

Michael G Tudball AFSM FAICD

Submission to Senate Inquiry Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016

Introduction

I provide this submission as a passionate Country Fire Authority (CFA) Volunteer Member, firefighter, Officer for over 36 years and a Government appointed CFA Board Member first appointed in 2003 and re-appointed successively in 2007, 2011, 2014 until I and all of the CFA Board were removed by the Victorian State Government in June 2016.

I thank the Committee for seeking submissions and make myself available to appear before the Committee not only to expand on the points in this submission but to answer any questions the Committee may have of me.

This submission covers my views and associated evidence where I can provide freely as information is in the public arena from other sources or where I have facts and documentation that may not be producible due to privacy, confidentiality either Board or Government or information provided under legal privilege all of which I am willing to share if required and legally advised to do so.

I also provide this submission with the sole intention of ensuring community safety and fire service prevention, preparedness, response and recovery not only for this coming fire season and future fire seasons but importantly for the ongoing viability and sustainability of the Victorian Integrated Fire Service model into the future.

CFA, and all of Victoria's Fire Services provide a 365 day, 24 hour service regardless of 'declared fire seasons' and 'bushfires'. The CFA is also a unique fully integrated Volunteer and Career (Paid) firefighting workforce that requires a unique approach to ensure that throughout any deliberations or decisions these two key components of our workforce are not disadvantaged.

Background

Our collective interests should be, and I believe are driven by achieving safer communities and reducing the impact of fire on our communities and the protection of life and property, acknowledging the primacy of life.

This involves a range of perspectives and points in time during fire and other emergencies in this 'all hazards, all agencies' approach from preparing the landscape and communities, building community capacity and resilience and building and maintaining prevention and response capability and importantly recovering from fire.

We should all agree that volunteers are not only the vital for Victoria's emergency management arrangements, it is the only cost effective model for providing the fire and emergency management arrangements in Victoria and as stated in the CFA Act a prime responsibility for us all under Section 6 and 6 (i) in particular "*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*"

To enable the above the State of Victoria and the CFA under its Act & Regulations have responsibilities and accountabilities and the points I will cover below provide a context, and I believe evidence that in the event of the current industrial arrangement proposals being implemented neither CFA nor the State of Victoria can deliver on these responsibilities and accountabilities as many of the decision-making powers are either taken, frustrated through other potentially and historically drawn-out processes and will inhibit investment into these areas of resources, infrastructure and programs due to the significant and inordinate costs associated with the proposed agreement.

I support the wage increase and health and safety as a priority for career firefighters and indeed all employees, I do not believe this is or has ever been in dispute. However, the proposed EBA undermines volunteers, the CFA culture, allows the UFU operational and management control of CFA and are discriminatory. I, along with the State I know value the work of all our members - career firefighters, volunteers and support staff.

The integrated model of volunteer and career firefighters is unique and allows CFA to effectively protect the Victorian community. To begin to 'tear down' and destroy this model will have a serious impact on the preparedness and response capability of the State's Fire Services, in particular the CFA.

I also firmly believe the amount of angst and concern in the regions from our Operational Career and Volunteer members has and will have a significant impact on our operations leading into and during this coming summer. All members need to have confidence in what is being said, what they are being told and what is actually happening.

Legalities of the proposed agreement and arrangements

I have serious concerns many of these proposed clauses are unlawful and I as a previous Board Director have legal advice that indicates CFA would be in breach of its statutory obligations in the agreeing of these clauses.

The Fair Work Commission's (FWC) recommendation stated the changes to the agreement do not impact to volunteers in a preamble or statement at the beginning, the recommendation does not override the many specific clauses within the agreement that give rise to those issues. Many of these clauses have no place in modern day workplaces and are out of step with today's society in my view.

Advice provided to the Board and the Government from the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) is that some clauses do not comply with the Equal Opportunity Act and again are unlawful.

In correspondence with the Victorian Minister for Emergency Services 10 June 2016 the Board alerted the Minister:

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.

Supporting clauses that provide UFU with the power to veto operational decisions would also mean CFA contravenes the Country Fire Authority Amendment (Volunteer Charter) Act 2011. The Chief Officer's role, under the CFA Act, states that he or she is responsible for the operational management and resource allocation.

CFA also engaged with Industrial Relations Victoria (IRV) outlining our concerns and again showing a complete willingness to progress subject to satisfactory resolution of the outstanding concerns.

The former CFA Board took legal advice from Queen's and Senior Counsel, the VEOHRC, the Government's own Crown Counsel and the FWC all of whom agreed and/or commented on components of the proposed agreement and its legality, compliance with CFA's own legislative requirements or that of other significant legislation including Occupational Health & Safety Act (OHS) and Equal Opportunity Act.

Finally, and again communicated with the Victorian Minister for Emergency Services on 10 June 2016 ensuring I fulfilled my Director's Duties and Statutory obligations I could not in all good conscience defer my legal and Director obligations to another body:

"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. In this context, the Board is aware that diversity is a matter the Fair Work Commission must take into account in exercising its functions (s.578©), as well as being an objective of the Fair Work Act (s.3c).

Therefore a question remains in my mind that as to the legitimacy or good governance of leaving all of these questions to a final arbiter (FWC) rather than being addressed throughout the EBA development and negotiation process by independent legal advice by the State Counsel or Solicitor-General as appropriate.

Cost implication of the proposed agreement and arrangements

Again, in my role as a Director of the CFA Board and under my fiduciary obligations as a Director I was briefed and received workings on the cost implications of implementing the proposed agreement and arrangements.

Whilst many areas were difficult to quantify I believe that CFA along with the Department of Treasury & Finance (DTF) and the Department of Justice & Regulation (DJR) worked on the costings to ensure that sufficient funding were available or could be made available to implement.

