



7 July 2017

Assistant Clerk Committees
Department of the Legislative Council
Fire Services Bill Select Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

Dear Committee,

This letter and the attached detail is the VFBV submission to the Select Committee established to examine the Fire Services Bill.

VFBV wishes to thank the Select Committee for the opportunity to provide comment regarding the proposed Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 (referred to in VFBV submission as 'proposed legislation').

The following submission is provided in good faith and in response to the Select Committee's invitation for comment on the proposed legislation. The timeframes for submission on this important matter have been extremely tight, and I am hopeful that the committee will accept supplementary information if required.

In making this submission we have reflected on the many previous reviews of recent years and the recurring concerns of volunteers that they are being heard but not listened to. In the lead up to this proposed legislation those concerns were amplified because there was not even an opportunity to be heard. There was no consultation prior to the tabling of the proposed legislation in Parliament despite Government's claims to the contrary.

Now, less than 4 weeks on, volunteers still feel that despite a series of field briefings to tell them what the proposed legislation is - there has still not been real or genuine effort nor process to take on board what they have said, listen to nor consider their concerns and treat them with the respect they deserve.

Just because volunteers are not paid, and just because their good will is likely to see them continuing to help people in need these are by no means reasons to disrespect, disempower or denigrate their views and input.

I am very sad to say that many volunteers do think that their views have been too readily dismissed and ignored. There are also many who feel the effect of unfair reactive castigation and sometimes

vilification just for having their say. This behaviour is not reasonable and should stop, and the way to stop it is by example - led from the top.

We are hopeful that the tensions associated with this review can become a lesson to everyone about how not to do things.

Apart from the consideration of the proposals covered in the proposed legislation, it would be good if we can put this bad process to some good use and use it as a catalyst to rethink behaviours and lead, by personal example, a better way of behaving in the future.

VFBV and individuals within VFBV have felt the effect of MPs, abusing the privilege of parliament to spread known mistruths about us, about what we have said and what we stand for. This is totally inappropriate and is not the way to treat anyone. I ask the committee to contemplate an important question – if people can be so brazen as to defame someone in the public eye and under the protection of parliament, what threat and retribution is happening behind the scenes to people, at the ground level and even those expert officials who need to be able to speak independently, who dare to speak in any way that contradicts the directions driven from the secret places that developed this legislation.

We are not alone in this and, sadly, have observed other key players in the sector being treated with similar disdain simply for having the integrity to speak up.

The issue of fair process and mischief is not covered in the attached submission as it falls outside the terms of reference, but it does warrant serious independent investigation and I state this formally in the hope that this can happen before this legislation is decided on.

It is important to note that the Government's commitment to provide additional funding and support to CFA is not enshrined nor delivered through the proposed legislation and does not need to be. These welcome initiatives can therefore be delivered regardless of the outcome of the propose legislation. VFBV welcomes and appreciates these initiatives however we do not believe these critically deserved offers of core support and funding should somehow be tied to the dismantling of CFA and the proposed legislation that has real potential to destroy the very thing the funding is designed to support.

The need for increased funding of CFA's core capital works, fleet replacement, firefighting equipment, volunteer support and training has been extensively covered by previous VFBV submissions and has been well and truly established by previous reviews as recently as the Department of Treasury base funding review conducted only a few years ago.

VFBV looks forward to assisting the Select Committee in any way required.

Yours Sincerely



Andrew Ford
Chief Executive Officer



Submission

By Volunteer Fire Brigades Victoria

Select Committee: Inquiry into the Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017

7th July 2017

Table of Contents

Summary	5
Overarching Concerns on the proposed legislation	10
Flawed rationale/motivation for the proposed change	13
Lack of consultation and failure of process underpinning policy rational	16
Lack of transparent impact analysis	18
Weakens local service, major incident and peak load surge capability	20
Loss of CFA authority, control and autonomy over middle management	23
Legislation is narrowly focussed because it is driven by the wrong agenda	25
Includes ambiguities and may have unintended consequences	27
Examples of CFA Legislative Impact Implications	27
Examples of Potential Legislative Gaps or Oversights	31
Examples of Increased Executive Government Powers and Influence	32
Long term implications have not been tested	35
A significant ideological shift that diminishes how volunteers are valued	38
Presumptive Rights Compensation	40
List of Attachments	42
Attachments (page numbered separately)	1 - 82

SUMMARY

VFBV wishes to thank the Select Committee for the opportunity to provide comment regarding the proposed Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 (referred to in VFBV submission as 'proposed legislation').

The first comment to be made is that VFBV is very disappointed that the proposed legislation combines the two totally separate issues of firefighter cancer presumptive rights compensation and the proposed restructuring of Victoria's fire services. VFBV feels strongly that it is morally wrong and offensive to combine an issue so important as firefighter cancer protection with the proposed fire services restructure.

VFBV submits that the proposed *Firefighters' Presumptive Rights Compensation* aspects of the proposed legislation should be separated into a different Bill and be subject to separate consultation.

Nevertheless, while the proposed legislation ties the firefighter's presumptive rights aspects to the proposed restructure of Victoria's fire service, consideration of the proposed restructuring of Victoria's fire services also demands comment on the Firefighters' Presumptive Rights Compensation aspects of the proposed legislation.

Presumptive rights compensation

In respect to *Firefighters' Presumptive Rights Compensation* aspects of the legislation, VFBV is very strongly of the view that there should be equality in the treatment of volunteer and career firefighters. The proposed *Firefighters' Presumptive Rights Compensation* legislation does not treat volunteers and paid staff equally. It sets up a complex, and ambiguous legal battle for volunteers and a much simpler process for paid firefighters. The proposed Victorian presumptive rights legislation is not the same as the QLD model. To sell the proposed Victorian presumptive rights legislation as being the same as the simple and equitable model now in place in QLD is misleading. Legal advice obtained by VFBV from QC Jack Rush¹ confirms VFBV concerns and observation provided to VFBV by lawyers² directly experienced in the operation and intent of the QLD model also points to a fundamental difference and less desirable proposal being put forward for Victorian volunteers.

Proposed restructure - flawed motivation

In regard to the proposed restructure of Victoria's fire services aspects of the proposed legislation, the pre-eminent consideration in determining a structure for fire and emergency public safety should be to have a sustainable, efficient and cost effective system for planning, prevention, response to and recovery from fire and other emergencies. VFBV submits that the policy rationale driving the proposed restructure of Victoria's fire services has not been driven by this consideration.

¹ Jack Rush QC Legal advice is provided as an appendix to this submission.

² James Lawyers advice is provided as an appendix to this submission

Instead the change has been motivated by a Government and United Fire Fighters union agenda to find a way for a problematic and overreaching operational staff EBA to avoid recently amended provisions in the Fair Work Act³ (referred to in VFBV submission as the '*FWA volunteer support amendment*'), amendments that simply seek to recognise and respect the role and contribution of CFA volunteers.

Not only is this motivation flawed, the claim of an impossible barrier to finalising future EBA's is simply not true. This claim that the *FWA volunteer support amendment* now means that any CFA EBA containing matters relating to training, equipment, rostering cannot be finalised is an untested and unsubstantiated claim and in VFBV's view it misleading and patently wrong.

The *FWA volunteer support amendment* does nothing more than prevent EBA's from restricting or limiting how an organisation such as CFA supports, equips, recognises, respects and consults with volunteers in the same way as the Fair Work Act has prevented enterprise bargaining clauses which breached the Victorian Equal Opportunity Act since the Fair Work Act was introduced by the Gillard Government. This Commonwealth FWA volunteer support amendment does no more than prevent an Enterprise Agreement between the CFA and UFU from breaching the current requirements regarding CFA volunteers as contained in and arising from the Country Fire Authority Act 1958 as it has existed since May 2011.

Proposed restructure – doesn't fix FWA/ EBA problem

To say the restructure of the fire services is needed because of the problems created by the *FWA volunteer support amendment* is wrong. To allow this to be the motivation for carving up the fire services is wrong. To say it will fix the problem is wrong.

Carving up the fire services to avoid the *FWA volunteer support amendment* test does nothing to fix the problem.

The proposed restructure creates even more problems and the underlying issues of EBA overreach are still embedded, and perhaps made worse by the proposed legislations requirement for all CFA operational personnel to be employed by FRV, under an EBA to be negotiated by FRV without CFA involvement.

Proposed restructure – fundamental concerns

VFBV is concerned with the proposed restructure at a fundamental.

Any modernisation of the fire and emergency services must be based on consideration of how best to systematically meet local needs plus how best to function as an intrinsically connected regional and state-wide whole, ensuring flexibility and resources are available for local demands and also for severe, multiple/concurrent, and long duration events (whilst simultaneously protecting their local communities).

Experience and reviews have shown us again and again that the best approach to public safety is to embed public safety ethos and practice in local communities. The CFA community based model, where emergency service volunteers and paid staff work in a fully integrated manner and where volunteers

³ A copy of the Fair Work Amendment is provided as an appendix to this submission.

are empowered, responsible and valued based on their training and experience (regardless of pay status), for both local service delivery and major incident management roles is a best practice model regarded world-wide.

The medium and long term effect of the proposed changes on Victoria's volunteer peak load and surge capacity is of deep concern for VFBV and others engaged in public safety.

The fire service structure set down in the proposed legislation is rigid, costly and undermines the whole concept of building local community embedded volunteer capacity and capability by relegating volunteers to second rate responders (if required at all) and also by removing the statutory responsibility of paid firefighters and FRV employees to encourage, maintain and strengthen local volunteer capacity.

VFBV submits that it is totally inappropriate to enshrine a changed fire service restructure that will have direct cost increase impacts without the proposal being adequately costed and properly funded not just for the next two years, but with assurances moving forward.

Consideration should also be given to the fact that simply costing the proposal properly and building an assured funding mechanism will do nothing to alleviate the even broader concern that the proposed legislation and flow on implications are likely to cause increases to the fire services levy, complications to the fire service levy governance and an impact on every person in Victoria who pays the fire service levy.

Proposed structure – adds no additional benefit to fix service gaps

We note that there have been attacks on the CFA meeting fire standards in some areas and that this has also been used as a basis for justifying the proposed changes. Without commenting on the statistics used in those attacks (which are made on CFA volunteers and paid staff alike), it is important to note that the current CFA system can and does flexibly respond to any real service capacity gaps and already has all of the legislated powers necessary to employ additional paid firefighters to supplement and support the volunteer base where required. The proposed legislation provides no change whatsoever to the fire services ability to respond to urban growth or urban service demands.

Any limits on CFA's ability to respond and quickly to gaps in service capacity can be directly traced to outdated or otherwise limiting industrial clauses and practices arising from industrial agreements over the past 20 years. It is the statutory duty of the CFA management to maintain effective functional service standards and they are accountable for that duty.

Negotiating industrial agreements in harmony with their statutory responsibilities is part of CFA management's responsibility and should not be subject to political interference. The proposed legislation does nothing to fix these problems, and worse, it establishes in legislation a future framework that reduces the options and flexibility that currently exist.

The opportunity that exists today for CFA pursue a range of options to transition and evolve volunteer brigade capacity (including supplementing paid firefighters into the volunteer brigade) as local service demands changes will be reduced not strengthened by the proposed restructure.

The proposed structure and resulting systems established by the proposed legislation lack the flexibility of the CFA system and alienates local volunteerism in urban communities; it sets a framework that will disempower and discourage volunteers and this will lead to a need to replace

volunteers over time with paid staff doing the same response job as volunteers but without the community networks or ongoing provision sufficient surge capacity.

Proposed legislation – should be rejected and rethought

VFBV submits that the proposed restructure of Victoria fire services as established by the proposed legislation is inferior to the CFA's current system and must be rejected.

The proposed legislation provides no additional service capacity or service interoperability than exists today, in fact it further fragment the services.

The proposed legislation will act to diminish and discourage volunteer capacity.

The proposed legislation is inconsistent and in conflict with key recommendations of recent major reviews, including the findings of the 2009 Victorian Bushfires Royal Commission.

The proposed legislation is motivated by the wrong reason of seeking to find a clear path to push ahead with EBA demands of the UFU. It works against sustaining volunteer capacity.

The proposed legislation does not provide a solution to the current real problem of industrial dispute and it does not provide a solution to the challenges/problems/opportunities facing the fire and emergency sector.

In summary VFBV submits:

- The Fire Service Reform aspects of the proposed legislation should not be supported. The Bill should be withdrawn and its underlying assumptions rethought for the provision of agile, responsive and effective community embedded public safety across Victoria. Any structure proposed for adoption must maintain and strengthen the primary role of community embedded volunteers fully integrated with and, supplemented and supported by paid staff on a genuine needs basis. Future models should be developed in a fully transparent and collaborative way with the full involvement of all stakeholders and personnel/volunteers on the ground.
- The proposed legislation should be split to separate the consideration of Firefighters' Presumptive Rights Compensation from Fire Services Reform aspects and be subject to separate consultation.
- The Firefighters' Presumptive Rights Compensation aspects of the proposed legislation needs to be amended to remove the differential treatment of paid staff and volunteers.

A way forward

VFBV respectfully request that the Select Committee seek:

- Transparent and evidence backed understanding of the problems trying to be fixed;
- Independent and robust impact analysis (including cost/benefit impact) of any reform proposals before a decision is made;

- Critically examination and evidence to test how the key changes being proposed will provide a better solution than the arrangements which exist today;

VFBV believe it is critically important that there is established a proper and transparent process of community, agency and volunteer engagement and consultation before the reform policy is decided and before future legislation is considered and developed.

VFBV suggest, as an immediate next step and before any legislation is decided, an independently chaired, all stakeholder fire service improvement task force be established to - commence and actively facilitate organisational culture and positive relationships shift; engagement of key stakeholders; support active leadership to rebuild a shared focus and commitment to common operating principles and goals; facilitate an independent review of fire service best practice models; identify priority areas for improvement in Victoria; to ensure independent and transparent assessment of options and feasibility/costs/benefits impacts; and develop a Fire Services Reform program owned by the people on the ground.

The establishment of this taskforce will provide an immediate opportunity for trust and respect to be rebuilt between Government and all stakeholders and agencies, and create a framework for a shared vision and journey for future fire services reform.

FWA/EBA concerns – let FWC process resolve it

At a minimum VFBV believes it is incumbent on the Select Committee to test the proposition about problems caused by the *FWA volunteer support amendment* thoroughly.

VFBV submits that to end the tension, claim and counter claim – submit the proposed 2016 CFA Operational Staff EBA to the Fair Work Commission and allow the fair umpire⁴ and subsequent transparent process to resolve any concerns.

Volunteers do not wish to stop EBA's from being finalised and the Government and United Firefighters Union have openly stated that the proposed 2016 CFA Operational Staff EBA does not, should not and is not intended to be able to restrict or limit how CFA supports, equips, recognises, respects or consults with volunteers. Given this foundation, a sensible way forward would be to submit the EBA, confirm if there are any unintended problems and remove these problems. The tensions that have played out over the past year will be resolved and at a minimum there will be objective, transparent and fair deliberation.

The following detail provides further background and explanation to these concerns.

VFBV OVERARCHING CONCERNS ON THE PROPOSED LEGISLATION

The Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 (referred to in this submission as 'proposed legislation') creates the legislative framework for a reform and restructure of Victoria's fire services.

VFBV wishes to raise the following overarching concerns regarding the proposed legislation:

1. That the proposed structural changes to Victoria's fire services is being inappropriately driven by the **wrong motivation/agenda**, which has been openly stated as a desire to find a way for any operational staff EBA to avoid the Fair Work Act volunteer respect provisions and therefore attempt to avoid the volunteer protection clauses provided for in the Fair Work Act.
2. The lack of consultation. In particular VFBV is concerned by;
 - The **lack of consultation** prior to the Government's decision regarding the proposed structural changes, and the failed moral and statutory obligations to consult with volunteers;
 - The failure to test the policy rationale with the expert fire service officials;
 - The missed important step of testing the proposal with community and stakeholders to evaluate and determine potential legislative impact and consequence;
 - The missed critical step of engaging with the people on the ground delivering the services to help define a workable solution and gain their buy-in to any required change journey.

It is a huge concern when rather than resolving tensions within the fire services, the poor process underpinning this legislation is making things worse, and does not provide an end to tensions or a way forward.

3. The **lack of transparent impact analysis** and absence of unfettered input from expert fire service officials, including cost, service capability, future volunteerism, governance and implementation, flow on implications, interoperability, culture and leadership, public value impact and risk analysis.

The proposed structural change to dismantle the CFA integrated service model and further split the fire services is **contrary to advice and recommendations of recent reviews** (including the 2009 Victorian Bushfires Royal Commission, Jones Report and Victorian Government Fire Services Review and will exacerbate, not fix problems identified by these reviews.

4. The proposed fire service restructure **weakens rather than strengthens service delivery capability for urban growth areas, and surge capacity support to regional Victoria and major state-wide disasters**. VFBV supports the need for service delivery to be objectively monitored

using outcome measurements and for current fire services arrangements to be the subject of continuous improvement with demonstrable improvement, and objective focus and evidence based analysis of required additional resources including personnel and funds to meet future demands, but the proposed change is not required nor the ideal approach for this improvement to occur. The **proposed change reduces rather than strengthens the ability and flexibility to evolve and adapt to changing community needs**. The proposed fire service structure has the potential to result in reduced volunteer capacity, increased costs and further fragmentation of the fire services.

5. **Stripping out CFA middle management** (Operations Managers, Operations Officers, Training Instructors, Community Safety Managers etc.) to Fire Rescue Victoria, will have serious detrimental impact on CFA authority, autonomy and control over the core CFA brigade leadership and support workforce, **impacting on every CFA volunteer brigade across Victoria**. These serious detrimental impacts are amplified when considered against the result that CFA may be excluded from any negotiations of the working conditions that said employees will negotiate with their employer (FRV) and the reduced power and autonomy of the CFA Chief Office to manage his future workforce is severely compromised.
6. The proposed restructure of Victoria's fire services, contrary to a modern community safety outcome focus, is **narrowly focussed on re-allocating jurisdiction based on fire response** activity, population and urbanisation. This narrow 'demand = more paid response resources' focus, misses the real priorities, challenges and opportunities that should be the foundation for the modernisation of the fire services. The focus should be on examining the planning, prevention, response and recovery capacity requirements for public safety and performance improvement inherent in alternative or adopted models of operation relative to risk.
7. The proposed legislation contains ambiguity that may result in **unintended consequences and exposures** and to our knowledge has not been robustly independently tested or analysed.
8. **The long term and flow on impacts to volunteers across Victoria** and the **medium to long term implications** of the proposed restructure and proposed arrangements have not been adequately tested. The reforms will have flow on implications to volunteers and volunteer brigades across Victoria, not just to the 35 integrated brigades. Any change that disempowers or diminishes the standing of volunteers will have a negative impact on volunteer contribution, motivation, sustainability.

It is highly deficient to only contemplate the impact of transitioning the service responsibility for 35 locations currently serviced by CFA when the proposed changes affect the culture of CFA as a whole. By eliminating the option of the CFA integrated model in areas needing paid firefighter support, the future scenario will see a growing disenfranchising of volunteers and a compounding **loss of CFA volunteers generally and much diminished volunteer surge capacity**.

If volunteers are not empowered, respected and given responsibility they will lose motivation - this is already having the effect of volunteers who have traditionally been willing to provide

support well beyond their local community saying ‘why bother if the work I do is not respected or valued’.

9. The proposed legislation is fundamentally flawed and represents **a significant ideological shift that diminishes how volunteers are valued** which will have long and lasting effect for the future sustainability of Victoria’s volunteer workforce.

10. VFBV submits that the proposed legislation should be split to separate the consideration of **Firefighters’ Presumptive Rights Compensation** from Fire Services Reform aspects and be subject to separate consultation.

