

Michael G Tudball AFSM FAICD

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

Senate Inquiry Presentation Notes used 28 September 2016.

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.

The Role of Volunteer (new clause)

The role of volunteers in fighting bushfires and maintaining community safety and delivering high quality services to the public in remote and regional areas and in integrated stations, is not altered by this Agreement.

For the avoidance of doubt, except as provided by Clause 60 – Peer Support, nothing in this agreement shall prevent volunteers in the CFA from providing services normally provided by such volunteers without remuneration.

Whilst this statement is admirable, it does not override the individual clauses, of which there are many (50+) and if allowed to progress will force CFA to abide all of the clauses in regards consultation (agreement), allocation of resources, volunteer support programs and staff, different uniforms and equipment, no cross-crewing (paid & volunteer together), separation of facilities at fire stations,

The detail of the EA not only gives the UFU enormous control over CFA resourcing, staffing, adoption and allocation of firefighting vehicles, but it forces the CFA to break the law of the State of Victoria.

There is discussion that this only applies to 34 Integrated locations, this is all of the locations where paid and volunteer firefighters work together in an integrated manner, this is divisive to that model.

It should not be allowed but currently the Fair Work Act does not give the Commission the powers to take into account jurisdictional law. The proposed Bill corrects this lack of power.

Points of Clarification

During the course of questioning by Senators a number of statements were made that I seek to clarify and set the record straight.

1. Dismissal of former CFA Board

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.

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

Mr Tudball: Apparently.

Senator MARSHALL: That is how you were introduced.

Mr Peberdy: Who said we were dismissed for that? I thought we were dismissed, according to Mr Merlino, because we let the dispute go on for too long.

Senator MARSHALL: Mr Merlino says in his statement:

In addition, the findings of the Parliamentary Inquiry into Fiskville and the Fire Services Review have identified significant cultural and governance failures which I am not satisfied the board will address.

The Fiskville Inquiry report found that some senior executives and Board members of the CFA did not meet their responsibility to keep members and the local community safe from contamination.

I attach correspondence from the Minister for Emergency Services, Hon. James Merlino to the former Board Members dated 10 June 2016 outlining the Government and his expectations and that in the event the Board did not agree he would take steps to formally direct the Board and recommend to the Governor in Council that the members be removed from office.

This clearly articulates the State Government position and expectations and does not refer to the Fiskville Inquiry at all.

2. Fire Services Review

Senator MARSHALL: There was evidence from Ms Nolan, I think—I do not want to say that it definitely was her—about the fire services review. She talked about a 'toxic relationship' between CFA and its employees and its volunteers. Are you aware of your relationship being described that way?

Mr Tudball: I think the fire services review was between management and its workforce. It was not between the paid and volunteer staff.

Senator MARSHALL: It did not talk about volunteers at all. Is that correct?

Mr Tudball: Certainly volunteers were referred to in the review. My memory is pretty good on that one, that there was a 'toxic relationship', I think they were the words that were used, between CFA management and its paid workforce.

Senator MARSHALL: Would you say that there was a lack of trust?

Mr Peberdy: That is what came out of the review. I do not necessarily agree with the review.

Report of the Victorian Fire Services Review
Page 28 Heading Relationship between volunteer and paid firefighters

The Review heard different accounts of the relationship between volunteer and paid firefighters, whether the latter were from the CFA or MFB. The majority reported that on the fireground, or at other incidents, the relationship was very good, with everyone working together to do what was needed to get the job done. Some commented on how each needed and benefited from the other, exchanging expertise and local knowledge.

Despite being similar services, CFA and MFB have very different cultures which are strongly entrenched in their organisations. CFA brigades are created from their communities and often become the fabric of their communities, particularly in rural areas. CFA volunteers may wear a number of hats in their local area and be leaders on a range of issues. Though part of the organisation, CFA brigades also have a sense of independence and autonomy. This can sometimes create tension with the organisation.

Report of the Victorian Fire Services Review
Page 32 Heading Morale

It is evident to the Review that there is a serious and fundamental disconnect between the senior management and operational firefighters. In the case of MFB, this has become an almost uncrossable chasm.

3. Chief Officer advice re Statutory Responsibilities

Senator HUME: I asked this question to Ms Nolan and I will repeat it to you: at any stage did you receive advice regarding the potential of these clauses to compromise the public safety and restrict the power of the chief officer?