CFA had no capacity internally to reallocate funding of this magnitude to support the implementation of the agreement without a severe impact on current other services, programs and initiatives especially those focussed on the Volunteer workforce as a large percentage of the CFA Budget is recurrent salaries and on-costs (~75%) excluding Capital and no Government commitment to my knowledge that this was to be separately funded, excepting the election commitment relating to an additional 350 firefighters, and the funding allocated in years 1 & 2 of this program included **NO** funding for associated infrastructure including fire stations and fire trucks.

Therefore, the shortfall that in funding could only come from areas that impacted on Volunteers and Brigade support or community engagement, strengthening and resilience program.

In correspondence to the Victorian Minister for Emergency Services from the Board Chair on 10 June 2016 the Chair stated:

“The Board is not comfortable that the Proposed EA maintains the custom and practice using volunteers within the existing operational framework. The Proposed EA includes a number of clauses that adversely impact on volunteers. The reservation to the Emergency Management Commissioner of an oversight role in effect prevents the Board from raising issues on its own behalf. This is not acceptable”

The advice received from CFA’s Chief Financial Officer indicates the quantum to fund such a proposed agreement and arrangements to be in the order of \$627M over the 4 years of the agreement. As I understand DTF also analysed the workings of CFA and arrived at \$596M but I was never privy to any of these discussions or workings from inner government departments.

Further analysis undertaken by CFA highlighted other potential costs of the implementation and the most recent advice provided to the former Board that the 4-year cost to implement the proposed agreement and arrangements was in the order of \$671-\$755M.

It is fair to say that whatever the end cost it is in the order of \$500M (half a billion dollars) and the only funding source apart from the Victorian Government’s Budget Expenditure Review Committee (BERC) direct funding is from the Fire Services Property Levy (FSPL) and all of Victorian Landholders, including all Volunteers and a large number of farming families and CFA Volunteers that will contribute to this cost on top of their significant Volunteer contribution.

Any misjudgment of the costs associated with the implementation of the agreement and arrangements will no doubt have a detrimental effect on other vital programs including preparedness, prevention, community education and response activities of CFA. This could further flow on to previous Bushfire Royal Commission recommendations and outcomes that would no longer be able to be funded due to these competing and ultimately overriding priorities.

I think it only fair that as a minimum the true costings, budget implications and funding sources are disclosed to the Victorian Community through this inquiry process to give confidence in the ability of the State and the Fire Services to fund the initiatives.

The relevance to this inquiry goes to the heart of the integrated model of fire & emergency service delivery by CFA in that the capacity, availability and ultimate viability of the Volunteer Integrated model is seriously in jeopardy and cannot be guaranteed to be sustainable into the very short term future. Any legislative changes should ensure that full costings are disclosed and then the appropriate employer (or Government) show a commitment to the funding.

Impact Assessment

CFA was and I presume still is committed to resolving this matter as quickly as possible and continued to act in good faith despite to commentary to the contrary.

In the last weeks of the former Board's tenure we continued to meet our Statutory and Director's responsibilities, including Special Board meetings at least on a weekly basis, direct communications and meetings with the former and new Minister, FWC, UFU, Metropolitan Fire Brigade (MFB) Board, DJR and Department of Premier & Cabinet (DPC) Senior personnel and most importantly our people both Volunteers and Career Staff.

Previous letters sent to the UFU State Secretary asking for and suggesting ways forward and to my knowledge not one response to the CFA Board by the UFU.

Letters and advice subject to confidentiality from legal, Ministerial and other sources confirming our willingness to progress but also inhibitors to us agreeing in its current form.

Ensuring support to the Board Chair, Chief Executive Officer and Chief (Fire) Officer there are standing Board resolutions that any decision to agree and ultimately sign an Enterprise Bargaining Agreement was a full Board decision at an appropriately constituted Board meeting to ensure our Director's and Statutory obligations were met from a Financial, Legal and equity perspective for the organisation and most importantly the State of Victoria.

Much of these processes and time could be mitigated with a requirement that the parties (CFA & UFU in this case) conducted a full Impact Assessment, clause by clause within the agreement of the impact or flow-on to the Volunteer workforce of any of the arrangements within an Agreement.

The relevance to this inquiry is that if these processes are all legislated in the lead up the final FWC ruling the energies of the organization and the industrial body are not spent in the FWC process but in the negotiations and lead up to any final ruling or decision, thus creating a more efficient FWC process also.

Summary & Conclusion

I believe in the above headings and detail I have expressed enough concern, fact and challenges going forward that the committee will incorporate this as evidence that much needs to be done.

Firstly to reach an acceptable, legal and workable industrial arrangement between CFA and the UFU to ensure to ongoing viability and sustainability of the Volunteer Integrated Model of Fire and Emergency Service and Management within CFA.

Secondly to move forward in the 'All Hazards All Agencies' and Joined Up Integrated model of Emergency Management and Service across the State where Government, State Agencies and Communities not only have confidence in our emergency services and management arrangements but in the event of such fires and emergencies we are organised, prepared, trained and appropriately resourced with people, infrastructure and direction to minimize the damage to life and property as a result of those fires and other emergencies.

This is the ultimate measure and judgement on how our emergency management arrangements here in Victoria are judged.

I believe that all of the above demonstrate enough concern that the Fair Work Commission Legislation and work should take into consideration any industrial agreement impact on a Volunteer workforce as the CFA model in Victoria is a truly integrated model and this relies on both parties, Career and Volunteer working together and having the ability to present a balanced argument when negotiating and deciding components of an industrial agreement that has the potential to impact on another major portion of the workforce.

I thank the Committee for the opportunity to submit and again offer to give evidence to the Inquiry in person prior to final reports and recommendations to the Federal Parliament regarding the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016.

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