CONCERN: Flawed rationale/motivation for the proposed change

It is VFBV's view that the proposed structural change to Victoria's fire services is being inappropriately driven by the **wrong motivation/agenda**. Speaking to the rationale for the proposed legislation, the Honourable Minister James Merlino MP has frequently stated that the proposed restructure of the fire services is needed because of Fair Work Act amendments⁸ (referred to in this submission as '*FWA volunteer support amendment*').

The *FWA volunteer support amendment* does nothing more than prevent EBA's from restricting or limiting how an organisation such as CFA supports, equips, recognises, respects and consults with volunteers. These tests are not only common sense, they essentially already exist in CFA legislation. These tests do no more than enforce what is in Victoria's own CFA and Emergency Management Act as they apply to volunteers which has been repeatedly supported by both Labor and the Coalition in the Victorian Parliament.

The *FWA volunteer support amendment* has no impact on normal EBA matters and only applies to aspects such as EBA clauses that restrict or limit a body such as CFA engaging or deploying its volunteers; providing support or equipment to those volunteers; and managing its operations in relation to those volunteers.

Importantly the *FWA volunteer support amendment* simply seeks to ensure that an EBA does not require or permit a body to do something other than in accordance with the powers, functions and duties set down in the CFA Act. In essence, it stops Federal legislation being used to circumvent State legislation, such as the CFA Act.

VFBV is concerned that the real agenda behind the proposed legislation, and specifically the proposal to separate paid operational staff and volunteers into different organisations, is to clear the way to push ahead with the demands listed in the proposed CFA/UFU Operational Staff EBA 2016⁹ without the requirement for it to be subject to the *FWA volunteer support amendment*, which simply seeks to avoid EBA's that restrict or limit how an organisation such as CFA supports, equips, recognises, respects and consults with volunteers. This concern is especially evidenced by the comments of Victorian Industrial Relations Minister Natalie Hutchins on 20th June when she revealed a new Fire Rescue Victoria EBA was already being developed, and "as a basis of that if the prior CFA agreement that was struck last year".

VFBV concerns include:

- misrepresentation of the *FWA volunteer support amendment* when the simple fact is that they are designed only to ensure EBA's do not restrict or limit how an organisation such as CFA supports, equips, recognises, respects and consults with volunteers;

⁸ Fair Work Act Amendment (Respect for Emergency Services Volunteers) Bill 2016, amending *Fair Work Act 2009* – Attachment

⁹ Herald Sun, 31 May 2017 *More questions raised about CFA split*

- Government's apparent refusal to consider altering aspects of the CFA/UFU Operational Staff EBA 2016 that negatively impact on supporting, equipping, recognising, respecting and consulting with volunteers as an alternative option (ie. alter the EBA as opposed to dismantling the CFA integrated model and splitting the paid operational staff out of CFA into FRV);
- claims by the Government that the *FWA volunteer support amendment* mean that '*not just the proposed CFA agreement but any CFA agreement cannot be finalised because of the federal legislation. That is, any agreement that contains clauses that relate to training, that relate to equipment, that relate to rostering, that relate to other normal aspects that you would see in an enterprise agreement*'¹⁰ despite a failure to even submit the CFA/UFU Operational Staff EBA 2016 to the Fair Work Commission, and despite another enterprise agreement of an other emergency service, the 'State Emergency Service' (SES) recently concluding, and lodging its enterprise agreement under the current Fair Work Act;
- inappropriate active encouragement of an 'invented crisis' promoting, fostering and blaming a supposed irretrievable breakdown to the current arrangements, somehow caused by an impossible EBA negotiating landscape, instead of balanced leadership to defuse tensions and apply the Fair Work Commission process to enable all allowable EBA matters to proceed and for the 'fair umpire' to provide the objective scrutiny and guidance to address EBA overreach into areas that restrict or limit the operations of CFA and provision of support to volunteers;

It should be noted that the employee wage increases, and allowances have all been administratively applied and are in place, including payment of a sign-on bonus to all operational employees – in effect negating any perceived crisis of "obstruction" or "barrier" to their deserved pay and conditions being concluded.

- inconsistency and direct contradiction of previous claims by Government (and recently appointed CFA Board, CEO and CO) that there is nothing in the proposed CFA/UFU Operational Staff EBA 2016 that impacts on volunteers compared to the insurmountable problem that the EBA would now face if exposed to the simple Fair Work Act volunteer support amendments;
- motivation to avoid the Fair Work Act volunteer support amendments even though they provide no additional obligations than those which exist today in the CFA Act
- claims that the Fair Work amendments are the barrier to the successful completion of EBA arrangements are further contradicted when you consider that the MFB have also been unable to finalise their EBA agreement, and the MFB does not contain any volunteers. It should not be lost, that the effect of the proposed legislation also effectively removes the current MFB Board, MFB Chief Executive Officer and the MFB Chief Officer. MFB are on record stating that they believe the proposed MFB/UFU enterprise agreement is unworkable, and will impact on their exercise of their statutory powers. They join the previously sacked CFA Board, and the forced resignations of the previous MFB Chief Officer,

¹⁰ Minister for Emergency Services, Hon James Merlino MP, Legislative Assembly Hansard, 10 May 2017, page 1194.

CFA Chief Officer, and CFA Chief Executive Officer all of whom have variously stated the same concerns and objections.

Suggested Way Forward

VFBV submits that the fire service structural reform should not be driven by industrial motivation.

A fundamental flaw with the proposed legislation is its failure to carry any obligation into FRV for FRV to ensure policy and work arrangements encourage, maintain and strengthen the capacity of volunteers despite FRV being proposed as the body who will negotiate future EBA's for all operational staff supporting every (1,220) CFA volunteer brigade across the whole of Victoria.

A fundamental flaw with the proposed legislation is a failure to unequivocally enshrine in the legislation that CFA will have the power to ensure that the working arrangements of staff being contracted back to CFA from FRV cannot in any way:

- Restrict or limit how CFA provides support to volunteers;
- Restrict what equipment CFA provides to those volunteers;
- Restrict how CFA consults with its volunteers or limit CFA's ability to make decisions as a result of that consultation; nor
- Limit how CFA manages its operations, or limit how CFA volunteers are recognised, deployed, respected.

There should be an independent review of the Government's legal assessment that the *FWA volunteer support amendment* does not allow for the proposed CFA/UFU Operational Staff EBA 2016 to be finalised' particularly given that this claim has been used by Government as the key policy rationale to separate paid staff and volunteers into separate organisations.¹¹

There needs to be transparent inquiry/review into the extent to which the proposed restructure of the fire services is motivated by an agenda to avoid the *FWA volunteer support amendment* and push ahead with terms and conditions like the proposed CFA/UFU Operational Staff EBA 2016 versus improving community safety.

The Committee should ensure that there can be no deals, side deals, deeds, MOU's, contracts, instruments or restrictions etc. by FRV, CFA or anyone outside of CFA encumbering CFA's ability to support, equip, recognise, empower, respect and consult with volunteers.

¹¹ SES EBA recently approved by FWC despite being subject to the same tests Herald Sun, 31 May 2017 *More questions raised about CFA split*

CONCERN: Lack of consultation and failure of process underpinning policy rationale

The **lack of consultation** prior to the Government's decision regarding the proposed structural changes failed moral and statutory obligations to consult with volunteers. The failure to consult also missed the critical step of engaging with the people on the ground delivering the services to help define a workable solution and maintain their buy-in to any required change journey.

Advice from fire agencies indicates that they were not involved in developing the reform proposal, nor testing the policy rationale and proposal, advising on adverse effects, preferred/better options, flow-on implications, cost, resource or risks.

It is VFBV's view that the process did not follow the Government's own principles that recognise 'better regulatory design and practice requires high quality evidence, analysis and stakeholder consultation'¹². The Victorian Government's own consultation and participation principles for changes such as those in the proposed legislation and reform agenda, state that the experience and views of stakeholders should inform the process; and that early stakeholder consultation should be the default approach for any proposal. VFBV is concerned that this fundamental approach to good process has been ignored, the proposed legislation has been prepared in secret, and has been rushed for no apparent reason.

VFBV is concerned that the poor process underpinning this legislation, rather than resolving tensions or 'fixing things' within the fire services, is actually making things worse.

VFBV's concerns include:

- failure to consult with volunteers in accordance with the CFA Act and Volunteer Charter;
- failure to consult with external stakeholders and agency experts - which has resulted in the absence of expert and specialist input;
- absence of even the most basic community/stakeholder engagement opportunities that would normally occur with a change of such significance;
- absence of transparent cost, service delivery, CFA capability, volunteer impact analysis;
- false claims by Minister Merlino that VFBV had been consulted prior to the tabling of the reform proposal¹³
- statements that VFBV had not been consulted because it is not a representative body¹⁴ for volunteers, despite VFBV's role being formally established in the CFA Act and 95% of CFA brigades registered as financial members of VFBV;
- statements that meetings, presentations and briefings held after the legislation has been tabled, and advice that the Government will not be considering changes - somehow construed as effective consultation and engagement

¹² Victorian Guide to Regulation – A handbook for Policy Makers in Victoria, Department of Treasury and Finance, State of Victoria, 2016

¹³ Minister for Emergency Services, James Merlino MP, Interview with Neil Mitchell on 3AW Radio, Mornings Program 19 May 2017; Legislative Assembly Hansard, 10 May 2017, page 1194; Legislative Assembly Hansard 25 May 2017, page 1452

¹⁴ Minister for Emergency Services, James Merlino MP, Legislative Assembly Hansard, 25 May 2017, page 1452

- failure to apply even the most basic elements of sensible change management provisions required to maintain the commitment of CFA volunteers;
- dismissive and misleading commentary/response from Government about legitimate and reasonable concerns raised by VFBV and CFA volunteers and hostile public commentary seeking to discredit and delegitimize VFBV's right to evaluate the proposed legislation and reform and raise its concerns.

Suggested Way Forward

The proposed legislation should not proceed or be supported until it has been subject to proper, transparent consultation and impact analysis.

Further consideration of the legislation must consider:

- a transparent review and comparison to establish what is 'best practice';
- proper and transparent process for developing assurances, working detail, intent and assumptions and enshrining these sufficiently into any proposed legislation to build surety in the stated intents;
- detailed capability, service delivery, volunteer cost (including Fire Service Levy quantum, collection and allocation) impact analysis;
- genuine stakeholder engagement including genuine consultation with volunteers in accordance with the CFA Act and Volunteer Charter.

The Victorian Government's 'regulation-making guidelines'¹⁵ provide a sensible approach that should be applied for future consideration of reforms of the magnitude outlined in the proposed legislation. This approach would provide answers to the key questions:

- What problem is trying to be solved? - problem analysis and objectives of the action;
- Identify feasible options;
- Consider benefits and costs of feasible options and apply impact analysis to identify preferred options;
- What is the preferred option?;
- Implementation plan;
- Evaluation strategy.

A proper process of inquiry, collaboration/engagement, problem analysis and solution development could act positively to set the foundations for improving culture, trust, respect, leadership and harmony within and across the fire services. VFBV encourages such a process and would welcome the opportunity to actively participate and assist.

¹⁵ Victorian Guide to Regulation – A handbook for Policy Makers in Victoria, Department of Treasury and Finance, State of Victoria, 2016

CONCERN: Lack of transparent impact analysis and fire services expert input underpinning policy rationale and misleading reference to recent fire service review recommendations

VFBV is concerned about the **lack of transparent impact analysis** and absence of unfettered input from expert fire service officials, including cost, service capability, future volunteerism, governance and implementation, flow-on implications, interoperability, culture and leadership and public value.

VFBV is also concerned about the misleading inferences that the restructure of Victoria's fire services, as directed by the proposed legislation, was recommended by the 2009 Victorian Bushfires Royal Commission or any other recent formal reviews.

Further splitting the fire services, dismantling the CFA integrated service model and separating CFA paid staff and volunteers into different organisations is **contrary to advice and recommendations of recent reviews** (including the 2009 Victorian Bushfires Royal Commission) and will exacerbate not fix problems identified by these reviews.

VFBV concerns include:

- absence of transparent cost, service delivery, CFA capability, volunteer impact analysis;
- no evidence to support the claim that discontinuing the integrated model has been recommended by previous reviews
- no clarity around the problems trying to be solved
- no opportunity for VFBV or volunteers to be involved in discussing and developing solutions and reform to addresses the problems identified
- no cost/benefit analysis nor public value or assessment against impact on improving community safety outcomes

VFBV has provided an attached 'Fact Sheet'¹⁶ that highlights significant recent reviews, inquiries and reports .

Suggested Way Forward

The Victorian Government's 'regulation making guidelines' impact assessment evidence and analysis requirements, if applied and made transparent, would help alleviate much of the concern and scepticism about the motivation and rigor of the proposed fire services restructure. These requirements include:

- Using relevant quantitative and qualitative evidence, gathered through consultation and the evaluation of existing settings;
- Collecting additional information where important gaps have been identified;

(continued over)

¹⁶ FACT SHEET: Significant Recent Reviews, Inquiries and Reports

- Presenting the evidence and conclusions drawn from this evidence using a clear analytical framework;
- Explaining assumptions and judgements made.

A proper process of inquiry, collaboration/engagement, identification of outcome sought, risk and impacts analysis, could act positively to set the foundations for improving culture, trust, respect, leadership and harmony within and across the fire services. VFBV encourages such a process and would welcome the opportunity to actively participate and assist.

CONCERN: Proposed fire services structure weakens local service, major incident and peak load surge capability

VFBV supports the principle for fire service arrangements and service delivery to be objectively monitored using outcome measurements and for current fire services arrangements to be the subject of continuous improvement. The proposed change is not based on such a process and is not required nor the ideal approach for this improvement to occur.

It is VFBV's view that the proposed fire service restructure weakens rather than strengthens Victoria's service delivery capacity and has the potential to have a detrimental impact on CFA's surge and peak load capacity and the contingent capacity required to sustain the response required for large scale, long duration and emergencies and situations where large numbers of separate events happen concurrently.

The peak load and surge capacity is not just required for high profile disasters like 2009 Black Saturday fires. Each year there are numerous days when thousands of personnel deployments are needed. Even at a local level, large events (large fires, industrial incidents) and multiple concurrent incidents require an ability to deploy very large numbers of trained volunteer firefighters, often for many days/nights at a time and always at the same time needing maintain response availability as normal throughout the local level service area.

Dismantling the CFA integrated model, and setting a framework that will drive further replacement of CFA brigades with the FRV model, removes an important capacity to apply a continuum of progressive support to CFA volunteer brigades, particularly in high activity urban risk areas, and therefore will reduce rather than strengthen the ability and flexibility for CFA to evolve and adapt to changing community needs. This volunteer only versus paid only brigade approach removes the flexibility to evolve with growing communities and weakens the capacity to sustain volunteers in those communities in the long term.

Dismantling the CFA integrated model, a change driven by the Government's desire to satisfy the EBA agenda, will also create formal structural and cultural division between paid staff and volunteers, representing a major and baseless ideological shift away from the principle of volunteers and paid staff working together in a fully integrated manner.

The proposed arrangements further fragment rather than integrate the fire services and effectively legislate an ideological shift that devalues and disempowers volunteers as inferior service providers, simply because they are not paid.

In VFBV's opinion, the proposed legislation creates a framework that erodes volunteer capacity in urban areas by removing the primary prevention and suppression role for volunteers in the 35 areas to be excised from CFA, and establishing a fire service boundary review that will lead to a compounding discouragement and disincentive for volunteers in more urban areas into the future. Without any objective factors enshrined in the process to ensure it is transparent, evidence based, and evaluates outcome measurements - volunteers are understandably concerned that the legislative framework is simply setting them up to fail, when all effort and energy should be focussed on how to

improve community outcomes, including before and after emergencies to build community resilience and shared responsibility.

There is no doubt that a decline of CFA volunteers in highly populated urban areas will, lead to reduced local service capacity, reduced state-wide surge capacity, reduced contingent capacity and higher costs as gaps in volunteer capacity need to be filled with paid resources.

The proposed fire service structure further separates the fire services rather than establishing a framework that drives toward a more integrated all hazards all agencies fire and emergency sector and creates a policy direction that will work to segregate and isolate (even if unintentionally), rather than proactively for, sustaining the CFA community embedded service model particularly in urban areas. In the future this will result in even further fragmentation of the fire services leading to even further reduction in volunteer capacity over time and a progressively increasing cost.

VFBV's concerns include:

- Dismantling the existing 35 integrated brigades will pose real risk of displacing and discouraging volunteers and future volunteerism;
- Removal of the legislated obligation of paid firefighters, that exists under the current CFA integrated model, to actively encourage, maintain and strengthen volunteer capacity to deliver CFA (and to become FRV) services to the community, will weaken the active incentive and legislated requirement to maintain and build volunteer capacity;
- Removing the primary prevention and suppression role for remnant CFA volunteer brigades to be 'co-located' in areas excised from CFA to FRV, takes responsibility away and has the potential to disempower volunteers. This will be a disincentive for active and sustainable volunteerism and may well lead to a decline in volunteer capacity (likely to be an immediate impact with it worsening over time);
- The proposal to strip all CFA operational staff (Operations Managers, Operations Officers, Training Instructors etc) out of CFA into FRV and have these CFA positions then seconded back to CFA weakens CFA's authority, autonomy and control of this core CFA workforce. This change impacts every one of the 1,220 CFA brigades and jeopardises CFA's ability to nurture and sustain the culture and leadership required for a successful volunteer based organisation;
- Impact of discontinuing the option of establishing CFA's integrated brigade model in future where community demands exceed the capability of a fully volunteer brigade. VFBV agrees that the integrated model could be improved and enhanced – but to destroy it altogether removes flexibility from CFA's suite of service delivery treatments and removes a key volunteer support option for future brigades that may require support in the future;
- Impact of excising the 35 CFA integrated brigades on surrounding volunteer CFA brigades, and the future ability to encourage, maintain and strengthen volunteer capacity at those brigades. CFA's brigades are all interconnected and form a cohesive network of brigades that mutually support and assist each other. The annexure of brigades to FRV where different systems of work, operating procedures and doctrine will exist is likely to have major impact and flow on effects felt most acutely by the hundreds of brigades that will directly support and interact with these new staff only stations;

- Dismantling the CFA integrated resource model and discontinuing the notion that roles performed are based on competence, experience and proficiency not pay status – is a fundamental principle enabling volunteers and paid firefighters to work together as one integrated team. The proposed changes introduce a profound shift in the philosophical approach, policy and operations of emergency management in Victoria;
- Inference that volunteers are second rate or not up to providing first class professional service to urban areas is not only factually incorrect, but allowed to go unchecked and accepted will act as a powerful disincentive working against sustaining active volunteerism well into the future;
- The decline of CFA volunteers in heavily populated urban areas will lead to reduced local service capacity, reduced state-wide surge capacity, reduced contingent capacity and higher costs as gaps in volunteer capacity need to be filled with paid resources.

Suggested Way Forward

VFBV suggests there should be an evidenced based analysis of outcome measures, including consideration of social capital, cost/benefit analysis and the importance of building shared responsibility and community resilience into performance measurements to determine the validity of the CFA model operating in highly populated urban areas and the comparable service delivery between models, including detailed assessment against international and national trends and experiences. This would allow objective analysis and evidence to be used as the basis for future discussions.

CONCERN: Loss of CFA authority, control and autonomy over middle management

A major concern for VFBV and CFA volunteers right across Victoria is the detrimental impact of the stripping out of CFA middle management (Operations Managers, Operations Officers, Training Instructors, Community Safety Managers etc.) to FRV and then seconding these people back to CFA.