Mr Peberdy: We received legal advice to that effect.

Senator HUME: Do you have that advice with you?

Mr Peberdy: I do not have that advice, no.

Senator HUME: Do you have access to that advice?

Mr Peberdy: I have the same common advice that Ms Nolan talked about, which is available in the CFA files, but I am obviously no longer a board member.

Senator HUME: Thank you both.

Mr Tudball: If I may: I think you will find, if you refer to CFA board minutes, that the chief officer at the time reported to the board on at least two occasions that it would impact his statutory authority, therefore his control of brigades and therefore, I would determine, public safety. That is in board minutes.

CFA Board Chief Officer's Report Meeting Date – 16 May 2016

CFA/UFU Operational Staff Enterprise Agreement

The UFU proposed changes to CFA/UFU Operational Staff EBA if accepted will directly impact on CFAs ability to meet the Chief Officers statutory obligations, ability to manage integrated stations and erode volunteerism. The escalation of negotiations in the public domain is having a divisive impact on members. The Chief Officer has directed that a consistent policy position must be applied across all members with respect to protests & rallies with a focus on maintaining operational service delivery readiness and not compromising public safety through participation. This position has been reiterated through a 'From the Chief Officer' communique, teleconferences with Service Delivery Leadership Team and the following advice to Operations Managers with respect to the recent motorcade in the CBD:

- Maintaining operational readiness and community safety must not be compromised
 - Brigades to notify RDO of any variation to operational readiness
- CFA owned equipment and primary appliances are not to be taken out of their primary response area
- Use of Brigade Owned vehicles should not be unreasonably withheld – with service delivery and response capability being the overriding consideration. Common sense should be applied
- Brigades and groups give due attention to maintaining a command and control capability to ensure that their first priority is to the communities which they serve
- The wearing of PPC and /or CFA uniform is discouraged as it is to be worn only for the purpose intended
- We're sure that you will handle this matter with both the importance, respect and sensitivity it deserves
- CFA respects the right for members to voice a view or position but this must not impact on the level of service we provide to the community or compromise public safety in any way.

The Chief Officer and Chief Executive Officer are working together on the negotiations and strategy development for the Enterprise Agreement.

4. Fiskville Report references

During the course of Senators questioning both Mr Peberdy and myself many references were made to the Fiskville Inquiry, times, dates and allegations of Board knowledge. The following excerpts are directly from the Final Report and wish them to be tendered into my evidence also.

There were two reports in the final Fiskville Report one of which was from the minority members and one closing statement by those members included:

The minority members share some concerns that evidence given to the committee in the form of lay opinion, speculation or anecdotal recall, appears in some cases to have been accepted by some members of the committee as irrefutable proof. Anecdotal and hearsay evidence cannot substitute for empirical evidence nor can it be fairly and reasonably used to support an otherwise unsupported or untested hypothesis, or support a political or industrial agenda, or give succour to those who would seek to capitalise or profit from others misfortune. Such an approach belittles the object of this enquiry and does a disservice to those adversely referred to within. More importantly, it trivialises the impact of those tragically, adversely and personally affected by the events in question.

Senator MARSHALL: May I just clarify one thing before you take us out, Chair? I have been advised—contrary to your evidence earlier, Mr Peberdy—that the dams at Fiskville were still being used up until October 2012. Do you dispute that?

**Inquiry into the CFA Training College at Fiskville – Final Report
Change of water use from Dams 1&2 and Potable water usage**

Page 96

Mr Justin added that the water in Dam 2 at Fiskville was tested quarterly up to January 2012 after which it was tested monthly. WorkSafe also believed that testing was being carried out monthly. However, test results seen by the Committee show that the water was at times tested weekly.

Mr Justin further advised the Committee that if test results were outside water quality guidelines the PAD supervisor would obtain advice from a water chemist and implement action determined by the CFA's Water Management Plan. He said: "This approach was consistent with the advice from all external experts, being ALS, Wynsafe and HAZCON. As far as I was aware, the water being used in training was always within CFA guidelines."

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In a media release dated 6 July 2012, the then CFA CEO Mr Mick Bourke said:

To provide certainty and comfort for all people doing live fire training at Fiskville, we made a decision last week to only use mains water until further notice. We will keep using mains water for training while we receive further expert advice about how we best manage our water systems in the future.

