The MFB wishes to clarify the assertions made and provide the Inquiry with a more fulsome and accurate account of the circumstances regarding the Ladder Platform Replacement Project. Mr Marshall made similar assertions when he appeared before the inquiry into Victoria’s fire season preparedness that is currently taking place before the Victorian Environment and Planning Committee (**the Victorian Fire Season Inquiry**). The MFB has provided a similar letter to the Victorian Fire Season Inquiry so that Committee is fully informed of the relevant facts and circumstances regarding the MFB’s acquisition of replacement ladder platforms. We understand the Education and Employment Legislation Committee has recently tabled with the Senate its report into the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016. The MFB nonetheless submits this letter so the MFB’s position is recorded by the Committee.

The Ladder Platform Replacement Project

A ladder platform is an appliance fitted with an aerial ladder and rescue platform with a telescopic cage boom at its head. It has dual hydraulic controls which means that a firefighter can operate the ladder platform from up on the cage or on the back of the fire truck.

In June 2010, the MFB ordered two new 44 metre Bronto Ladder Platforms as replacements for two existing Bronto Ladder Platforms which had reached their 15-year lifespan.

At that time, the process for replacing and managing individual appliances differed from the consultation process now applied in accordance with the current MFB enterprise agreement, the *Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement 2010 (2010 MFB Enterprise Agreement)*. The 2010 MFB Enterprise Agreement had not yet come into operation when the MFB ordered the replacement ladder platforms.

Individual appliances were replaced and managed in two ways, subject to whether the replacement appliance was “like for like” or whether a different appliance with a change in capability was needed.

Where a replacement appliance was identified as a “like for like” replacement, the MFB Fleet Department simply notified the Vehicle and Equipment Sub-Committee (**V&E Sub-Committee**) that the appliance was being replaced. The V&E Sub-Committee was a sub-committee of the Consultative Committee convened in accordance with the consultation provisions of the then enterprise agreement. The rationale behind this process was that once an appliance had been initially commissioned, evaluated and considered as fit-for-purpose, it was appropriate to proceed to replace it without the need for another extensive consultation process.

Where a replacement appliance was identified as having a change of capability, however, an extensive consultation and assessment process was carried out. This involved establishing a working party made up of various representatives including a Commander, health and safety representatives, Fleet Department representatives, end-user representatives and UFU representatives. The working party would develop user requirements that resulted in the creation of technical specifications which were then to be endorsed by the working party before being presented to the V&E Sub-Committee. If satisfied, the V&E Sub-Committee then recommended the proposal to the Consultative Committee for endorsement. If endorsed, a request for tender was then issued. This process is now largely reflected in the processes carried out under the 2010 MFB Enterprise Agreement.

To assert, therefore, that the MFB initiated the Ladder Platform Replacement Project “outside the consultation process” is incorrect. The replacement ladder platforms were like for like in terms of the capability of the ladder platforms then in use, and so, in accordance with the accepted custom and practice at that time, the decision to purchase the new ladder platforms was notified to the V&E Sub-Committee on 16 June 2010 and they were ordered on that date, at a cost of \$2.8million to the MFB, without the need for consultation. The UFU was notified of the purchase through its representatives on the V&E Sub-Committee.

The MFB notes that the “like for like” process is now no longer followed under the 2010 MFB Enterprise Agreement. In accordance with clause 88 of the 2010 MFB Enterprise Agreement, the MFB and the UFU must consult and “agree on all aspects” of appliances, even in circumstances where the replacement is “like for like”.

The UFU’s Grievance

On 30 May 2011, the UFU lodged a grievance under the 2010 MFB Enterprise Agreement over the purported lack of consultation in relation to the Ladder Platform Replacement

Project. This grievance was raised despite the then accepted custom and practice for like for like replacements not requiring consultation and the 2010 MFB Enterprise Agreement not being in operation at the time of the purchase. By raising the grievance, the UFU invoked the status quo requirement of the 2010 MFB Enterprise Agreement which meant the proposed appliances were not to be implemented.

The replacement ladder platforms were delivered to the MFB in May 2012 and when they arrived some faults were identified that required repair under warranty. The MFB engaged the manufacturer to remedy those faults.

At a Consultative Committee meeting on 1 August 2012, the MFB sought endorsement of the replacement ladder platforms however the UFU did not provide that endorsement. Rather, the UFU sought to have the MFB commence the consultation process afresh from the beginning, as though the ladder platforms had not been purchased. The MFB ultimately agreed to commence the consultation process afresh.