VFBV asserts that this will have serious detrimental impacts on CFA authority, autonomy and control over the core CFA brigade leadership and support workforce, **impacting on every CFA volunteer brigade across Victoria.**

These serious detrimental impacts are amplified when considered against the result that CFA may be excluded from any negotiations of the working conditions that said employees will negotiate with their employer (FRV) and the reduced power and autonomy of the CFA Chief Office to manage his future workforce is severely compromised.

The proposal risks driving a perception of mistrust and suspicion by volunteers who may question the motives or agenda of a workforce that they feel is not truly part of their organisation anymore. It has the potential to drive rifts and a breakdown in cooperation across one of the most vital and effective partnerships within CFA - that of the brigade and its catchment officers. These officers perform such an important and influential role in the encouragement, capability, support, management, authorising environment, priority setting and budgetary process – that any risk to the relationship between brigades and CFA operational middle management will have disastrous affect.

CFA's submission to the 2015 Fire Services Review specifically pointed out the differences between why and how CFA employ staff compared to other agencies, stating that there were "significant differences and that these differences arise from CFA's need to empower and support communities in preference to delivering services directly to them." ...and that "CFA's management structures and practices are all directly or indirectly focussed on the provision of effective and efficient support to volunteers."

CFA further pointed out that "differences as to the design criteria for management structures and practices will manifest between agencies because of the fundamentally different requirements arising from the need at the front line to effectively empower and support brigade management teams." CFA pointed out significant differences between CFA and MFB and stressed that these should not be underestimated in terms of organisational dynamics and culture.

Concerns include the:

- Reduced CFA authority and control over the conditions, selection, performance and management of this crucial resource network which impact on every CFA brigade;
- Removal of CFA's formal representation and ability to negotiate EBA conditions for the core workforce supporting all CFA brigades across Victoria;
- Impact on CFA volunteer culture;

- Loss of perceived credibility and authority key operational management layers which may result in a loss of confidence of brigades in their catchment teams

Suggested Way Forward

The proposed legislation must not proceed without unequivocal provision to ensure that CFA will have the power to ensure that the working arrangements of staff employed by CFA either directly or via secondment from FRV, or being contracted back to CFA from FRV, and cannot in any way:

- restrict or limit how CFA provides support to volunteers;
- restrict what equipment CFA provides to those volunteers;
- restrict how CFA consults with its volunteers or limit CFA's ability to make decisions as a result of that consultation; nor
- limit how CFA manages its operations, or limit how CFA volunteers are recognised, empowered, deployed, respected.
- limit the CFA Chief Officers ability to manage and control his/her workforce

CONCERN: Legislation is narrowly focussed because it is driven by the wrong agenda

The proposed legislation and restructure of Victoria's fire services is narrowly focussed on re-allocating jurisdiction based on fire response activity, population and urbanisation.

The focus should be on examining the planning, community engagement, prevention, response and recovery capacity requirements for public safety and performance improvement inherent in alternative or adapted models of operation relative to risk.

The narrow focus of 'increased fire call activity or increased population = need for more paid response resources' misses the contemporary view of focussing more on community safety outcomes and looking for ways to reduce incidents and incident impact through prevention and mitigation, education and awareness, and ignores the public value and social capital achieved through volunteerism – and as a result communities share responsibility in their fire safety which builds much stronger and lasting community resilience.

Previous reviews have identified other priorities for the fire services including a shift in focus from a preoccupation with measuring response times to a greater focus on measuring outcomes such as reducing numbers of incidents, reducing loss and building shared responsibility. International studies and experiences continue to add significant weight and credibility to this approach.

Previous reviews have specifically recognised the value of the CFA model, recognising it as leading practice. The CFA integrated brigade model has been recognised as a strong and viable model that needs to continue and is critical to Victoria's ability to respond to major disasters that frequently occur.

It is most concerning that the proposed legislation not only contradicts these important findings but also misses the opportunity to consider other opportunities that should be the foundation for modernisation of the fire services. Amongst the real priorities for change are:

- leading/fostering an inclusive, unified and modern fire services culture;
- finding better ways to encourage, maintain and strengthen the capacity of volunteers;
- tailoring a variety of flexible support options (including strengthening the CFA integrated brigade model) and local solutions to supplement rather than displace volunteer capacity in busy areas;
- ensuring fire services are adequately empowered to establish workforce management arrangements that meet their needs;
- building local community participation and shared ownership;
- reducing demand for services in the first place through active prevention to reduce incidents and reduce risk/consequence;

- focussing on community safety outcomes not fire truck response times;
- creating flexible and agile solutions to local community circumstance;
- harnessing and empowering the broader social value of active volunteerism and community participation; and
- establishing fire service arrangements that work toward a more unified fire and emergency sector and;

The proposed legislation is not driven by the above rationale.

CONCERN: The proposed legislation includes ambiguities and may have unintended consequences

VFBV is very concerned that the proposed legislation may contain significant gaps and/or oversights that may result in unintended consequences and exposures for both the Agencies themselves, as well as the communities and municipalities that will have their fire districts changed under the proposed legislation.

As the proposed Fire Rescue Victoria Act 1958 proposed in the legislation has used the Metropolitan Fire Brigades Act 1958 as its base, and with alterations made to this historical legislation to try and adapt to the proposed new operating model envisaged by the proposed reform, VFBV is concerned the proposed legislation has the potential to introduce ambiguity and confusion to Statutory Powers, obligations, immunities and other associated arrangements. The Act is complex, and has many interdependencies and cross references which in VFBV's view needs to be closely examined and tested for actual legislative impacts and consequences.

It is VFBV's view that the abolishment of an independent board, and removal of multiple statutory positions such as the Chief Executive and Chief Officer, the proposed legislation has the potential to significantly reduce corporate governance arrangements and the independence of the newly formed Fire Rescue Victoria agency. It is our view that this represents a major departure from the statutory authority model both the MFB and CFA have operated under, and significantly increases the role of the Executive Government in the delivery of fire services by concentrating and expanding significant powers to the Minister for Emergency Services at a time where political interference in the sector has led to significant mistrust, upheaval and concern. To be clear, VFBV is not against the Minister having appropriate powers, but cautions the Committee to consider what impact these changed governance arrangements will have on an organisation that is operating in a very critical community safety and public value area and also a complex political and industrial environment.

Examples of CFA Legislative Impact Implications

Due to the complex nature of the amendments, and ambiguity of powers, VFBV respectfully urges the committee to clarify and satisfy itself of the actual impacts of the amendments. Key concerns and interpretations that policy makers should seek clarity on are:

- It appears to transfer from CFA to Fire Rescue Victoria (FRV) all existing Operations Officers (OIC's) of Integrated Brigades, all Senior Instructors, Instructors, and PAD Operators as well as all operational firefighters (Senior Station Officers down to Recruit Firefighters) (s53)(FRV Act s102). The Minister has also confirmed his intent to transfer all positions covered by the CFA/UFU Operational EBA including all remaining Operations Managers and Operations Officers etc.
- It appears to remove the CFA Chief Officer's power under section 17 of the CFA Act over these employees, and prevents the CFA Chief Officer from exercising any right or power to appoint, transfer, suspend or remove any FRV employee made available or seconded back to the CFA

(s38) such as the Operations Managers, Operations Officers, Instructors etc. What is the intent of removing this power, and how will the CFA Chief Officer consequently manage this class of employee's that currently form CFA's entire middle operational management layer, that interacts with each and every one of CFA's 1,220 brigades?

- It appears to legislate a narrow consideration for boundary review as having regard to a “any change in fire risk” and does not enshrine any contemplation of objective factors for the review panel to consider, as recommended by the 2009 Victorian Bushfires Royal Commission which recommended considerations such as: comparable service delivery between similar MFB and CFA stations; community expectations; municipal requests and requirements; considerations of social capital and value for money. (s42, 43, 44). Is there a reason the Government has rejected the suggestions of the Royal Commission as to the objective factors that should underpin a boundary review?

In only recommending a maximum of one review every three to five years, the Royal Commission appears to have acknowledged the anxiousness and potential disruption that would surround such reviews, and appeared to have erred on the side of providing stability. Again, is there a reason the Government has chosen to not adopt this principle, and instead proposed a model that has the potential to run an unlimited number of reviews at whatever frequency it so desires?

- It appears the “independent” Fire District Review Panel members are appointed directly by the Minister, can be removed at any time and for whatever reason by the Minister, and provides advice/recommendations to the Minister which he/she is not bound to follow. The advice/recommendations of the Panel are made directly to the Minister and are not required to be made public (s44). What effect will these arrangements have on the confidence, integrity and perceived impartiality of the panel?
- It appears to remove the CFA statutory obligation that all employees of CFA must support volunteers in a fully integrated manner by modifying s6F of the CFA Act. (s47). Given how close employees and volunteers work together to form one integrated team, especially on the fire-ground, why is it proposed to remove “fully integrated” from the CFA's statutory obligations?
- It appears to remove the primary role of a CFA Brigade (duty of taking superintending and enforcing all necessary steps for the prevention and suppression of fires and for the protection of life and property) situated/co-located in an FRV area. Clarity is sought on whether by only listing out specific powers of the CFA Act that a CFA Brigade may exercise in an FRV area – does this have the impact of preventing those Brigades exercising powers from elsewhere in the Act, including the Regulations?

On one interpretation - removing the powers of CFA under s20 of the CFA Act to do all things necessary or convenient to be done – and replacing this power with only a small number of specific powers to brigades located in FRV areas (s48) the following concerns and questions arise:

When an area is annexed from CFA and transferred to FRV, is the intent of s48 of the Act to limit what powers these brigades may exercise. If so – VFBV urges the committee to examine and seek clarity on for example:

- Does it remove the power of CFA to enter into agreements for the provision of goods and services from the CFA (s20AA(2)(b) in the CFA Act) which potentially prevents CFA brigades located in FRV areas from providing FEM (Fire Equipment Maintenance) services?
- Does it remove the power for crown land to be granted to CFA in FRV areas (s21A of the CFA Act)?
- Does it remove the power for CFA to compulsorily acquire land within an FRV area (s21B of the CFA Act)?
- Does it remove the authority of CFA to publish or disseminate printed matter or general information in the interests of fire prevention and fire suppression in FRV areas, which may prevent CFA brigades co-located in FRV areas from disseminating any CFA materials (s23(1)(l) of the CFA Act)?
- Does it remove the CFA Chief Officer’s general powers and directions over CFA Brigades and CFA Officers and members located in FRV areas (s27(1) of the CFA Act)?

If not – why have these powers been specifically excluded by section 48 of the proposed bill?

Below is a cross reference of just a few sections of the CFA Act concerning powers and duties of CFA, showing which have and have not been referenced by s48. Whilst there may be a perfectly valid reason for these anomalies, volunteers have raised concerns and are seeking clarity.

Summary of Powers Exercisable by CFA Brigades	
In Country Area of Victoria	Co-located in Fire Rescue Victoria
20 General Duty of Authority – The duty of taking superintending and enforcing all necessary steps for the prevention and suppression of fires and for the protection of life and property in case of fire...	Not referenced
20AAA Duty to assist in major emergency	Unclear
20AA(1) ...has the power to do all things necessary or convenient to be done for or in connection with the performance of its duties and functions	Not referenced
20AA(2)(a) enter into agreements or arrangements with any person or body for the provision of goods or services to the Authority	Referenced
20AA(2)(b) ...enter into agreements or arrangements with any person or body for the provision of goods or services by the Authority;	Not referenced
20AA(2)(c) apply for, obtain and hold intellectual property rights (including patents, copyrights, trade marks and registered designs)	Not referenced

20AA(2)(d) enter into agreements or arrangements for the commercial exploitation of those intellectual property rights and ancillary services on any terms and conditions as to royalties, lump sum payments or otherwise as the Authority may see fit	Not referenced
20AA(2)(e) ...form, participate in the formation of, or be a member of a body corporate, association, partnership, trust or other body	Not referenced
20AA(2)(f) ...enter into a joint venture agreement, shareholders agreement or unitholders agreement with any other person or body	Not referenced
20AA(2)(g) do all things necessary or convenient to give effect to any agreements or arrangements entered into by the Authority including power to appoint any person or body as the Authorities agent for that purpose.	Referenced
20A Attendances unconnected with a fire	Not referenced
20B False alarm of fire – charge false alarm fees and charges	Not referenced
21(1)The Authority may purchase take on lease or otherwise acquire stations and other buildings and land...	Referenced
21(2) All monies resulting from the sale exchange or letting of any property...shall be applied in the purchase of property...	Not referenced
21A Power to grant Crown land to Authority	Not referenced
21B Power to acquire land - compulsorily	Not referenced
22 Persons holding property of brigades may transfer it to Authority or sell it etc.	Not referenced
23(1)(a)take measures to facilitate the formation of permanent or volunteer fire brigades and groups of brigades	Referenced
23(1)(b) upon application made in the prescribed manner and form register a brigade and enrol the officers and members thereof	Referenced
23(1)(c) cause to be kept a book or other written record containing the names ages occupations and places of abode of all members of brigades	Referenced
23(1)(d) amalgamate any brigade or disband or cancel the registration of any brigade or the enrolment of any officer or member of any brigade	Referenced
23(1)(e) furnish any apparatus and other property acquired by or vested in the Authority to any brigade or group of brigades	Referenced
23(1)(f) determine the apparatus and other property of the Authority to be available for use by each brigade or group of brigades	Referenced
23(1)(g)establish schools and facilities or courses of instruction to provide training to any person in the skills required to perform any of the functions of the Authority and permit the use of those schools and facilities by any other body or person	Not referenced
23(1)(h) establish and maintain or contract for the establishment and maintenance of fire alarms...	Not referenced
23(1)(i) establish and maintain or contract for the establishment and maintenance of telephonic telegraphic radio or other communication between the several stations at which members of brigades are placed and between any such stations and any other places	Not referenced
23(1)(j) contract for the carrying out of aerial reconnaissance of the country area of Victoria or any part or parts thereof for the detection of fires	Not referenced
23(1)(k) organize and conduct fire brigade competitions, defray the cost of transport of members of brigades thereto and therefrom, and	Referenced

provide prizes and certificates for presentation to brigades and competitors thereat	
23(1)(l) publish or disseminate or contract for the publication or dissemination of printed matter broadcast matter and general information in the interest of fire prevention and fire suppression	Not referenced
23AA Industry Brigades - establishment	Unclear
23A Groups of brigades	Unclear

Examples of Potential Legislative Gaps or Oversights

The proposed legislation transfers the 35 CFA Integrated Brigade response areas currently classified as the Country Area of Victoria to the new body FRV. This will have the practical effect of introducing a patchwork of islands across Victoria including large rural and provincial cities (eg: Rural City of Wodonga), whom will all now transfer and operate under a different Act.

The MFB Act and CFA Act have both evolved over time – often times quite separately, and it could be argued - to address quite different challenges and circumstance. Due to this history, it is understood that the MFB Act was not envisaged to cover remote provincial cities and townships. The MFB Fire District has always been contiguous, and thus the proposed legislation proposes a radical departure. By transferring many of these areas out of the Country Area of Victoria and to FRV, where the modified MFB Act will now operate, the city centric legislation would be introduced to regional and rural municipal local Government areas for the first time.

By doing so, VFBV is concerned that it has the potential to create a patchwork of ambiguity and confusion, duplication and conflicting powers and responsibilities in so far as fire prevention, and some potential legislative gaps in areas that are addressed by the CFA Act – but have not been fully or clearly transferred or catered for in the new Act. The consequence is that this may have the effect of these powers, duties, obligations and immunities not operating in these new FRV islands.

As an example, there appears to be no clarity around many protections and prohibitions found in the CFA Act, that would appear to not be clearly found in the modified MFB Act, which may then have the effect of unintentionally transferring responsibilities and liabilities to Councils, or at best introduce confusion over where those responsibilities now resides with whom in CFA areas transferred to FRV. Do these responsibilities now default to Council with the withdrawal of the CFA Act from these areas? And if so, what will be the impact of that shift in responsibilities, both at a practical and logistic level with local government, how will they resource it, but also what impact does this have on the clear intent and direction of the 2009 Victorian Bushfires Royal Commission to provide clarity around bushfire preparedness and prevention?

The following is an example of sections of the CFA Act which either in whole or part may only relate to the Country Area of Victoria and thus by definition – may not apply in areas re-zoned to Fire Rescue Victoria districts. VFBV urges the committee to examine and seek clarity on for example:

- Is there a corresponding power in the FRV Act to s4 of the CFA Act - Declaration of Fire Danger Period – and would this have the effect that an FDP could not be called in an FRV area? And if not – what power does either the CFA Chief Officer or the FRV Commissioner have to declare a FDP in an FRV area?

- Is there a corresponding power in the FRV Act to s37 of the CFA Act - General prohibition against lighting open air fires – and would this mean it would not apply in FRV areas?
- Is there a corresponding power in the FRV Act to s38 of the CFA Act - Lighting fires in accordance with a permit – and would this mean it would not apply in FRV areas?
- Is there a corresponding power in the FRV Act to s39 of the CFA Act - Prohibited actions near fires – and would this mean it would not apply in FRV areas?
- Is there a corresponding power in the FRV Act to s39A of the CFA Act - Causing fire in country area in extreme conditions of weather – and would this mean it would not apply in FRV areas?
- Is there a corresponding power in the FRV Act to s39C of the CFA Act - Causing fire in a country area with intent to cause damage – and would this mean it would not apply in FRV areas?
- Is there a corresponding power in the FRV Act to s39E of the CFA Act - Prohibition of high fire risk activities – and would this mean it would not apply in FRV areas?
- Is there a corresponding power in the FRV Act to s50G of the CFA Act - Municipal Council designation of Neighbourhood Safer Places – and would this mean it would not apply in FRV areas?
- Is there a corresponding power in the FRV Act to s94/95 of the CFA Act – and would this remove or limit some of the protections for Councils and Municipalities from liability for things done in the exercise of the CFA Act in FRV areas?

One potential effect of these gaps if they do exist, is you can have a situation in a rural or regional city where people on one side of a street covered by the CFA Act are operating under a declared Fire Danger Period and all its associated protections and safeguards, and those on the other side of the street covered by the FRV Act do not have any of the same fire danger restrictions.

And whilst these appear to be gaps only referencing the CFA and MFB Acts – are there likely to be unintended gaps and consequences from subordinate and/or related legislation which places powers and responsibilities on CFA such as the Planning and Environment Act and various Electrical Safety Acts and Regulations such as the Electricity Safety (Bushfire Mitigation) Regulations 2013 etc. that may not have been assessed for future impacts and consequences?

Examples of Increased Executive Government Powers and Influence

Following on from the tumultuous period of the last year or so, and the desire to remove politics from the Fire Service, VFBV is concerned about the potential of the proposed legislation to significantly expand and increase the political control and direction of the Executive Government into the Fire Services. VFBV urges the committee to consider if this would be in the public interest, and what effect will the current public perception have on people's confidence and trust that these powers will be appropriately exercised and transparent.