Further, the CFA's submission to this Inquiry states: 'In June 2012, due to heightened concerns, CFA ceased using recycled dam water for training at Fiskville and switched to town mains water.

Two water storage tanks to store mains water were installed at Fiskville in 2012 — the first in June and the second in October. Mr Justin told the Committee that each tank held around 240,000 litres of water (the Committee also received evidence that they held 260,000 litres).

I believe that the Fiskville Inquiry Final Report clearly articulates when water practices and usage changed and is clearly not the October 2012 as indicated by the Senator.



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Mr John Peberdy
Acting Chairperson
Country Fire Board
PO Box 701
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Dear Mr Peberdy

I write in relation to the ongoing negotiation of an enterprise agreement (**EBA**) for the Country Fire Board (**Board**).

As you are aware, on 1 June 2016 the Fair Work Commission (**Commission**) issued a Final Recommendation in respect of the EBA, recommending that certain amendments be made to it and then put to the Board's employees for endorsement and, if passed, submitted to the Commission for approval.

In addition to the Final Recommendation, President Ross of the Fair Work Commission has made a number of proposals to resolve the Board's concerns about the role of volunteers, the consultation and dispute resolution provisions, the impacts of the 'seven on the fireground' provisions, and workforce diversity.

I note that this matter has had a protracted history and remains unresolved notwithstanding the Commission issuing its Final Determination and President Ross's proposals.

As a matter of Government policy, the Government expects that the Board, as a Victorian statutory body which is a party to this long standing and protracted industrial dispute, will abide by and implement the final recommendations of the Commission, with the necessary changes to implement the substance of President Ross's proposals (**Proposed EBA**).

While I acknowledge the Board may continue to have concerns that provisions of the Proposed EBA are potentially discriminatory or unlawful, as the Commission is required to consider these matters as part of the certification process, the Government's view is that the Commission (and not the Board) should finally determine these issues.

It is important that finality is now brought to the dispute over the terms of the enterprise agreement. The efficient resolution of industrial disputes and conclusion of industrial agreements involving such bodies is integral to the Government's industrial relations and wages policies and the broader regulation of its workforce. The ongoing dispute is a significant distraction from the operational work of the Board and will, unless resolved, continue to cause disruption and uncertainty within the Board and the broader community.

It is therefore the Government's view that the Proposed EBA should be put to employees for consideration.

In light of these expectations, I request that:

1. the Board indicate in writing to me, by 5.00pm on 10 June 2016 whether the Board will comply with the Commission's Final Recommendation by:
 - (a) putting the Proposed EBA to the Board's employees, including any incorporated materials, as soon as practical; and
 - (b) requesting that the Board's employees who would be covered by the Proposed EBA approve the Proposed EBA by voting for it as soon as practical;
2. if the Board does not propose to take the measures outlined in paragraph 1, the reasons why the Board will not comply with the Government's stated policy expectations; and
3. members of the Board do not make, or cause others to make, public comment on any matter relating to the terms of this letter or the Proposed EBA.

If the Board does not comply with paragraph 1 and, subject to me considering any reasons given in response to paragraph 2, this will constitute a ground for me to:

- issue the Board with a direction to take the action referred to in paragraph 1 in accordance with section 6A of the *Country Fire Board Act 1958* (the **Act**); and/or
- recommend to the Governor in Council that any member be removed from office under section 8(2) of the Act.

I wish to stress the importance with which the Government views this request. Given that one option that I am considering in the event that the Board does not comply with the request set out in this letter is to take steps for the Governor in Council to remove members of office under section 8(2) of the Act I am giving each member of the Board the opportunity to explain why, in the light of any failure of the Board to comply with the request, his or her appointment should not be terminated under section 8 of the Act. To that end I am copying this letter to each member of the Board.

I look forward to the Proposed EBA being concluded consistently with the Government's stated policy expectations.

Yours sincerely

The Hon James Merlino MP
Minister for Emergency Services

10.6.16

Copy to: Ross Coyle, CFA Board Member
Michael Freshwater, CFA Board Member
Katherine Forrest, CFA Board Member
James Holyman, CFA Board Member
John Schurink, CFA Board Member
Michael Tudball, CFA Board Member
Samantha Hunter, CFA Board Member