During the consultation process, a comparison between the replacement ladder platforms and the (old) ladder platforms was proposed by the MFB. This comparison took place on 23 October 2012, and during this exercise, an issue with the telescopic fly-booms was identified. The telescopic fly-booms are the small telescopic boom (arm) that connects the main booms to a cage. When the telescopic fly-booms were deployed, there was a two metre gap between the evacuation ladder on the cage and the ladder that was on the boom. While the MFB's Fleet Department had not been aware of this issue, the MFB did not, and does not, consider this issue to be a fault with the ladder platforms but rather part of the design of the appliance.

Steps taken to address the issue

Through further discussions with the Consultative Committee, it was agreed that a full risk assessment would be carried out. That risk assessment identified the gap as creating a significant risk, yet also identified a number of proposed controls to address the issue.

One proposal was to switch off the capability of the fly-boom to reduce the height limit down from 44 metres to 42 metres. This would in effect eliminate the two metre gap that had been identified. This proposal was not accepted by the Consultative Committee. The MFB also proposed and applied for funding for the manufacture of an additional ladder section from the manufacturer which would fit into the two metre gap. In or around March 2014, the MFB received the two additional ladder sections that were to be fitted to the ladder platforms. The process of fitting the ladders was completed in August 2014.

The ladder platforms were ultimately commissioned in May 2015 some 25 months after their purchase.

The MFB also notes that the replacement ladder platforms purchased are in service worldwide, including in Queensland and New South Wales, and no other fire service, apart from the MFB, has requested alterations be made to the ladder component of the appliances. The MFB was informed by a representative of the manufacturer that a reason for this was that there were a number of other redundant safety systems in place before the ladder would need to be used.

The MFB also notes that the Ladder Platform Replacement Project was the subject of much evidence in the MFB's 2014 application to terminate the 2010 MFB Enterprise Agreement in

accordance with the *Fair Work Act 2009*. Throughout that application and subsequent hearing before Commissioner Wilson of the Fair Work Commission, the UFU made similar assertions to those made to the Inquiry and the Victorian Fire Season Inquiry. That is, that if not for the consultation process, the MFB would have commissioned an appliance that created a risk of genuine occupational health and safety issues for firefighters.

The MFB does not accept those submissions and in response notes the following:

1. The grievance raised by the UFU was not in relation to health and safety concerns in relation to the telescopic fly-booms, but rather a purported lack of consultation. The grievance was raised despite the custom and practice of the time not requiring consultation for "like for like" replacements.
2. The issue regarding the telescopic fly-booms would have been identified through the mandatory risk assessment process the MFB carries out as part of the total process of commissioning an appliance. That is, any assertion that the issue with the telescopic fly-booms was only identified through the grievance raised is incorrect. The MFB carries out comprehensive risk assessments in accordance with the appliance development process manual. This issue would therefore have been identified and addressed.
3. The MFB is subject to a range of obligations set out in the *Occupational Health & Safety Act 2004 (OHS Act)* which imposes health and safety responsibilities in respect of MFB employees and members of the public. The MFB would under no circumstances have permitted an appliance to be commissioned that posed any lethal risk to the health and safety of its firefighters. Further, it is the MFB's position that it is these statutory obligations, and the consultation arrangements in the OHS Act, which are the appropriate mechanism for all health and safety matters to be addressed. WorkSafe Inspectors have powers under the OHS Act to investigate safety matters and to issue notices to the MFB requiring them to comply. These inspectors can be requested to consider issues by employee health and safety representatives and their decisions can be appealed, including to the Victorian Civil and Administrative Tribunal. These mechanisms provide for a review of employer decisions on safety grounds, including in urgent circumstances, and ensure employee accountability. As submitted in the MFB's response to the Victorian Government's Fire Services Review carried out in 2015, it is the MFB's position that safety is too important an issue to be left to the industrial arena. Industrial arrangements which delay decisions and require the intervention of the Fair Work Commission do not provide for the efficient deployment of emergency services resources to serve community needs.

We trust this summary is of assistance to the Committee and the Inquiry and the MFB would be willing to provide any further information sought in relation to these matters.

Yours faithfully,

Paul Stacchino
Acting Chief Officer