VFBV further urges the committee to examine, seek clarity and contemplate the effects of for example:

- Does the proposed legislation - condensing the significant powers, roles and responsibilities of the current 6 member MFB Board, MFB Chief Executive Officer and the MFB Chief Officer by abolishing these roles and transferring these to a single FRV Commissioner with the Commissioner being a Governor in Council appointment on the recommendation of the Minister for Emergency Services - weaken the independence and governance of FRV? (s26, 28, 30, 39, 53, 100)
- Does the proposed legislation expand the political control of the Executive Government by:
 - making the proposed FRV Commissioner and all his/her Deputy Commissioners Governor in Council appointments, on the recommendation of the Minister for Emergency Services (s30)
 - enable the Secretary of the Department to direct a review, enabling the Minister following a review to change the fire district boundaries at any time (s44)
 - enable the Minister to transfer ANY person or class of people from CFA to FRV until September 2018 (s53)(FRV Act s103)
 - enable the Minister to direct CFA to give an allocation statement transferring certain property (buildings, assets or equipment) from CFA to FRV in whole or in part up until the 1 July 2019 (s53)(FRV Act s105 – 117)
 - enable the Governor in Council to make regulations containing provisions of a transitional nature for any persons employed by CFA, for the sale, transfer or disposal of property, rights, liabilities and obligations of the CFA – and these regulations can have a retrospective effect and may differ from time to time (s53)(FRV Act s119)
- What is the implication of replacing the Minister’s current s8 of the MFB Act general power of direction, with much expanded and specific powers of direction over the new Agency, including increasing the Minister’s power to give direction on policies and priorities to be pursued by the Commissioner. (s29)
- What impact on independent decision making for decisions is created by establishing a subordinate “Strategic Advisory Committee” whose members operate in an advisory role to the Commissioner and would all be appointed and/or removed by the Minister at any time and for any reason, and whose Terms of Reference including defining their procedures and strategic focus as set by the Minister. (s40)
- What is the impact of creating an ability for the “independent” Fire District Review Panel whose members are appointed directly by the Minister, to be able to be removed at any time and for whatever reason by the Minister, and provides advice/recommendations to the Minister which he/she is not bound to follow and whose advice/recommendations made directly to the Minister and are not required to be made public. (s44)

These changes represent a major departure from the Statutory Authority type model currently in place and significantly increases the role of the Executive Government in the delivery of fire services. It concentrates and expands significant powers to the Minister for Emergency Services at a time where political interference in the sector has led to significant mistrust, upheaval and concern.

In an environment charged with entire Boards being sacked, Ministers, Chief Executive Officers and Chief Officers being forced to resign, VFBV contends the introduction of these increased powers do not potentially deliver on the Government's desire to stop the politicisation of our fire services, but rather increases it and enshrines it as a permanent fixture for years and possibly decades to come.

Suggested Way Forward

The proposed legislation should not proceed or be supported until it has been the subject of proper, transparent consultation and detailed impact and legislative impact analysis including clarity provided on the potential legislative impacts and consequences.

VFBV would urge the Committee to be satisfied that the expanded powers to the Executive Government are appropriate, and that there are appropriate checks and balances to ensure the full accountability and transparency of those powers being exercised.

CONCERN: Long term implications have not been tested

The medium to long term implications of the proposed restructure and reform of Victoria's fire services have not been adequately tested.

Contemplating the impact on changing the service responsibility for 35 locations currently serviced by CFA does not adequately address the likely future scenario of a changed resource model in many additional urban areas.

The fire service structure changes create a compounding problem for the future because the arrangements legislate a paradigm and framework that will drive even further expansion of a service model that will not encourage and sustain active volunteerism.

This will lead to an even greater loss of CFA volunteer surge capacity.

At the same time, as trends suggest the frequency and severity of major fires will increase, the proposed fire service restructure sets a scenario for further fire service boundary change and expansion of a service model that is highly likely to drive a reduction in volunteer capacity in those areas.

The proposed legislation sets a framework for diminished volunteer surge capacity at a time when future demands for large scale, rapid and sustained (surge) response are likely to increase.

Few would argue the need for independent and objective analysis of current service delivery models and the performance of the fire services servicing those areas to ensure communities are receiving the services they require. However, reviews should be evidence based, fair and equitable, and ensure analysis of current service delivery models is outcome based and not simple time or event measurements. The review process outlined in the Governments proposed legislation does none of these things, and volunteers fear it can easily be hijacked for ideological and political purposes, as similar panels have been in the past.

The proposed Fire District Review panel very closely mirrors the CFA/UFU Disputes Panel that was created by common law deed between the UFU and CFA in 2007, which replaced the UFU/CFA Board of Reference.

These bodies were designed to remove the powers of the CFA Chief Officer to determine future staffing and future integrated brigades, and transfer those powers to an "independent" panel. This panel consisted of;

1. Former industrial relations Commissioner Robert Merriman (appointed by the Minister as the "independent chair"
2. The then Deputy Chief Officer Steven Warrington
3. The then MFB Operational Commander Ken Brown representing the UFU

This panel operated and deliberated under a veil of secrecy, rejected the views in most cases of the then CFA Chief Officer, and ignored CFA's commitment to the 'continuum' approach to brigade service capacity and human resource planning principles.

Through these panels, the UFU pursued manning claims at the following stations:

Rowville	Warrandyte	Pakenham	South Morang
Phillip Island	Mooroopna	Ocean Grove	Portland
Mildura	Lara	Epping	Geelong West
Noble Park	Narre Warren	Hastings	Sale
Warragul	Lorne	Echuca	Melton
Ballarat	Werribee	Sunbury	Mornington
Diamond Creek			

Over the past year, the UFU have been using a presentation and submission, which criticizes and targets the following Brigades:

Bairnsdale	Ballarat	Hampton Park	Lilydale
Mernda	Narre Warren North	North Warrandyte	Truganina
Diggers Rest	Epping	Plenty	Diamond Creek
Wyndham Vale	Baxter	Bayswater	Beaconsfield
Carrum Downs	Churchill	Dromana	Drysdale
Edithvale	Ferntree Gully	Geelong West	Grovedale
Hamilton	Highton	Horsham	Keysborough
Langwarrin	Lara	Leopold	Lilydale
Moe	Montrose	Mooroolbark	Mooroopna
Mt Eliza	Mt Evelyn	Mt Martha	Narre Warren North
Noble Park	Portarlington	Rye	Sale
Scoresby	Sebastopol	Skye	The Basin
Torquay	Warrandyte	Wonga Park	Werribee
Wendouree			

The future scenario can be envisaged when a sequence of factors unfold as follows:

- i. There will be a continuous and growing need for fire services to increase capacity to respond to inevitable urban growth;
- ii. The proposed fire services legislated approach and structure facilitates a disincentive for strong volunteerism in high population, high fire activity urban communities;
- iii. The legislation sets a narrow focus that will drive solutions to more activity focussed on adding more fire suppression resources rather than prevention and building community capacity;
- iv. The legislation sets a narrow focus that will drive a different (FRV) service model in urban communities and fire service boundary changes regardless of volunteer capacity;
- v. The added factor of dismantling the CFA integrated brigade model will remove the option of supplementing gaps in volunteers capacity in busy urban communities and will drive even greater pressure for additional FRV boundary changes as the only available options as compared to the current system that allows a gradual supplementation of paid firefighters

working along side and integrated with volunteers to meet required demand;

- vi. This will lead to a more and more areas excised from CFA to FRV;
- vii. Under the proposed FRV arrangements, volunteers are disempowered and subordinated to a support role making it even harder to sustain volunteer motivation and retention;
- viii. Under the new arrangements and likely EBA requirements, the additional FRV boundary changes will compound the challenge of sustaining volunteer local capacity in an even greater number of communities leading to an even greater decline in Victoria's major incident surge capacity;
- ix. There is evidence of a continued growth in the likelihood of increasingly frequent, severe and high consequence major events (including natural and also human-made emergencies) requiring rapid mobilisation of surge capacity;
- x. Increased urbanisation will increase the number of people living in areas exposed to urban/rural interface which will increase the number of people exposed to the threat of major wildfire;
- xi. Just when Victoria will need more surge and concurrent event peak load response capacity, the proposed fire service restructure will cause it to be diminished.

Suggested Way Forward

Independent and robust impact analysis (including cost/benefit impact) of any reform proposals before a decision is made including future modelling of long term impacts;

CONCERN: The legislation represents a significant ideological shift that diminishes how volunteers are valued

The proposed legislation represents a major ideological change. It allows and potentially facilitates a conscious or careless shift away from respecting, recognising and valuing that volunteers are capable of being trained, available and proficient in the delivery of fire and emergency services even in the most complex and urban risk environments.

The Government's justification for the proposed restructure of Victoria's fire services fails (both the proposed legislation and Government's promotional messaging), to recognise that CFA already has the capacity to evolve resource capability, and specifically to employ additional paid firefighters and other resources, to maintain and expand service capacity to meet the service demands of growing urban communities.

The Government's reform agenda fails to address or even recognise that one of the key barriers to CFA being able to adapt and respond to this service growth emanates from a restrictive industrial/EBA environment NOT a CFA legislation blocker to grow, modernise and adapt to changing community needs.

The proposed legislation does not address the real problems and challenges, nor harness the opportunities facing the fire services and the pursuit of safer communities.

VFBV concerns include:

- A preoccupation with resourcing fire suppression, rather than a policy motivated by and focussed on community capability, community sharing responsibility, incident reduction, consequence reduction;
- Government's admitted policy agenda¹⁷, enabled by the proposed legislation to expand the excision of areas currently serviced by CFA beyond the 35 CFA integrated locations, which combined with the problems inherent in the legislation and associated structural changes proposed, will have a compounding negative impact on sustaining Victoria's volunteer capability;
- Lack of detail and transparency regarding future FRV boundary changes. There is no clear provision for proper consideration of volunteer capability, volunteer capacity building opportunities, impact of local boundary change on Victoria's capacity to deal with state-wide and major incident demands;
- Absence of any provision in the legislation for FRV to have an unequivocal obligation to encourage, maintain and strengthen the capacity of volunteers;

¹⁷ Minister for Emergency Services, James Merlino MP, Interview with Neil Mitchell on 3AW Radio, Mornings Program, 19 May 2017. *'Well, I would say to you that in a high population, high density areas, the community deserves 24/7 career station delivering urban fire services'*

- Failure to recognise that the 2009 Victorian Bushfires Royal Commission (VBRC) recognised that any consideration of change to the overall structure, governance arrangements and command structures of the fire services in Victoria must be tested against balancing two key requirements. These being how the changes improve (a) Victoria’s ability to manage bushfire prone areas (including preparing for and responding to major fires); and (b) service Victoria’s expanding urban fringe and growing regional towns. VFBV strongly supports the contention that these two requirements should not be considered in isolation.
- A failure to address the underlying problems generated by an EBA that goes too far;
- A major disruption to the fire services structure that provides no added benefit and does not provide any remedy to remove the negative effects of an EBA on volunteers. Instead the change will only result in further excluding CFA from having any say in the negotiations of EBA’s that will continue to have a direct and profound effect on CFA, not just in the 35 areas currently serviced by CFA integrated brigades, but also across every CFA brigade who are supported by the network of Operations Managers, Operations Officers, Training Instructors and other staff who will now have their EBA’s negotiated by FRV not CFA;
- A narrow focus on resource allocation and service boundary delineation driven by activity levels and population density rather than a focus on reducing incident frequency and consequence;
- Further fragmentation of the fire services rather than integration;
- Fire service structural arrangements that will reduce the flexibility, agility and options available to CFA to adapt, review and alter local service capability, resource allocation and volunteer support interventions according to changing local needs and circumstance;
- Fire service structural arrangements that effectively discourage and diminish recognition of the professional contribution of volunteers and active sustainability of volunteers as primary providers in urban risk environments rather than seeking to actively encourage, promote and value the contribution of these volunteers. At a time when there will be the juxtaposed phenomena of increased urbanisation (a key supply source for Victoria’s surge capacity), increased major fire risk due to climate factors and expanding urban/rural interface areas; and challenges to sustaining volunteer capacity in some rural areas, this reform will potentially lead to a decline in volunteering in urban communities and set a framework for even further decline in active volunteering into the future.

Suggested Way Forward

The Select Committee need to ask:

Is the ideological shift intended or unintended? If the shift is not intended the legislation is flawed and needs a rethink.

CONCERN: Presumptive Rights Compensation

VFBV wishes to formally express our disappointment that the proposed legislation combines the two totally separate issues of firefighters presumptive rights and fire services restructure.

VFBV has written¹⁸ to and met with MPs from all sides of politics seeking support to separate those aspects of the proposed legislation which relate to presumptive rights from those aspects relating to the broader restructure of Victoria's fire services.

VFBV submits that the proposed legislation should be split to separate the consideration of Firefighters' Presumptive Rights Compensation from Fire Services Reform aspects and be subject to separate consultation.

VFBV also submits that the Firefighters' Presumptive Rights Compensation aspects of the proposed legislation need to be amended to remove the differential treatment of paid staff and volunteers.

The proposed legislation needs to be reviewed and amended to fix the inequity and complexity set up for volunteers; to remove the additional fire attendance hurdles applying only to volunteers; and to reconsider the 10 year post eligibility cut off.

VFBV refers the committee to the attached legal advice provided to VFBV. This advice from Jack Rush QC¹⁹. This advice confirms VFBV concerns that the proposed firefighter presumptive compensation rights is being sold as something that it clearly is not. The advice confirms that the proposed firefighter presumptive rights compensation does not provide a simple process for volunteers, it does not treat volunteers and paid staff equally and whilst it establishes a simple process for paid firefighters it sets up potential for protracted legal battle for sick volunteers.

The Firefighters' Presumptive Rights Compensation aspects of the proposed legislation establish a mechanism that is NOT the Queensland model, which it is supposedly seeking to emulate. To sell it as being the same or as simple and equitable as the QLD model is misleading. The QLD model treats volunteers and paid firefighters identically, the Victorian proposal treats volunteers and paid staff very differently. The QLD model does not have time limits (ie the 10 year time limit cut off for former or resigned firefighters) for claims from retired or former firefighters the proposed. The time limitation

¹⁸ Letter to MPs attached

¹⁹ Jack Rush QC legal advice attached

for firefighters in Victoria could result in firefighters who receive a cancer diagnosis more than 10 years after they ceased firefighting to be ineligible to access presumption.

VFBV concerns about the differences between the Victorian proposal versus the simple and desired QLD proposal are confirmed by observation²⁰ made by QLD lawyers, James Law, who have experience assisting firefighters with cancer in QLD, Victoria and nationwide.

For a detailed analysis of the Presumptive Legislation please refer to the attached:

- Detailed Legal Advice provided by Jack Rush QC
- A Comparative View: By Queensland based James Law

Suggested way forward

The proposed legislation should be split to separate the consideration of Firefighters' Presumptive Rights Compensation from Fire Services Reform aspects.

The Firefighters' Presumptive Rights Compensation aspects of the proposed legislation need to be amended to remove the differential treatment of paid staff and volunteers.

²⁰ James law see attachment

List of Attachments

Detailed Legal Advice provided by Jack Rush QC

A Comparative View: By Queensland based James Law

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

Letter to all MP's: Concerns re the Firefighters Presumptive Rights Compensation and Fire Service Legislation Amendment (Reform) Bill

Fact Sheet: Recommendation 63 of the Victorian Bushfires Royal Commission

Fact Sheet: Brigade Continuum of Support

Fact Sheet: Consultation

Fact Sheet: Fundamental Factors Critical to the Future Success of Victorian Fire Services

Fact Sheet: Importance of CFA Culture to Future Volunteerism

Fact Sheet: Significant Recent Reviews, Inquiries and Reports

Fact Sheet: Support Required for Volunteer Training

News Note: 21 May 2017 - Victorian Fire Services Restructure

News Note: 15 June 2017 – Fire Services Reform Legislation Update & VFBV Legal Advice

QLD/VIC Presumptive Legislation Comparison Table (Working Document)



Submission Attachments

Select Committee: Inquiry into the Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017

7th July 2017

List of Attachments

Detailed Legal Advice provided by Jack Rush QC	1
A Comparative View: By Queensland based James Law	8
Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016	10
Letter to all MP's: Concerns re the Firefighters Presumptive Rights Compensation and Fire Service Legislation Amendment (Reform) Bill	20
Fact Sheet: Recommendation 63 of the Victorian Bushfires Royal Commission	22
Fact Sheet: Brigade Continuum of Support	25
Fact Sheet: Consultation	28
Fact Sheet: Fundamental Factors Critical to the Future Success of Victorian Fire Services	35
Fact Sheet: Importance of CFA Culture to Future Volunteerism	40
Fact Sheet: Significant Recent Reviews, Inquiries and Reports	45
Fact Sheet: Support Required for Volunteer Training	57
News Note: 21 May 2017 - Victorian Fire Services Restructure	62
News Note: 15 June 2017 – Fire Services Reform Legislation Update & VFBV Legal Advice	69
QLD/VIC Presumptive Legislation Comparison Table (Working Document)	75

Re Firefighters Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017 (Vic)

ADVICE

Introduction

1. I am asked to advise Volunteer Fire Brigades Victoria concerning **Firefighters Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017** (“**the Bill**”). I am specifically requested to advise as to that part of the Bill that purports to provide a rebuttable presumption “...for career firefighters and volunteer firefighters suffering from specified forms of cancer (the specified cancers) for the purposes of claiming compensation under the **Workplace Injury Rehabilitation and Compensation Act 2013**” (“**the Workcover Act**”).
2. The Bill establishes two distinct mechanisms for the operation of the presumption that specified cancers are due to the nature of firefighting – one for career firefighters and one for volunteer firefighters. The Bill discriminates against volunteer firefighters, is inequitable to them, has been drafted in a manner that is prejudicial to volunteer firefighters’ entitlements and rights to claim for specified forms of cancer when compared to the claims process created by the Bill for career firefighters for precisely the same cancer conditions

The Bill

Definitions

3. Relevant definitions contained in section 4 of the Bill are as follows:

advisory committee means the advisory committee established under section 20.

Authority means the Victorian Workcover Authority.

career firefighter means a person who is or was employed by a fire service as a firefighter in a role in which fire fighting duties are or were a substantial portion.

volunteer firefighter means a person who is or was a ***volunteer officer or member*** within the meaning of the **Country Fire Authority Act 1958** in a role in which fire fighting duties are or were a substantial portion.

4. It is to be observed the definitions in the Bill of career firefighter and volunteer firefighter are in substance identical.

Workplace Injury Rehabilitation and Compensation Act 2013

5. The Bill is to be read as if it formed part of the Workcover Act¹. If a firefighter satisfies the presumption concerning the occurrence of a specified cancer the cancer is taken to be an injury within the meaning of the Workcover Act. This has particular significance for volunteers as referred to below². The (Workcover) Authority becomes the manager of the volunteer’s claim.

Schedule 1

6. Schedule 1 of the Bill sets out 12 different cancers – the specified cancers. The cancers vary from “primary site brain cancer” to “primary site prostate cancer” to “primary site oesophageal cancer”. For each nominated cancer the Schedule establishes a “qualifying period”; thus by way of example the qualifying period for “primary site brain cancer” is five years, for “primary site prostate cancer” the qualifying period is 15 years.

Presumption – career firefighter

7. That a specified cancer is due to the nature of a career firefighter’s employment will be presumed upon it being demonstrated the cancer “occurs on or after 1 June 2016”³, “occurs during a period which [he or she] is employed as a career firefighter or within the 10 year period after [he or she] ceases to be employed or served as a firefighter”⁴, that before the specified cancer occurred he or she “is or was employed, or served as a firefighter, for at least the qualifying

¹ S 5(1).

² The Bill does more than create presumptive entitlements for specified cancers. It completely changes the claims process for volunteer firefighters to the Workcover Scheme. At present, volunteer firefighters’ claims for injury compensation are dealt with under the Country Fire Authority Regulations 2014 Part 6 which is a more generous scheme. See [22] this Advice.

³ S 6(1)(a)(ii).

⁴ S 6(1)(b).

period” specified in Schedule 1 for the specified cancer⁵ - using the examples above, brain cancer employment five years, prostate cancer employment 15 years.

8. A person is determined to be a career firefighter if “employed as a career firefighter at the time the injury occurs”⁶ or if the career firefighter has ceased employment he or she will be deemed a career firefighter if “their most recent employment or service as a firefighter was as a career firefighter”⁷ or “on balance the majority of their employment or service was as a career firefighter”⁸.
9. It is important to note the Bill does not specify any mechanism at all as to how it is to be determined “fire fighting duties are or were a substantial portion”⁹ of the role of a career firefighter. Indeed, the Bill proceeds on the basis that to be “a career firefighter” is in itself sufficient to invoke the presumption irrespective of specific roles or duties as a career firefighter.
10. Notably the presumption in the equivalent interstate legislation requiring that the career firefighter be actually employed “for the purpose of fire fighting” and “attending fires to the extent necessary to fulfil the purpose of the person’s employment”¹⁰ has been omitted from the Victorian legislation as it concerns career firefighters. This requirement has been omitted for career firefighters but, extraordinarily, included for volunteer firefighters.

Presumption – volunteer firefighter

11. That a specified cancer is due to the nature of a volunteer fire fighter’s service will be presumed upon it being demonstrated the cancer “occurs on or after 1 June 2016”¹¹, “occurs during a period in which the volunteer firefighter served (sic) as a firefighter or within the 10 year period after the volunteer

⁵ S 6(1)(c).

⁶ S 8(1).

⁷ S 8(2)(a).

⁸ S 8(2)(b).

⁹ See definition of Career Firefighter.

¹⁰ S 36E2(a)-(b) **Workers Compensation and Rehabilitation Act 2003 (Qld)**.

¹¹ S 9(1)(a)(ii).

firefighter ceases to serve as a firefighter”¹² and before the date upon which the specified cancer occurred

*“...the volunteer firefighter served as a firefighter for at least the qualifying period [specified in the table to Schedule 1], and the volunteer firefighter attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter - ...”*¹³

12. The discrepancy by the addition of the above condition is blatant, the Bill requires a volunteer firefighter to demonstrate attendance at fires “to the extent reasonably necessary to fulfil the purpose of their services of firefighter”. No such precondition is placed on career firefighters, indeed as noted above, it is highly likely this specific precondition (contained in equivalent Queensland legislation for both career and volunteer firefighters) was deliberately omitted for career firefighters in Victoria.
13. No explanation is provided in the Bill itself or in the Explanatory Memorandum as to why volunteer firefighters are exposed to this condition and career firefighters are not; no explanation is provided as to why the legislation is so slanted in favour of the claims of career firefighters.
14. The Bill then proceeds to establish a structure to determine whether a volunteer firefighter attended fires to the extent reasonably necessary to fulfil their service as a firefighter under section 9. The claim is to be administered by the (Workcover) Authority. The (Workcover) Authority must seek an expert opinion from an advisory committee¹⁴.
15. The advisory committee is to be established by the Minister¹⁵. One of the primary purposes of the advisory committee is to provide an “expert opinion” to the (Workcover) Authority as to whether a volunteer firefighter has attended fires to the extent reasonably necessary to fulfil the purposes of service as a firefighter¹⁶. The Bill makes provision for regulations to be made for the

¹²S 9(1)(b).

¹³S 9(1)(c).

¹⁴S 12(1).

¹⁵S 20(1).

¹⁶S 20(a)(2).

appointment of the advisory committee¹⁷ but provides no guidance whatsoever as to the background or expertise of those to be appointed¹⁸.

16. The (Workcover) Authority must have regard “to the expert opinion” of the advisory committee¹⁹ but the (Workcover) Authority “is not required to make a determination that is consistent with the expert opinion”²⁰.

Summary Concerning Volunteer Firefighters

17. It is informative to summarise in practical terms the effect of these provisions on volunteer firefighters, noting that NONE of these additional provisions are applicable to career firefighters.
18. A volunteer firefighter has the following additional requirements compared to a career firefighter:-
- (a) must demonstrate attendance at fires to the extent reasonably necessary to fulfil the purpose of their service as a volunteer firefighter;
 - (b) an advisory committee, comprised of individuals of unknown expertise or experience will provide an expert opinion to the (Workcover) Authority for the purposes of determining whether a volunteer firefighter attended fires to the extent reasonably necessary to fulfil the purpose of their service;
 - (c) a decision of the advisory committee that a volunteer firefighter has attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter is not binding on the (Workcover) Authority;
 - (d) there is no provision for the expert opinion of the advisory committee to be provided to the volunteer firefighter whom it concerns.

¹⁷S 20(3).

¹⁸The advisory committee is to have regard to relevant records, “local knowledge” and any other matters prescribed by the regulations. S 12(2)(a)-(b).

¹⁹S 12(3)(a).

²⁰S 12(3)(b).

Conclusion

19. There is no definition or guidance as to what amount of service, what aspects of service a volunteer firefighter must demonstrate to satisfy the advisory committee or the (Workcover) Authority that such firefighter has attended fires to the extent reasonably necessary to fulfill the purpose of their service. The wording is vague and liable to inconsistent and capricious interpretation.
20. As stated above, no attempt has been made in the Bill or in the accompanying Explanatory Memorandum to explain why the operation of the presumption is made more difficult and arbitrary for volunteer firefighters.
21. The legislation is entirely unsatisfactory and prejudicial to volunteer firefighters who may be diagnosed and wish to claim for a specified cancer. By comparison with a career firefighter diagnosed with and wishing to claim for precisely the same specified cancer the volunteer is required to proceed through an ill-defined and arbitrary process culminating in the (Workcover) Authority being able to reject the expert opinion of an advisory committee established by the Act. This leads to the remarkable outcome that a volunteer firefighter may attend exactly the same fires, be exposed to exactly the same toxins but only the career firefighter will have the advantage of the presumption and a straightforward route to compensation. For the volunteer the Bill is capricious and unfair.

CFA Regulations - Workcover

22. I make the very important observation that the Bill changes the process by which volunteer firefighters can claim for injury and compensation caused by their service.
23. Currently, as noted in footnote 2, volunteer firefighters claims and entitlements are as provided for in CFA Regulations Part 6 (the regulations). The Bill changes the process of claim and entitlements for a specified cancer to the processes and entitlements as set out in the Workcover Act. The presumption will not arise if a volunteer firefighter seeks to pursue his entitlement, as would have been normal, under the regulations.

24. By comparison with the Workcover Act the regulations provide a simpler process for claims and do not contain caps or limits on various heads of loss such as loss of earnings.
25. I have not been asked to analyse or advise in detail on the differences between the Bill and the regulations however because of the far reaching ramifications of the Bill in relation to such claims it is important that my instructing solicitors and their clients are aware of these changes.



JOHN T. (JACK) RUSH QC
8 June 2017

FIREFIGHTER CANCER PRESUMPTIVE LEGISLATION

A Comparative View

The Proposed Victorian Legislation and the Queensland Legislation

As the issue of presumptive legislation for firefighters in Victoria with a cancer diagnosis prepares to be debated, there is ongoing discussion and some confusion as to whether or not the proposed Victorian presumptive legislation is identical in its application and effect to the Queensland presumptive legislation, from which it is purportedly derived.

As a law firm assisting firefighters with cancer in Queensland, Victoria and nationwide (with and without presumptive legislation) our observation is that there are a number of differences between the proposed Victorian legislation and the Queensland legislation, with substantial entitlement and eligibility differences also between career and volunteer firefighters under the Victorian model.

The fundamental difference between the Queensland and Victorian legislation is that Queensland legislation treats volunteer and career firefighters the same. The proposed Victorian legislation does not. For a Victorian volunteer firefighter to have their claim accepted, additional hurdles must be jumped over when compared to their career firefighter counterpart.

Deemed Disease, Qualifying Period and Time Limitation

To be eligible under the proposed Victorian presumptive legislation, career or volunteer firefighters similarly must prove the following:

- (a) They have a cancer which is listed in the Schedule;
- (b) The date of diagnosis was on or after 1 June 2016 ;
- (c) The injury (cancer) was diagnosed during a period when they were employed or served as career or volunteer firefighter or within 10 years after ceasing to be a firefighter; and
- (d) They were, before the date of diagnosis, employed or served as a firefighter for at least the qualifying period listed in the Schedule.

This differs to the Queensland legislation, as there are no time limits on claims from retired or former firefighters. The time limitation placed on Victorian firefighters is a significant departure from the Queensland model, and it will result in a number of firefighters (career and volunteer) who receive a cancer diagnosis more than a decade after they ceased firefighting, to not be eligible to access presumptive compensation. The Queensland legislation, which has no time limit, reflects the way in which cancers develop from carcinogenic exposures in the course of firefighting suppression and firefighting training.

The deemed diseases and qualifying periods are identical for both volunteer and career firefighters under the Queensland and proposed Victorian legislation.

Qualifying Period

Under the proposed Victorian legislation and Qld legislation, both career and volunteer firefighters are required to meet the qualifying period (number of years).

When deciding the number of years to meet the qualifying period, the Queensland legislation, for both career and volunteer firefighter, states:

- 36E (2) *A period of 12 months may be included only if, throughout the period, the person -*
- a) *Was employed for the purpose of firefighting; and*
 - b) *Attended fires to the extent reasonably necessary to fulfil the purpose of the person's employment.*

For volunteer firefighters, the proposed Victorian legislation states:

*s9 (1) (c) Before the date on which the injury that is a disease referred to in column 1 of the table in schedule 1 occurred, the volunteer firefighter served as a firefighter for at least the qualifying period specified in column 2 of that table opposite the disease, **and** the volunteer firefighter attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter.*

The above only applies to volunteer firefighters, NOT to career firefighters.

The proposed legislation does not define what it means by “attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter” and this test is in addition to meeting the qualifying period (number of years).

The Victorian test for volunteers appears to be three tiered, in that the volunteer must firstly have diagnosed a cancer from the list, and then they must establish the requisite number of years to meet the qualifying period AND then establish that they attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter. This suggests that the test for volunteers is more than the career firefighter’s test.

For career firefighters, the proposed Victorian legislation states:

s7 (1) (c) Before the date on which the injury that is a disease referred to in column 1 in schedule 1 occurred the worker is or was employed, or served as a firefighter, for at least the qualifying period specified in column 2 of that Table opposite the disease –“

The career firefighter does not then have to go on and prove they have “attended fires to the extent reasonably necessary...”

Whilst the same wording is found in the Queensland legislation, it serves a different purpose, as it only applies to calculating the number of years to meet the qualifying period and it applies to both career and volunteer firefighters.

Advisory Committee

In the proposed Victorian legislation, there is a mandatory referral of all volunteer applications to an Advisory Committee, established under s 20, to provide an “expert opinion” about whether or not the volunteer has “attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter”. The Advisory Committee is not being asked to determine whether the volunteer has met the qualifying period (number of years), only whether or not they have “attended fires to an extent reasonably necessary to fulfil the purpose of their service as a firefighter”.

The mandatory referral to an Advisory Committee established by the proposed legislation further supports the conclusion that something more than service record will be used to determine whether a volunteer has attended at fires to “an extent reasonably necessary to fulfil the purpose of their service as a firefighter”.

The proposed legislation does not prescribe the nature of that expert opinion to be provided by the Advisory Committee. Nor does the proposed legislation indicate whether the expert opinion is to come from members sitting on the committee or sourced elsewhere.

The Advisory Committee has another function, which is to decide whether a firefighter (career or volunteer) has had an “exceptional exposure event” under s 20(2) (b). Queensland legislation does not have provision for exceptional exposure events.

Queensland does not have an Advisory Committee established under the legislation to provide opinion on any firefighter application. Queensland has the ability to form an administrative committee. This committee has been delegated to the Workers Compensation Regulator however to the best of our knowledge has never convened.

James Law disclaimer – this paper is general legal opinion only and not to be taken as legal advice. Should you require advice on your entitlement to make a claim for firefighter cancer compensation, we recommend you seek legal advice specific to your circumstances. Time limits apply for applying, and you may be able to apply now, even though presumptive legislation has not yet commenced.

2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

**Fair Work Amendment (Respect for
Emergency Services Volunteers) Bill
2016**

No. , 2016

**A Bill for an Act to amend the *Fair Work Act 2009*,
and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
	<i>Fair Work Act 2009</i>	3

Schedule 1—Amendments

Fair Work Act 2009

1 Section 12

Insert:

designated emergency management body: see subsections 195A(4) and (5).

objectionable emergency management term of an enterprise agreement: see section 195A.

volunteer of a designated emergency management body: see subsection 195A(6).

2 At the end of subsection 29(2)

Add:

Note: In addition, 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 (see paragraphs 194(baa), 195A(1)(d) and 253(1)(b)).

3 After paragraph 194(b)

Insert:

(baa) an objectionable emergency management term; or

4 At the end of Subdivision D of Division 4 of Part 2-4

Add:

195A Meaning of *objectionable emergency management term*

Objectionable emergency management term

- (1) A term of an enterprise agreement is an *objectionable emergency management term* if an employer covered by the agreement is a designated emergency management body and the term has, or is likely to have, the effect of:

- 1 (a) restricting or limiting the body's ability to do any of the
2 following:
3 (i) engage or deploy its volunteers;
4 (ii) provide support or equipment to those volunteers;
5 (iii) manage its relationship with, or work with, any
6 recognised emergency management body in relation to
7 those volunteers;
8 (iv) otherwise manage its operations in relation to those
9 volunteers; or
10 (b) requiring the body to consult, or reach agreement with, any
11 other person or body before taking any action for the
12 purposes of doing anything mentioned in subparagraph (a)(i),
13 (ii), (iii) or (iv); or
14 (c) restricting or limiting the body's ability to recognise, value,
15 respect or promote the contribution of its volunteers to the
16 well-being and safety of the community; or
17 (d) requiring or permitting the body to act other than in
18 accordance with a law of a State or Territory, so far as the
19 law confers or imposes on the body a power, function or duty
20 that affects or could affect its volunteers.
- 21 (2) However, a term of an enterprise agreement is not an ***objectionable***
22 ***emergency management term*** if:
23 (a) both of the following apply:
24 (i) the term provides for the matters required by
25 subsections 205(1) and (1A) (which deal with terms
26 about consultation in enterprise agreements);
27 (ii) the term does not provide for any other matter that has,
28 or is likely to have, the effect referred to in
29 paragraph (1)(a), (b), (c) or (d) of this section; or
30 (b) the term is the model consultation term.
- 31 (3) Paragraphs (1)(a), (b), (c) and (d) do not limit each other.

32 ***Meaning of designated emergency management body***

- 33 (4) A body is a ***designated emergency management body*** if:
34 (a) either:
-

-
- 1 (i) the body is, or is a part of, a fire-fighting body or a State
2 Emergency Service of a State or Territory (however
3 described); or
4 (ii) the body is a recognised emergency management body
5 that is prescribed by the regulations for the purposes of
6 this subparagraph; and
7 (b) the body is, or is a part of a body that is, established for a
8 public purpose by or under a law of the Commonwealth, a
9 State or a Territory.

10 (5) However, a body is not a ***designated emergency management***
11 ***body*** if the body is, or is a part of a body that is, prescribed by the
12 regulations for the purposes of this subsection.

13 *Meaning of volunteer of a designated emergency management*
14 *body*

- 15 (6) A person is a ***volunteer*** of a designated emergency management
16 body if:
17 (a) the person engages in activities with the body on a voluntary
18 basis (whether or not the person directly or indirectly takes or
19 agrees to take an honorarium, gratuity or similar payment
20 wholly or partly for engaging in the activity); and
21 (b) the person is a member of, or has a member-like association
22 with, the body.

23 *Limited application of subsection (1) for certain terms*

- 24 (7) If:
25 (a) a term of an enterprise agreement deals to any extent with the
26 following matters relating to provision of essential services
27 or to situations of emergency:
28 (i) directions to perform work (including to perform work
29 at a particular time or place, or in a particular way);
30 (ii) directions not to perform work (including not to perform
31 work at a particular time or place, or in a particular
32 way); and
33 (b) the application of subsection (1) in relation to the term would
34 (apart from this subsection) be beyond the Commonwealth's

1 legislative power to the extent that the term deals with those
2 matters;
3 then subsection (1) does not apply in relation to the term to that
4 extent.

5 Note: See paragraph (l) of the definition of *excluded subject matter* in
6 subsections 30A(1) and 30K(1).

7 **5 Subsection 205(2)**

8 After “a consultation term,” insert “or if the consultation term is an
9 objectionable emergency management term,”.

10 **6 After section 254**

11 Insert:

12 **254A Entitlement for volunteer bodies to make submissions**

13 (1) A body covered by subsection (2) is entitled to make a submission
14 for consideration in relation to a matter before the FWC if:

- 15 (a) the matter arises under this Part; and
16 (b) the matter affects, or could affect, the volunteers of a
17 designated emergency management body.

18 (2) The bodies are as follows:

- 19 (a) a body corporate that:
20 (i) has a history of representing the interests of the
21 designated emergency management body’s volunteers;
22 and
23 (ii) is not prescribed by the regulations for the purposes of
24 this subparagraph;
25 (b) any other body that is prescribed by the regulations for the
26 purposes of this paragraph.

27 (3) Subsection (1) applies whether or not the FWC holds a hearing in
28 relation to the matter.

29 **7 Section 258 (paragraph relating to Division 7)**

30 Repeal the paragraph, substitute:



15th June, 2017

Members of Parliament
As addressed

URGENT

Dear Member,

**Concerns Regarding the Firefighters' Presumptive Rights Compensation and Fire Service
Legalisation Amendment (Reform) Bill 2017**

I am writing to seek your support to address concerns regarding the Firefighters' Presumptive Rights Compensation and Fire Service Legislation Amendment (Reform) Bill 2017 (referred to in this letter as 'the Bill').

VFBV has already raised many concerns regarding the entire Bill, including concerns regarding the lack of consultation; the negative impact of dismantling the existing CFA integrated service model; the potential erosion of Victoria's vital volunteer surge capacity and the weakening of CFA's independence and provision of support to volunteers and their operations in protecting the people of Victoria.

Regarding the presumptive rights compensation aspects of the Bill I refer you to the attached legal advice provided to VFBV. This advice confirms VFBV concerns that the proposed firefighter presumptive rights legislation is being sold as something that it clearly is not. The proposed Victorian legislation does not provide a simple process for volunteers, it does not treat volunteers and paid firefighters equally, it is not the same as the well regarded QLD model and it sets up potential for protracted legal debate for sick volunteers.

To sell the cancer protection as being the same as other simple and equitable models such as the QLD approach is false. The proposed Victorian cancer protection legislation is not the QLD model, it sets up complex administrative and legal arrangements for volunteers and a much simpler process for paid firefighters. VFBV is pleased that paid firefighters will be provided with simple and compassionate cancer protection but why discriminate against volunteers?

I urge you to consider the attached legal advice. VFBV believes there is a compelling case for there to be further work done on the presumptive rights protection aspects of the Bill before it is adopted. VFBV believes this work could be done quite quickly if the true spirit of the QLD model is genuinely intended.

Volunteers feel the combination of an issue so important as firefighter cancer protection with the proposed reforms to the fire services that essentially carve up CFA, one as a ransom note for the other, is highly offensive and morally wrong.

VFBV seeks your support to separate those aspects of the Bill which relate to presumptive rights from the remaining aspects relating to the broader restructure of the fire services.

VFBV also seeks your support to reject the other aspects of the Bill relating to the so-called fire service reform. The proposed fire service reform change triggered by the legislation is not a modernisation of the fire services. It creates less flexibility for the fire services to adapt to changing risk and service demands. It further fragments Victoria's fire services when all recent reviews have said fire service modernisation needs to be about joining up effort. It creates unnecessary complexity, confusion and duplication. There are too many unanswered questions.

Contrary to the Governments claim, none of the recent major reviews, and certainly not the 2009 Victorian Bushfires Royal Commission, recommended splitting the world-renowned CFA model. Quite the opposite, these reviews recognised the importance of maintaining and strengthening the existing CFA model that fully integrates volunteers and paid firefighters. Furthermore, these reviews recognised the absolute importance of the existing CFA model as the best way for Victoria to be able to maintain the huge surge capability required for major disasters and at the same time enable the flexibility to supplement volunteer capacity with paid firefighters in growing urban service areas.

It has been and remains VFBV's view, as supported by current legislation, that the determination of local risk and consequent service need and resource deployment should reside with CFA through the Chief Officer's statutory role in consultation with local volunteers and other stakeholders. This is of course subject to performance audit by the Auditor-General and the Inspector General Emergency Management (IGEM).

I am aware that this Bill has been passed in the Legislative Assembly and will now be considered by the Legislative Council next week. This is very disappointing for volunteers who have raised serious concerns about the lack of consultation regarding the Bill; the negative effect dismantling the existing CFA integrated service model; the potential erosion of Victoria's vital volunteer surge capacity; the lack of transparent process, operational or cost impact analysis; and the ambiguity, confusion and interference that will flow if this change is adopted.

Volunteers are supportive of fire service modernisation but we urge the decision makers to stop and have a re-think. If you are not prepared to take this legislation off the table for now, at least agree to a transparent and proper process of scrutiny and review before the legislation is passed.

Yours Sincerely,



Andrew Ford
Chief Executive Officer

FACT SHEET

Recommendation 63 of the Victorian Bushfires Royal Commission

July 2017

MINISTER MERLINO'S STATEMENTS

On the 19th May 2017, at the Ministers Press Conference, and repeated by the Minister on multiple occasions since, the Minister has stated the following:

"We will also introduce recommendation 63 of the Bushfires Royal Commission. This was an important recommendation that no Government has implemented. Well that stops now, no more reviews, we are going to introduce legislation we will introduce recommendation 63 and that is an independent process, the new Fire District Panel that will look at where in the future we need additional career firefighting services so the legislation will also implement in full recommendation 63."

WHAT WAS RECOMMENDATION 63?

The following is a direct extract from the 2009 Victorian Bushfires Royal Commission final report (pg 381)

RECOMMENDATION 63

The State enact legislation designed to achieve two specific ends:

- appoint a Fire Commissioner as an independent statutory officer responsible to the Minister for Police and Emergency Services and as the senior operational firefighter in Victoria
- make the Chief Fire Officer of the Department of Sustainability and Environment a statutory appointment.

The Fire Commissioner should have responsibility for the following:

- promoting and directing reform aimed at increasing the operational capability, interoperability and resilience of Victoria's fire services
- developing and building operational capacity to prepare for the days of highest bushfire risk and exercising control over level 3 fires as the permanent State Controller
- providing to government periodic advice on the metropolitan fire district boundary on the basis of triggers, frequency and criteria approved by government
- representing Victorian interests on operational matters in national committees.

WHAT HAS THE INDEPENDENT IMPLEMENTATION MONITOR REPORTED?

The Bushfires Royal Commission Implementation Monitor Act 2011 (the BRCIM Act) required an Implementation Monitor to report on implementation progress of the Royal Commission outcomes.

The role of the Bushfires Royal Commission Implementation Monitor was formalised through the passing of the Bushfires Royal Commission Implementation Monitor Act 2011 (BRCIM Act) in April 2011 and the then Premier Hon John Brumby announced former Police Commissioner Mr Neil Comrie AO APM as this independent monitor on the 14 October 2010.

Both the independent monitor's interim (Progress Report) dated July 2011 and final report dated July 2012 (both of which were tabled in Parliament) reported implementation of Recommendation 63 was implemented and **completed**. The implementation monitor further reported under recommendation 63; "...the BRCIM notes the positive progress that has been made to date and the appropriateness of the plans for the future."

WHAT DID THE ROYAL COMMISSION SUGGEST ABOUT FUTURE BOUNDARY CHANGES?

Boundary changes were dealt with in the Royal Commission final report under section 10.6.2, the Royal Commission spoke about future changes and said:

“If the existing model can deliver the service the community expects and continues to deliver it, this provides social capital for local communities and a depth of operational capacity. On the limited evidence available, the Commission considers the CFA integrated service delivery should be maintained as a viable model.”

The Royal Commission suggested a range of considerations influence the boundary question, and recommended that decisions for future change should be made on the basis of objective factors.

The following table compares what the Royal Commission suggested should be considered, compared to what the Governments proposed legislation determines:

Royal Commission	Andrew’s Government Legislation
Objective factors	
<ul style="list-style-type: none"> • Comparable service delivery between similar MFB and CFA stations • Community expectations • Municipal requests and requirements • Considerations of social capital • Value for money 	<p>A change in fire risk, defined as:</p> <ul style="list-style-type: none"> • A change in land use or development • A demographic change or a change in demand • Any other change
Triggers	
<ul style="list-style-type: none"> • Meeting community expectations • Requirements of local government 	<ul style="list-style-type: none"> • Minister determines • Recommendation by the Secretary of Ministers department
Frequency	
<ul style="list-style-type: none"> • No more than once every three to five years 	<ul style="list-style-type: none"> • No Limit • Must be done at least once every 4 years
Who should conduct Review	
<ul style="list-style-type: none"> • Fire Services Commissioner 	<ul style="list-style-type: none"> • “independent panel” appointed by the Minister, members can be removed at anytime and for whatever reason by the Minister, and only provides advice/recommendations, of which the Minister is not bound to follow

As is clear from the table, the proposed legislation does not pick up the objective and balanced factors the Royal Commission was suggesting.

WHAT ARE VOLUNTEER CONCERNS ABOUT A REVIEW PANEL?

Few would argue the need for independent and objective analysis of current service delivery models and the performance of the fire services servicing those areas to ensure communities are receiving the services they require. However, reviews should be evidence based, fair and equitable, and ensure analysis of current service delivery models is outcome based and not simple time or event measurements. The review process outlined in the Governments proposed legislation does none of these things, and volunteers fear it can easily be hijacked for ideological and political purposes, as similar panels have been in the past.

The proposed Fire District Review panel very closely mirrors the CFA/UFU Disputes Panel that was created by common law deed between the UFU and CFA in 2007, which replaced the UFU/CFA Board of Reference.

These bodies were designed to remove the powers of the CFA Chief Officer to determine future staffing and future integrated brigades, and transfer those powers to an “independent” panel. This panel consisted of;

1. Former industrial relations Commissioner Robert Merriman (appointed by the Minister as the “independent chair”
2. The then Deputy Chief Officer Steven Warrington
3. The then MFB Operational Commander Ken Brown representing the UFU

This panel operated and deliberated under a veil of secrecy, rejected the views in most cases of the then CFA Chief Officer, and ignored CFA’s commitment to the ‘continuum’ approach to brigade service capacity and human resource planning principles.

Through these panels, the UFU pursued manning claims at the following stations:

Rowville	Warrandyte	Pakenham	South Morang
Phillip Island	Mooroopna	Ocean Grove	Portland
Mildura	Lara	Epping	Geelong West
Noble Park	Narre Warren	Hastings	Sale
Warragul	Lorne	Echuca	Melton
Ballarat	Werribee	Sunbury	Mornington
Diamond Creek			

Over the past year, the UFU have been using a presentation and submission, which criticizes and targets the following Brigades:

Bairnsdale	Ballarat	Hampton Park	Lilydale
Mernda	Narre Warren North	North Warrandyte	Truganina
Diggers Rest	Epping	Plenty	Diamond Creek
Wyndham Vale	Baxter	Bayswater	Beaconsfield
Carrum Downs	Churchill	Dromana	Drysdale
Edithvale	Ferntree Gully	Geelong West	Grovedale
Hamilton	Highton	Horsham	Keysborough
Langwarrin	Lara	Leopold	Lilydale
Moe	Montrose	Mooroolbark	Mooroopna
Mt Eliza	Mt Evelyn	Mt Martha	Narre Warren North
Noble Park	Portarlington	Rye	Sale
Scoresby	Sebastopol	Skye	The Basin
Torquay	Warrandyte	Wonga Park	Werribee
Wendouree			

The UFU data distorts the context of time based measurements and ignores any outcome measurements.

July 2017

There needs to be a range of flexible support options available for volunteer brigades based on local circumstance/need. VFBV submits that a continuum of support options needs to be available to ensure CFA volunteer brigades maintain a service capacity matched to local need. CFA needs to deploy a range of capacity building support options for volunteer brigades such as:

- active recruitment support,
- targeted training assistance,
- administrative support,
- leadership support,
- smart volunteer alerting systems,
- infrastructure and firefighting equipment appropriate for the brigades service profile, fire appliances matched to risk, community/industry partnerships, operational response arrangements and so on.

THE CONTINUUM OF SUPPORT

The CFA Human Resource Planning Principles for Volunteer Brigades ('the continuum of support') was jointly developed by the VFBV and CFA and considered by the joint Board meeting of VFBV and CFA in 2008. The principles were developed and refined over the subsequent months as the principles to apply for supporting volunteer brigades and determining additional support supplementation solutions.

It provides a framework and a set of principles for CFA to work with volunteer brigades to ensure service delivery to the localities assigned to each volunteer brigade can be met. It was also aimed at setting an approach for CFA to design all organisational policy, systems, initiatives and procedures in such a way that building community and volunteer capacity to achieve community outcomes was a highest priority.

The continuum's principles provide for the flexible allocation of treatments to brigades that have difficulty in meeting their local service delivery requirements because of changes to their volunteer profile (age, skills, volunteer availability, reductions in number of members etc) and/or changes to their service response requirements (usually a major increase in turnouts arising from urban, commercial and industrial growth).

The practical implementation of the policy requires:

- In conjunction with brigade members, assessing brigade needs to meet service demands and identify priority responses. Responses to be undertaken may include:
 - Change of systems, procedures or organisational arrangements to reduce burden on volunteers
 - Smart systems to assist with brigade support workload
 - Recruitment campaign matched to speedy minimum skills training for approved recruits and the provision of PPC and other equipment
 - Upgrading brigade infrastructure and equipment
 - Targeted training to match operational profile, leadership, management or administrative needs
 - Allocation of administrative support under the BASO program
 - Allocation of paid community education or fire prevention support
 - Appointment of paid support to assist with leadership development or specific issue resolution

- Temporary allocation of day shift career staff to assist while the brigade is rebuilding its capacity
- Seasonal allocation of support for peak periods
- Longer term allocation of day shift career staff to cover day periods when volunteers are not available in sufficient numbers because of work commitments
- Allocation of 24 hour shift career staff to supplement volunteers, usually as a result of major increases in brigade turnouts with insufficient volunteers to guarantee the required level of service delivery

These responses are to be flexible and progressive based on the brigade's service delivery capacity assessment after each response and further assessments over time, eg if daytime volunteer capacity has increased to the extent that career staff (temporary or permanent) are no longer needed to provide required service delivery they should be re-allocated to another location (according to need) or when a brigade returns to service capacity it will revert to covering its previous assignment area. Equally, if a brigade's volunteer capacity relative to service demand further reduces there may be a need to increase the number career staff and/or move to 24 hour career staff shifts to ensure local service delivery.

Under the continuum approach it is only when these staged treatments fail to lift the brigade's capacity to meet its required service standards would CFA in conjunction with the brigade undertake the appointment of 24 hour 10/14 shift firefighters to work with and support the Brigade's volunteers to build service capacity.

To successfully enable the proper application of the 'continuum' and appropriate support for volunteer brigades will require CFA Board and management commitment to implementing this approach as an organisational policy, and appropriate budget priority for these solutions, as well as the delivery of changes to several existing industrial arrangements related to:

- BASOs;
- use of non-firefighter staff to support volunteers in the delivery of community education;
- deployment arrangements for (new) career firefighters;
- potential introduction of new firefighter classifications with more flexible deployment, staffing and shift arrangements; and,
- creation of greater volunteer needs-based training arrangements including lateral entry of suitably experienced and qualified applicants, including volunteers, to Instructor positions together with part time, casual and sessional employment arrangements to facilitate the delivery of such arrangements

For some brigades deploying additional paid firefighters to support a CFA volunteer brigade is required. The CFA integrated brigade resource model enables CFA to grow volunteer brigade capacity to meet growing service demand in urban growth areas and at the same time maintains the volunteer 'surge' capacity to manage large scale, long duration and concurrent major emergencies.

VFBV strongly supports the continuation of the integrated brigade model however notes there needs be stronger CFA leadership and more proactive effort to lead, facilitate and support local volunteers and paid firefighters achieve good integration.

For the integrated model to work at its best, the CFA Chief Officer must have the flexibility to determining when, where, what roles and how many additional paid resources might be deployed to support a brigade(s) based on local community need and brigade volunteer capacity.

Specific continuing concern relates to the apparent inability for the CFA Chief Officer to employ day time support for busy volunteer brigades where day time volunteer availability becomes a challenge for example in brigades where members are working away from the brigade area during the day. This issue is not only frustrating to volunteer brigades but also leads to missed opportunity to get broadest possible geographic coverage from finite paid firefighter numbers.

The cost difference between allocating paid firefighters on a daytime roster versus the existing industrial agreement requirement to transition all paid firefighter positions to a 24 hour roster are significant. The cost of providing 24 hour paid firefighter support including its corresponding recurrent salary costs infrastructure requirements to a brigade is likely to be at least three to four 5 times more expensive than providing daytime paid firefighter support.

July 2017

CONSULTATION

This is the most often cited issue raised by volunteers. The extreme disappointment, and in many cases anger, with CFA and Government failing to meet their obligations under the Volunteer Charter has been evident throughout volunteer ranks over recent times.

The failure to meaningfully and effectively consult before decisions are made; to listen to volunteer concerns/inputs early in the deliberative process; and under-utilisation of the knowledge and experience of volunteers results in widespread disaffection in volunteer ranks. Volunteers deserve to have input, have valuable expertise to offer and have a legislated right to be consulted before decisions are made whether that be in new policy development, legislation, new initiative design, systems and support design, training delivery, community education etc.

The legislation passed by the Victorian Parliament in 2011, *Country Fire Authority Amendment (Volunteer Charter) Bill 2011*, gives the Volunteer Charter legal status. However, the challenge is to ensure compliance with its terms and conditions throughout CFA and Government.

In any workforce, the genuine engagement with the “workers” is key. In a decentralised organisation it is even more important. In a community embedded and overwhelmingly volunteer based workforce, not only is genuine engagement as an organisational philosophy important, as an underlying driver of organisational culture, values, behaviours and approach, but also robust and meaningful and effective consultation about all matters effecting this volunteer workforce, before decisions are made, is critical.

Consultation with volunteers on all matters that are likely to affect them before decisions are made is not only morally sensible it is good business and it is critical for successful uptake of the decisions. Critical in terms of maintaining volunteer dedication and commitment. Critical in terms of gaining volunteer views so that programs, policies, initiatives, procedures and support are designed in such a way that they will work on the ground to maintain and strengthen volunteer involvement in the work that needs to be done; and getting optimal benefit of the available volunteer resource and good-will; and critical to achieving and understanding, buy-in and ownership about the future.

A failure to consult and engage effectively and genuinely with volunteers will lead to:

- Government and CFA management spending excessive time ‘selling’ the decisions that have already been made and real potential for on ground, lasting implementation failing;
- Decisions designed to suit the corporate environment and corporate needs, but not necessarily workable on the ground potentially creating excessive, unnecessary or unappreciated workload for the volunteers on the ground who need to implement them.
- Poor decisions can have serious impact on long term volunteer viability and willingness to contribute;

- Programs not being conducive to optimal volunteer participation, potentially missing critical volunteer capability development and resulting in unnecessary, inefficient and costly alternative solutions to be required; and
- Programs not being implemented with lasting buy-in and drift away once corporate monitoring and initial drive is removed.

Whereas genuine, up-front engagement and consultation has been proven time and again to lead to:

- Programs, policies, initiatives and systems that work for volunteers and get the most out of what volunteers are prepared to contribute;
- Better understanding of the challenges and context for proposed solutions, policy or organisational arrangements and early engagement of volunteer leadership to help resolve issues and generally a better, faster and lasting outcome;
- Consultation effort focuses on solving the problem not reacting to volunteers being unhappy about decisions forced from 'the top';
- Local knowledge and expertise being effectively utilised and therefore programs designed to meet the differing needs of local situations; and
- Ownership and buy-in from the people that will ultimately need to do the implementation.

It is VFBV's strong belief that empowering volunteers and engaging with them to consider issues and determine the best way forward leads not only to solutions that will work better on the ground and achieve deeper ownership of the chosen course of action; but also contributes to a motivation for members to continue contributing their services (a 'feeling of pride and ownership' is often quoted) and attracting others to join them. Empowering and engaging volunteers is important as a means for more experienced/capable members to be active as volunteer leaders and managers of the CFA.

Many members have expressed a concern that they sometimes feel that Government and CFA treats them as 'cannon fodder' or, cheap labour and this is seen as a disincentive for continued volunteer contribution.

On this latter issue CFA and Government cannot operate on the premises that all leadership, direction, governance and performance management will be provided by paid personnel. Just as volunteers are essential to front-line fire-fighting and incident command, volunteers in CFA are vital to the non-operational leadership and management of CFA, at every level from brigade to board.

Given the above, one would expect to find obvious structure, process, systems, cultural and governance elements in place to ensure this is happening effectively across the sector. Whilst some of these elements exist, a frequent complaint of volunteer members is that processes are merely paid lip service; input is not treated seriously enough; and the sector culture too often considers that the paid staff know best and volunteers 'ought to do as they are told.

Industrial arrangements put in place over the years mean that there is a differential treatment of the views expressed by volunteers; often an inability to actually make a fair decision incorporating both volunteer and paid workforce input; and ultimately for many critical issues an inability for the CFA to actually make the decision without industrial agreement.

There are a number of key formal arrangements in place within CFA to deliver effective engagement and consultation:

- The CFA Act
- The Volunteer Charter
- The Emergency Management Volunteer Statement
- VFBV Processes
 - Brigade Delegates
 - District Councils
 - State Council
 - Joint CFA/VFBV Committees
 - Overarching joint consultative committee and joint CFA / VFBV Board arrangements
- CFA District Planning Committees
- CFA Group Structures

For these arrangements to be effective, requires not only good process and adequate resourcing, but also a CFA culture driven by principles of striving to design policy and organisational arrangements that maintain, encourage and strengthen the capacity of volunteers to deliver CFA's services; and a desire for genuine engagement with the volunteers who are CFA.

In order for consultative arrangements to work effectively, CFA and Government will need to better respect and willingly embrace the legitimate role of VFBV as established under the CFA Act. Just as volunteers are not mere stakeholders of CFA, VFBV (as the legislatively established representative of CFA volunteers) is not just another stakeholder of CFA.

BEST PRACTICE CONSULTATION

VFBV considers the following principles and accepted best practices are the foundation to genuine consultation:

- Consult early, when policy or proposal objectives and different approaches are still under consideration. (Involving stakeholders from the earliest possible stage in the proposals development process will promote transparent and comprehensive participation)
- Explain the objectives of the consultation and the context for it
- Provide an opportunity for stakeholders to readily contribute to the proposals development
- Sharing and exchange of information and analysis to form genuine and informed dialog on the proposal. (Information and Issues papers, draft assessments, draft regulation/policy, impact statements, whitepapers, green papers or exposure drafts should be made available to stakeholders to enable them to make informed comments on proposals.)

- Clearly identify the problem(s) or opportunity(s) looking to be achieved
- Consider the practical 'real-world' impact of the proposal and various options to achieve stated aim from the volunteers perspective
- Consider alternatives and allow reasonable time for alternatives to be developed
- Identify risks and consider options to mitigate or limit them
- Give stakeholders a reasonable opportunity to express their views
- Take those views into account and demonstrate how they have been considered
- Respond promptly to queries from stakeholders
- Timeframes for consultation should be realistic to allow stakeholders enough time to provide a considered approach. (Involving stakeholders in determining timelines can be an important part of building and securing a positive relationship.)

FRAMEWORK PRINCIPLES

For a robust and genuine consultative process to work successfully, VFBV believes the following high level principles should be applied. Consultation:

- Should be done in a genuine and timely way
- Should be continuous and should start as early as possible
- Should be conducted prior to decisions being made to ensure outcomes are able to be considered before the decisions made
- Different views are heard and acknowledged without interruption, criticism or judgement
- There is a willingness to reach consensus or to find alternate ways to proceed
- Processes to resolve differences of opinion are fair and equitable, and all views are heard and taken into account
- A commitment for no "Spin". Spin is a form of propaganda, achieved through providing a biased interpretation of an issue to persuade public opinion in favour or against a predetermined proposition. In the context of consultation, spin can have a major impact on trust and confidence in the process. During consultation, stakeholders want accurate information, and evidence based analysis so that they can form their own judgement about impacts and trade-offs.

VFBV accepts and supports that consultation is not to be confused for joint decision making. VFBV has no desire to withhold agreement or to stop or prevent a decision being made. VFBV sees it role to ensure all decisions are informed decisions, that volunteers have buy-in and advocates that parties be made to demonstrate that they have complied with their obligations to consult, have done it genuinely and with best endeavour to ensure the views of volunteers has been heard and understood on any matters that may or have the potential to impact on them - prior to decisions being made.

WHAT ARE THE CURRENT OBLIGATIONS TO CONSULT

CFA Act (inter alia)

6F Recognition of Authority as a volunteer-based organisation

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.

6G Recognition of the Volunteer Charter

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

6H Authority to have regard to Volunteer Charter

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

6I Authority's responsibility to encourage, maintain and strengthen capacity of volunteers

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.

The Volunteer Charter (inter alia)

- 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?

CFA

- 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 on all matters which may impact upon Volunteers before the adoption or implementation of any new or changes 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

The Government of Victoria

- 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

Emergency Management Volunteer Statement (inter alia) Signed by Premier Daniel Andrews MP and Craig Lapsley PSM

- Is an agreed commitment between the State of Victoria and emergency management volunteers, from agencies listed in the Emergency Management Manual Victoria
- Ensures the State of Victoria and the emergency management volunteer agencies will commit to consult with volunteers on matters which affect them, through volunteer engagement arrangements within the emergency management sector, including the Volunteer Consultative Forum, and in line with their agencies' obligations;
- Coexists and compliments the enduring effect of the CFA Volunteer Charter

Emergency Management Volunteer Agencies:

- Work with and support a positive integration of paid and volunteer emergency management workers;
- Develop and maintain an organisational culture and organisational relationships that support volunteer engagement in all emergency management functions;
- Commit to maintaining and building individual and overall emergency management volunteer capacity to carry out emergency management roles

The State of Victoria:

- Commits to engage and consult with emergency management volunteers and their representative bodies on emergency management issues and matters that affect them, through the Volunteer Consultative Forum and other volunteer engagement arrangements within the emergency management sector taking into account the recognition of the importance of volunteers in Victoria's emergency management arrangements under the Emergency Management Act 2013;

OTHER RESOURCES

“The consultation must take place early enough in the decision making process to ensure that its outcomes are able to be considered prior to the decisions being made. As a general rule, the earlier in the process it happens, the better. This means that consultation should occur on the scoping or identification of the issues rather than just on the final decision. It will also assist the credibility of the process if people feel that issues have not been resolved prior to consultation.”

Victorian Local Governance Association: Community Consultation Resource Guide.

“It is best to use a discussion paper or white paper process before embarking on substantial reform to ensure that only necessary legislation and regulations are drafted. Legislation should usually undergo an exposure draft process.”

“Consulting on and analysing implementation options is an important part of policy development. Before finalising the policy, test the details of complex regulations with relevant businesses. Release exposure drafts of complex regulations for significant matters to allow businesses and other stakeholders to provide more detailed comments and advice on how the regulation will work in practice.”

Australian Government: Office of Best Practice Regulation Guidance Note Feb 2016.

“When a green paper is required, it should be released relatively early in during the policy development, before a preferred option is ‘locked in’. An exposure draft of the regulation should be released closer to finalisation, but still allow time for stakeholders to provide feedback about the details and for their views to be addressed.”

Australian Government: Office of Best Practice Regulation Guidance Note Feb 2016.

July 2017

VFBV submits that there are some fundamental factors which are critical to the future success of Victoria's volunteer based fire and emergency management capability and these factors must underpin any future decisions made about the resourcing, operations, management and culture of the collective fire services.

Balancing the need to maintain local service capacity PLUS ensure peak load capacity exists for Victoria's major fires/disasters

The 2009 Bush Fires Royal Commission (BFRC) recognised that any consideration of change to the overall structure, governance arrangements and command structures of the fire services in Victoria must be tested against balancing two key requirements.

These being how the changes improve

- a) Victoria's ability to manage bushfire prone areas (including preparing for and responding to major fires); and
- b) service Victoria's expanding urban fringe and growing regional towns. VFBV strongly supports the contention that these two requirements should not be considered in isolation.

Decisions about one aspect of service planning, resource allocation, training, equipment etc invariably have flow on effect to other areas of fire service capability. It is not appropriate to consider decisions about one aspect of fire service planning, resourcing, operations, management or culture without also considering the flow on impact of those decisions on Victoria's overall fire suppression, prevention and preparedness capacity including the impact on community readiness and resilience.

Regardless of the presenting issue at a local level or a specific service planning challenge one thing remains constant. And that is future consideration of Victoria's fire services cannot separate the interrelationship between maintaining and strengthening capacity to deal with major disasters (bushfire, other emergencies etc); urban growth; and rural changes.

Adding resources in one area, or introducing a work practice in another to the detriment of treating a more pressing issue or at the risk of eroding Victoria's ability to deal with major fires, could have disastrous consequences.

CFA community embedded and volunteer based model underpins community sharing responsibility for their own safety

CFA has the legislative duty of superintending, enforcing and taking all necessary steps for the prevention and suppression of fires and for the protection of life and property in the case of fire. In addition to its own fire suppression and prevention efforts, a shared responsibility between CFA and the community is core to CFA's service delivery approach.

This approach requires active effort to build and maintain community awareness and capacity to support and participate in their own safety as an essential ingredient to success of the fire services effort.

The CFA community embedded and volunteer based service model not only provides the state's surge capacity to deal with major disasters it also provides a vital direct link for community participation and shared

responsibility. Apart from its enormous economic and fire response capacity contribution, the CFA's volunteer based service model provides significant foundation for social cohesion and community resilience. It is essential therefore that all CFA (and in fact emergency management sector) service delivery planning and resource effort includes a focus on building community and volunteer capacity.

CFA volunteer based model is critical to meeting Victoria's peak load and surge capacity for major, concurrent and prolonged emergencies

Victoria is one of the most fire prone areas of the world and in recent years Victorians have experienced longer and more extreme fire season conditions.

The ability to mobilise large numbers of emergency personnel to major disasters anywhere in Victoria (and frequently interstate), often over long durations and frequently to concurrent large scale emergencies PLUS maintain service coverage to local service risks (eg suburban areas) is one of the most critical fire service resource management responsibilities for Victoria's fire services.

Recent decades show a regular (ie to be expected) annual occurrence of major events requiring deployment of massive numbers of trained volunteer firefighters and future climate/population assessments generally predict potential for more frequent and more consequential (life, property, livelihood loss) events.

Recent years also demonstrate that large scale non fire emergencies (flood, storm, threats to critical infrastructure supply such as gas or coal) can and do occur randomly at all times of the year impacting broad community areas and significant numbers of people.

CFA brigades service all of country Victoria, more than half of metropolitan Melbourne, and all provincial centres and townships across Victoria. Victoria's surge capacity is derived from this entire network of CFA brigades but importantly a large portion of the volunteer surge capacity is supplied from CFA brigades in the highly populated urbanised outer metropolitan areas.

Sustaining volunteer capacity across Victoria and particularly in outer metropolitan Melbourne and provincial towns where there are larger concentrations of CFA volunteers is vitally important for Victoria's statewide peak load and surge capacity.

The peak load capacity is not just required for high profile disasters like the 2009 Black Saturday fires, each year there are numerous days when thousands of trained firefighters need to be deployed to major emergencies. Even at a local level, large events (eg. large fires, industrial, commercial fires etc) frequently require an ability to deploy very large number of trained volunteer firefighters sometimes for many days and at the same time needing to manage normal response availability in the surrounding areas.

This same volunteer surge capacity is equally important to providing the large numbers of highly trained firefighters and operational command personnel required to combat large non bushfire emergencies including major industrial fires, Hazelwood mine fire, flood events, Longford Gas Explosion.

Population growth and urban expansion will see even more people living in high risk environments and more communities on the urban development/fire risk interface.

The resource approach to managing urban population growth in Victoria will have a direct impact on Victoria's ability to deal with major fires/emergencies.

CFA integrated resource model is vital to maintaining Victoria's volunteer surge and peak load capacity at the same time as managing urban service growth challenges

As outlined above the CFA volunteer capacity in outer metropolitan Melbourne areas and provincial centres makes up a substantial portion of Victoria's volunteer surge and peak load fire response capacity. CFA incident statistics show that for the big emergencies 40 - 50% of personnel deployed are volunteers supplied from volunteer and integrated CFA brigades in the greater metropolitan area of Melbourne (excluding the MFB district where there are no volunteer firefighters). Maintaining volunteer capacity in these areas serviced by the CFA integrated brigade model is vitally important for Victoria's capacity to deal with large scale emergencies.

Over the years CFA volunteer brigades have generally been able to evolve their capacity to match changes in local community circumstances and service demand increases such as those caused by urban population growth. Sometimes growth does exceed the capacity of volunteers or community circumstances challenge a brigade's ability to sustain required levels of volunteer capacity and additional support needs to be provided to the brigade.

When the support solution requires additional paid firefighter support the current CFA model deploys paid firefighters to supplement and support the existing volunteer capacity. This approach is known as the CFA integrated brigade resource model.

The key difference between the CFA integrated brigade model and the MFB paid only model is that the CFA integrated brigade resource model enables the CFA Chief Officer to employ paid firefighters at targeted CFA volunteer brigades to supplement existing volunteer capacity with paid firefighter support, adding to but not displacing the vital volunteer firefighting capacity at these locations.

In the past the CFA Chief Officer has had reasonable flexibility in determining when, where, what roles and how many additional paid resources might be deployed based on local community need and brigade volunteer capacity. In recent years the CFA Chief Officer's influence and control of additional paid firefighter deployment decisions has become highly influenced and controlled by industrial agreements which has significantly impeded his ability to allocate and manage resources flexibly to meet changing community and brigade support needs.

The CFA integrated brigade resource model enables CFA to grow volunteer brigade capacity to meet growing service demand in urban growth areas and at the same time maintains the volunteer 'surge' capacity to manage large scale, long duration and concurrent major emergencies.

All CFA brigades are volunteer based and in 35 of CFA's 1220 brigades there are also CFA paid firefighters working with and alongside the CFA volunteers as 'CFA integrated brigades'.

VFBV strongly supports the continuation of the integrated brigade model however notes there needs be stronger CFA leadership and more proactive effort to lead, facilitate and support local volunteers and paid firefighters to achieve good integration.

VFBV supports any opportunity to establish more focussed work involving volunteers, paid firefighters, VFBV and the UFU to support strong integration. For several years VFBV has encouraged CFA to take a more active lead role in this area. Specific improvement opportunities suggested by volunteers at integrated brigades through our Integrated Brigade forums have been frequently provided to CFA for consideration.

There needs to be a range of flexible support options available for volunteer brigades based on local circumstance/need – a ‘continuum of support’

Throughout metropolitan Melbourne and major provincial centres across Victoria there are numerous examples of purely volunteer CFA brigades coping well with high workload and highly urbanised fire risk environments. In other locations brigades with similar risk profiles and experiencing challenges sustaining the required volunteer capacity have addressed the volunteer capacity gaps by adopting innovative solutions to volunteer recruitment, focussed operational training, satellite volunteer infrastructure, brigade administrative support, community fire prevention etc.

Deploying additional paid firefighters to support a CFA volunteer brigade is not the only support option for busy CFA brigades and there are many other volunteer and community capacity building options that should be explored and implemented before needing to progress to the high cost option of requiring additional paid firefighters.

VFBV submits that a continuum of support options, one of which is the flexible provision of additional paid firefighters needs to be available to ensure CFA volunteer brigades maintain a service capacity matched to local need. The ‘continuum of support’ and where additional firefighters are required the ‘CFA integrated brigade’ resource model are fundamental to maintaining Victoria’s volunteer surge capacity for major disasters.

CFA Board and Chief Officer approved a brigade resource support model often nicknamed ‘the continuum of support’ some years ago. The approach intends to apply a range of capacity building support options for volunteer brigades such as active recruitment support, targeted training assistance, administrative support, leadership support, smart volunteer alerting/dispatch systems, additional infrastructure (such as satellite facilities and additional fire appliances (ie fire truck)s to extend service to the outlying areas of a brigade’s service profile, fire appliances matched to risk, community/industry partnerships, operational response arrangements and so on.

Many volunteer brigades feel that CFA has not taken sufficient proactive steps to implement the range of other solutions for building volunteer capacity. This lack of action can lead to an avoidable decline in volunteer capacity. VFBV has previously raised concern with CFA Board and management that insufficient effort and governance has resulted in this course of action being hit and miss to the detriment of volunteer capacity and at the cost of ever increasing fire services expenditure.

In previous years a highly successful program known as the Community Support Facilitators (CSF) Program was implemented by CFA. The CSF program appointed paid non firefighter staff to volunteer brigades to assist with community education, risk mitigation planning, fire awareness and targeted avoidable fire reduction programs, administration and implementation of community/industry partnerships to build community and volunteer capacity. At the time (the year 2000 or thereabouts) there were approximately 50 -60 full time CSF positions appointed by CFA working across conceivably 70 of CFAs busiest brigades. The CSF program was highly successful, cost effective and extremely well received by volunteers.

The CSF program was abolished because of industrial pressure from the UFU against the wishes of CFA management and despite its success in building community capacity, improving community safety and sustain strong volunteer capacity.

Community understanding, confidence and buy in is fundamental to success of Victoria’s Fire Services

Hand in hand with the above there needs to be ongoing community education and information about the professionalism, capacity and performance outcomes delivered by Victoria’s volunteer based CFA. This will require deliberate and sustained effort by both fire service leaders, the emergency management sector leaders and Government.

The education must go beyond the traditional themes of summer, bushfires and thanking volunteers for their dedication and commitment. Communities need to be made aware that CFA volunteer brigades are professionally equipped and trained, providing services 365 days a year, 24 hours a day to service to communities in all risk environments including not just rural Victoria and bushfires but also the growth areas of Melbourne, provincial centres and townships across Victoria.

For the public attacks, driven by union or any other interest group agenda to be allowed to mischievously mislead the community into thinking they are somehow lesser protected by the CFA volunteer based fire service to go unanswered by fire agencies, the emergency sector leaders and the Government is disappointing.

Volunteers expect Government, Emergency Management Victoria and the fire agencies to ensure that the community know the facts about the professional level of fire service and the excellent capacity of volunteers to continue to deliver this service. For officials to sit back, say nothing and suggest that tensions about union community message campaigns, designed to erode community confidence in the capacity of CFA's volunteer brigades, are due to tensions between volunteers and paid firefighters is unreasonable and short sighted.

FACT SHEET

Importance of CFA Culture to Future Volunteerism

July 2017

CFA and EM Sector culture, work practices and work force management arrangements need to be designed and managed to support, encourage and strengthen a volunteer based and fully integrated CFA

Because the volunteer based approach is core to achieving community capacity, community sharing responsibility and the service capacity required in Victoria, the CFA culture (and the emergency management sector culture overall) need to be deliberately designed and actively managed to ensure all personnel understand, are trained and are held accountable to act in ways that encourage, maintain and strengthen the capacity of volunteers.

In addition to their firefighting or technical roles, this underlying role of maintaining and building volunteer (and community) capacity makes the contribution of CFA paid staff even more valuable than many people recognise. Certainly volunteers know and value the contribution paid staff make, particularly at the brigade and local level and wherever it is working well, it is deeply appreciated by volunteers and VFBV.

The need for all personnel to be skilled and committed to encouraging, maintaining and building volunteer capacity means that CFA staff need to be carefully selected, highly trained, values driven and well recognised for the crucial role they perform in supporting and sustaining thriving volunteerism. This cannot be left to chance and requires active leadership from the top down.

Recent CFA and VFBV surveys suggest there is opportunity for significant improvement in this area in some locations or on some work shifts. Workforce design, including enterprise agreements should be structured to deliver and reward work systems, roles, values, behaviours, work design and performance that achieve this outcome.

ORGANISATIONAL WORKFORCE DESIGN

For CFA this means that work arrangements (hours of work, rosters, responsibilities etc.) workforce configuration (roles; position descriptions; human resource planning and deployment principles; promotion and reward frameworks; development and promotion systems) training and development; accountability frameworks; core governance processes; and leadership/management focus and so on should be intentionally designed and held accountable to support the CFA volunteer based and fully integrated culture and work arrangements.

The review by His Honour David Jones (2011) covers these issues extensively and still provides a blue print for needed actions on many issues.

VOLUNTEER UTILISATION

Increasingly volunteers are noting they are being treated as second class members of the CFA and experiencing a lack of respect by growing parts of the management and paid career staff. Whilst these are issues of attitude and culture they are increasingly reflected in CFA management arrangements and industrial agreements affecting the best utilisation of volunteers.

It is troubling to many volunteers that CFA leadership and senior management are not addressing this issue, including giving a lead by their own actions, to engender more positive attitudes and thus better use of volunteers.

In fact, until recently at least, CFA leadership and senior management have, perhaps unwittingly, reinforced the growth in negative attitudes and treatment of volunteers by their actions. This is exemplified by:

- the industrial arrangements entered into by CFA leadership over the last few years;
- the failure to make volunteers and their brigades the subject of organisational and budgetary priority in any way proportionate to their service delivery role through the provision of adequate support, training, equipment or infrastructure; and,
- the failure to comply with the spirit and requirements of the Volunteer Charter.

These failures of leadership, the industrial relations environment and the growing incidence of dismissive attitudes towards volunteers at state and local management level is giving rise to an increasing incidence of underutilisation of experienced and qualified volunteers.

In the past, senior experienced volunteers have been employed by CFA as operations officers along with others who have come from the ranks of paid career staff. This mix of backgrounds at this level of operational management and coordination helped maintain and inter-generationally carry over the unique CFA culture underpinning a large volunteer workforce integrated with a relatively small career staff. Such lateral entry for appropriately qualified and experienced volunteers is now made next to impossible under current industrial arrangements.

REMOVE INDUSTRIAL INTERFERENCE IN CFA CHIEF OFFICER OPERATIONAL DECISION MAKING

Victoria's fire services are unduly hamstrung by restrictive industrial and workforce management practices, industrial interference, arbitrary resource allocation decisions and a Government/Agency complacency about what needs to be done to encourage maintain and strengthen the capacity of volunteers and communities.

The statutorily appointed CFA Chief Officer and CFA senior management regularly privately report interference by or reluctance to stand up to Government pressure even when they question the impact certain actions or failure to act might have on community safety.

In the ten year period from the year 2000, there were significant changes in the CFA's industrial arrangements with career firefighting staff and a shift in senior management focus, affecting the volunteer based ethos of CFA.

The industrial arrangements had the effect of significantly extending the union's influence over management and CFA operations to the point of establishing effective control over key management decisions directly affecting CFA operational capability and also volunteers.

As a consequence, there were a number of negative impacts on CFA volunteers affecting such things as training, volunteer brigade support, and equipment selection.

The failure to appropriately manage the CFA as a volunteer based integrated organisation, the significant change in the balance of resource allocation away from volunteers, industrial limitations on the provision of such things as accessible training for volunteers and volunteer representatives being frozen out of genuine consultation on matters that affected them created hard feelings and division.

At the 2010 Victorian election both the Labor Party and the Coalition promised to address these issues. In the autumn session of the Victorian Parliament the following year, legislation was unanimously carried by both Houses of Parliament that made clear that the CFA is first and foremost a volunteer-based organisation in which volunteers are supported by employees in a fully integrated manner.

The legislation, entitled *Country Fire Authority (Volunteer Charter) Act 2011*, also enshrined at law what was known as the CFA Volunteer Charter, first signed in 2001, that provided for meaningful consultation between representatives of the volunteers, the CFA and Victorian Government as well as certain other obligations and duties between the parties. The Charter was re-signed by Premier John Brumby on 4 October 2008 and Premier Ted Baillieu and Deputy Premier Peter Ryan on 27 February 2011 as a prelude to introducing the *Country Fire Authority (Volunteer Charter) Bill to Parliament on 3 March 2011*. Apart from different names appended to the Charter at each iteration, the terms of the Charter remained unchanged.

BI-PARTISAN STATUTORY DIRECTION & APPROACH

CFA Legislation

On 3 March 2011, The Hon Peter Ryan, introduced amendments to the CFA Act. It was supported by all parties in both Houses of Parliament and assented to on 10 May 2011.

The legislation states:

1. **Recognition of Authority (ie CFA) as a volunteer-based organisation** – *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.*
2. **Recognition of the Volunteer Charter** – *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 the Volunteer Fire Brigades Victoria Incorporated on behalf of volunteer officers and members on any matter that might reasonably be expected to affect them.*
3. **Authority to have regard to Volunteer Charter** – *The Authority must, in performing its functions, have regard to the commitment and principles set out in the Volunteer Charter.*
4. **Authority's responsibility to encourage, maintain and strengthen capacity of volunteers** – *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.*

These are clear statutory instructions on the CFA's method of operations, resourcing, management, culture and service delivery approach.

In both Houses of the Victorian Parliament, members rose to support all aspects of the Bill. Proudly, Labor members argued with force that the Volunteer Charter and all of its requirements was their creation in 2001 and they had done more to support CFA and its Volunteers than any previous government. Many stressed the importance of the CFA's integrated model of 1,500 paid staff working side by side supporting CFA's 60,000 volunteers and the need to maintain what they described as the successful, world regarded model.

Coalition members were quick to respond that it was their government making the legislative running and they pointed out their ongoing support for CFA Volunteers.

At any rate, the unanimous legislation constituted a clear direction to the CFA's leadership and management by all of the State's legislators.

By virtue of this unanimously supported amendment to the CFA Act, the requirements and responsibilities of CFA Volunteers, the CFA and the Government of Victoria spelled out in the Volunteer Charter now have clear legal standing and are obligatory on the parties.

The Volunteer Charter goes beyond the important requirements of meaningful consultation and having regard to volunteer views, and includes directive obligations that :

- the necessary resources will be provided to enable new or changed policies, procedures or approaches which impact on them as CFA volunteers will be implemented efficiently and effectively;
- adequate resources will be provided to enable volunteers in CFA to deliver agreed service; and,
- within available resources Volunteers will be provided with administrative, operational and infrastructure support to perform their roles safely and effectively.

There are also obligations to, amongst other things, provide to volunteers (within CFA's available resources):

- effective and comprehensive training
- support and assistance for volunteers in applying for employment as CFA employees
- compensation for accidents, injuries and losses.
- procedures to address issues of discrimination against volunteers,

The legislation puts beyond doubt that CFA is first and foremost a volunteer based organisation and importantly that volunteers are to be supported by employees in a fully integrated manner to deliver CFA services. The legislation places the nature of the organisational relationship beyond doubt and requires CFA *"... to develop policy and organisational arrangements that encourage, maintain and strengthen the capacity of volunteer officers and members to provide the Authority's services"*.

The effect of the legislation is to create a requirement for CFA to give priority to these matters which are the enablers of volunteers to deliver the CFA's services in an efficient and cost effective manner.

This legislation makes clear to the CFA leadership, successive governments, other relevant stakeholders and the public at large the role and responsibility of the CFA to engage with, maintain and strengthen its volunteer workforce to provide CFA's fire and emergency services to the community.

In all organisations but even more so in a volunteer based organisation, the importance of genuine consultation and engagement of volunteers in decisions that affect them cannot be overstated. A failure to genuinely consult with or listen to volunteers and under-utilisation of the knowledge and experience of volunteers is an area that still requires significant attention despite being clearly identified as a priority for improvement by most recent reviews/inquiries.

VFBV Annual Volunteer Welfare and Efficiency Surveys indicate that volunteers place a very high priority on being consulted before decisions that affect them are made.

Whether it be in new policy/initiative development, new equipment design, systems and support design, training delivery, community education or in senior roles for which they were trained and used in the past, a failure to engage volunteers ignores valuable resource/expertise; demotivates volunteers and negatively impacts on volunteer retention. Failure to consult with volunteers creates a real risk that policy, procedure and systems decisions might not be practical in a volunteer based organisation

Volunteers also express deep frustration about restrictive industrial agreements and the impact these have on creating inequity between consultative arrangements for paid staff versus those for volunteers.

Volunteers have no interest in the pay and conditions of paid firefighters and respect the rights of paid firefighter unions to negotiate hard for the best possible pay and conditions for their members. Volunteers also respect the rights of paid staff to be consulted about matters that affect them or about matters where their expertise could make a productive contribution to decision making.

The CFA and EM sector as a whole needs to be able to consult with both paid staff and volunteers openly and on a level playing field. Volunteers do not accept second class treatment or differential outcomes for volunteers and paid staff simply because volunteers aren't paid. Industrial agreement clauses that restrict CFA's ability to genuinely consult with all parties or restrict CFA management's ability to make decisions have caused significant concern in recent years and these issues need to be resolved. CFA must be able to consult with both paid staff and volunteers as equals.

FACT SHEET

Significant Recent Reviews, Inquiries and Reports

July 2017

OVERVIEW

Over the past ten years, and particularly since the tragic 2009 bushfires, there has been a number of thorough independent reviews and inquiries into Victorian Fire Services; the emergency management arrangements in Victoria; arrangements to support CFA volunteers and CFA volunteer brigades; factors inhibiting the ability of fire services chiefs to manage the fire services effectively; the cost and funding of the fire services; problems with industrial interference with fire service decision making; fire service governance; and arrangements to effectively manage training across the fire services (particularly provision of training to volunteer brigades).

In the case of CFA (and no doubt MFB, DEWLP and other emergency services) there has also been continuous internal review and analysis of challenges and opportunities to improve fire service performance and preparation for the future to ensure CFA continues to be a modern and contemporary fire service.

VFBV and volunteers have assisted, and engaged where asked with each review and inquiry, and have done so in good faith and with best endeavour. One recurring concern held by VFBV and CFA volunteers is the lack of action against some of the critical recurrent issues identified in these reviews, and still missing or not addressed by the Government's proposed legislation.

VFBV supports measures to improve coordination and interoperability between emergency management agencies (including, but not limited to, MFB and CFA) and these issues were extensively discussed in the input to the creation of Emergency Management Victoria. However in considering any changes VFBV reinforces the important observation made by the 2009 Victorian Bushfires Royal Commission that any consideration of change to the overall structure, governance arrangements and command structures of the fire services in Victoria must be tested against balancing two key requirements.

These being how the changes improve:

- a) Victoria's ability to manage bushfire prone areas (including preparing for and responding to major fires); and
- b) service Victoria's expanding urban fringe and growing regional towns. VFBV urges the Review to understand the interdependence of these two requirements and to ensure they are not considered in isolation.

RECENT REVIEWS, REFORMS, REPORTS AND INQUIRIES

The following is a summary of the most recent reviews, reforms, reports and inquiries with important relevance to future reform of the fire services:

- 2008 Independent Government Review by Judge Gordon Lewis – Report on the Processes to Select New Personal Protective Clothing for Victorian Firefighters - obstacles to fire services decision making and equipment procurement;
- 2009 Victorian Bushfires Royal Commission;
- 2009 CFA Independent Review by David Garnock – “Training Delivery” Review in CFA

- 2011 Ministerial Inquiry by His Hon. David Jones AM – Inquiry into effect of arrangements made by CFA on its volunteers;
- 2011 Government Discussion process ‘Green Paper – Towards a More Resilient and Safer Victoria’. Resulting in White Paper and Creation of Emergency Management Victoria to drive coordination, interoperability and improvement;
- 2011 CFA Act changes – legislating the fundamental importance of CFA ‘being first and foremost a volunteer based organisation with paid firefighters and volunteers working together in a fully integrated manner’ and the requirement for CFA to establish policy and organisational arrangements that encourage, maintain and strengthen the capacity of volunteers to deliver CFA services;
- 2011 Victorian Government Review of the 2010-11 Flood Warnings and Response;
- 2011 Fire Services Commissioner Fire Services Reform Program
- 2011 Victorian Government Fire Services Levy Options Paper
- 2012 Victorian Emergency Management Reform White Paper
- 2013 Emergency Management Bill
- 2014 Emergency Management Victoria – Emergency Management Strategic Action Plan Interim – 2014/2015
- 2014 Victorian Auditor-General’s Report – Managing Emergency Services Volunteers
- 2014 Hazelwood Mine Fire Inquiry
- 2015 Victorian Auditor General’s Report – Emergency Service Response Times
- VFBV Volunteer Welfare and Efficiency Surveys – 2012, 2013, 2014, 2015, 2016
- 2015 Emergency Management Australia – How a Change in Thinking Might Change the Inevitability of Disasters
- 2015 Victorian Fire Service Review -Drawing a line, building stronger services

COMMON THEMES THAT SHOULD SHAPE FUTURE REFORMS

It is important to note, that none of these reviews, reforms, reports or inquiries recommended the abolition of CFA’s Integrated model.

There is a consistent pattern in these reports, the importance of community based CFA and other emergency service volunteers to Victoria’s successful response capacity. For example, the 2009 Victorian Bushfire Royal Commission observed “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”.

There are common important themes emerging from this collection of detailed reviews/inquiries/reports and these themes should shape the deliberations and discussion of future reforms.

VFBV wishes to draw attention to the following common and important themes emerging from these reviews/inquires:

- That a priority for fire services is to ensure planning and resource allocation addresses preparedness and capability for the high consequence major events and avoid potential for local level planning and resource allocation to monopolise scarce resources or divert attention from major disaster readiness.
- That the frequency and severity of major fire and other disasters is predicted to increase and growing population in risk interface areas will mean increase potential life, social and economic impact will increase
- The importance of the CFA volunteer based model for the provision of rapid response, local knowledge and surge capacity required to manage peak load situations where huge resources are required to respond to major, concurrent and long duration emergencies at the same time as maintaining day to day service coverage in urban areas, townships and communities across Victoria.
- The importance of CFA's fully integrated paid staff and volunteer firefighter manning model, designed to achieve paid and volunteer firefighters working together as one integrated team, using same equipment, same nationally accredited training framework, and responding to fires as one integrated firefighting force
- The need to remove industrial interference and barriers to effective CFA decision making, particularly those barriers that prevent CFA being able to make decisions about resource allocation; prevent flexible resource deployment provisions enabling CFA to target solutions matched to local community and volunteer brigade capacity gaps; unduly delay commissioning of firefighting and operational equipment; and restrict provision of training/support to CFA volunteer brigades
- The need to improve genuine consultation with volunteers
- The need to improve planning, resourcing, delivery and access to training for volunteers
- The need for proactive, deliberate and accountable design and implementation of policy and organisational arrangements that encourage, maintain and strengthen the capacity of volunteers and the community
- The need for increased focus on prevention, education, and community sharing responsibility for their own safety
- An assessment that Victoria currently has one of the highest cost per capita fire services; that simply adding more paid firefighter resources to fire services and fire suppression will not always be the most effective or cost efficient way to improve community safety outcomes; and question whether Victoria's fire response standards are causing resources to be directed to the wrong solutions;
- That CFA volunteers are vital to Victoria's emergency management capability and despite there being ongoing social, demographic and other challenges to volunteering there are also many opportunities to improve the attraction, retention and support to volunteers. Considering the vital importance of volunteers to Victoria's emergency management capability there needs to be more focussed effort and investment in maintaining and strengthening volunteer capacity.

- Instead of making changes to the structure and/or management arrangements of the fire services there is better opportunity and precursor work required to improve shared effort; establish common operating systems; align work practices and culture; achieve commonality in operational doctrine and procedures; use compatible equipment; pursue integrated preparedness/response/prevention/recovery effort etc.

SIGNIFICANT REPORT SUMMARIES

The dot points included in the summaries provided below are findings of the relevant Reviews, Reports and Inquiry. Theses and recommendations highly relevant to the current proposed reforms are highlighted.

Independent Government Review – Judge Gordon Lewis (2008):

Instigated by Minister for Police and Emergency Services, Bob Cameron to determine the key obstacles in decision making processes for procuring firefighter equipment.

Key findings relevant to future reform:

- CFA and MFB EBA agreements with paid firefighters effectively give power of veto to UFU, preventing management decisions being made and seriously delaying procurement of firefighter protective equipment;
- **CFA and Government failed to meet their commitment and obligations to consult with volunteers;**
- Firefighters and the public of Victoria poorly served by the inability of the UFU, CFA and MFB to work cooperatively.
- **Future stakeholder relations effort and consultation arrangements must involve consultation with volunteer firefighters in Victoria and volunteers must be entitled to participate in any discussions directed at matters that affect them**
- ‘Machinations and intransigence of CFA, MFB and UFU contrasted starkly to the Volunteer’s cooperative approach’

Relevant to future reforms is the sad fact that the problems identified in the Lewis review remain largely as bad today as they were in 2008. Internally, CFA senior management frequently discuss circumstances of external process interference and industrial negotiations barriers that prevent, delay and sometimes destroy CFA management ability to develop, procure, deploy and utilise vital firefighting equipment and resources in a timely, cost effective or operationally efficient manner.

VFBV encourages sector leaders to actively explore the current reluctance or inability of CFA management to speak with independence about these concerns in a manner that will ensure facts are on the table without fear of reprisal. Also within CFA there is frustration amongst volunteers that too often commitments are made to act but action is not delivered; that consultation with volunteers is not always genuine; that decision making processes are not transparent; and that there is a culture that punishes those who speak out against views of the clique or views of senior managers.

These criticisms are not targeted to CFA management alone, there are many examples of delays and frustrations manifesting within CFA yet caused by problems, behind the scenes agreements or pressure at a broader Government, EM sector or external interference level.

The impediments to CFA operating with the degree of statutory independence, transparency and accountability required to ensure policy, organisational arrangements, operational decisions and resource allocation priorities is driven by community needs, risk and cost effectiveness need to be fully examined.

Independent Inquiry – His Honour David Jones AM (2011):

Commissioned by Deputy Premier Peter Ryan to examine the effect of arrangements made by CFA on the recruitment, training, deployment, and support to CFA volunteers.

Mr Jones was appointed to conduct the inquiry by the Deputy Premier of Victoria and Minister for Police and Emergency Services, the Hon Peter Ryan MP on 4 April 2011. In brief, the Terms of Reference related to the examination of the effect arrangements made by CFA were having on CFA volunteers and make recommendations to address any shortcomings of difficulties it identified.

The report was a landmark in bringing together an independent examination of issues negatively affecting CFA volunteers, spanning key issues including recruitment, retention, training, engagement & effective consultation, institutional discrimination and deployment.

The report itself is an important document which we strongly recommend be examined by all sector leaders as part of any discussions in addressing issues regarding CFA's resourcing, operations, management and culture.

Key findings relevant to this review:

- The process for addressing service needs and allocating resources must be clear and transparent. Decisions about allocation of additional career firefighters may affect the involvement of volunteers. Consequently, in accordance with the Volunteer Charter volunteers can reasonably expect to be consulted. **'Decisions such as allocation of resources and possible consequences on volunteer involvement should be made by the CFA Board and CFA Chief Officer not by a Dispute Panel or Board or Reference formed by an industrial agreement.'**
- Communication and information technology investment is vital to the sustainability of the CFA model and to facilitate effective involvement of volunteers.
- **The CFA model of one integrated force (volunteer and paid members) can serve the community very well.**
- CFA encouraged to develop service models, standards and resource planning processes that are evidence based
- Developing a better skills database to capture the skills and qualifications of volunteers to holistically drive volunteer development and utilisation; develop a cadet scheme that taps young members of the community and promotes volunteerism to retiring and resigning employees; explore legislative options for protecting volunteers in relation to their employment.
- **That the CFA's volunteer based and community embedded service model is fundamental to achieving community based responsibility for their own safety and engagement with local communities;**
- **CFA culture, leadership and human resource management are keys to maintaining and strengthening the community's understanding of, confidence in, support for and active**

participation in the volunteer based emergency service model for Victoria, which is consequently, fundamental to the future success of the CFA.

- Achieving an appropriate CFA organisational culture and providing sound organisational leadership driven by a commitment to principles and policy designed to achieve a successful volunteer based organisation are critical;
- People are CFA's greatest asset and must be looked after
- Improving leadership in CFA from top to bottom is key to the success of the CFA integrated model – this cannot be over emphasised and is one of CFA's biggest challenges. **Entry to leadership positions (including operational paid staff) needs to be opened up to ensure the right people hold relevant positions;**
- **Changes need to occur to single tier entry for paid firefighters**
- All position descriptions and key selection criteria for roles in CFA require knowledge of and commitment to a statement of CFA vision, mission and values which need to include principles that support and complement the principles in the Volunteer Charter and recognise the volunteer based nature of CFA
- Free up the process for volunteers transferring from one CFA brigade to another
- CFA identify and address barriers to retention of existing CFA volunteers
- The changing circumstance of Victoria further emphasises the need for CFA to ensure it remains attractive to future potential volunteers, and more critically, that the CFA volunteer based model that provides such valuable services is sustainable into the future.
- Women are currently an untapped resource for CFA volunteer recruitment and specific action is required that facilitates the involvement of women as volunteers in the CFA at all levels;
- CFA should further develop its community education programs to specifically engage culturally and linguistically diverse communities to address the importance of ethnic diversity; and more needs to be done to engage young people in CFA – there may be scope to do more work with schools.
- developing initiatives and strategies to maximise involvement of young people as volunteers and their retention as volunteers is of vital importance to the sustainability of the CFA model
- **Industrial arrangements should not limit or restrict utilisation of volunteers; appointments to positions in CFA should be based on merit, appropriate competency and experience that do not discriminate against volunteers. CFA employment arrangements should be flexible and matched to support/service need**
- **Barriers to lateral entry and secondments are contrary to the best interests of CFA in that it inhibits the ability of CFA to appoint the most suitable person to the position.** Where it prevents vacancies from being filled it is an unacceptable situation. CFA needs to revisit this arrangement

with the United Firefighters Union (UFU). Restrictions to lateral entry is causing delays in CFA's ability to fill key operational and management vacancies – sometimes for more than 12 months

- **High turnover of Operations Officers and industrial arrangements which inhibit the appointment of suitably qualified volunteers to Operations Officers and Operations Managers who have a very important role in the management, leadership and support for volunteers and their brigades, significantly affects CFA brigades;**
- The industrial barrier to CFA employing part-time or casual employees is too restrictive and inhibits the CFA in being able to best resource the needs of the organisation. This restriction should be revisited by the CFA with the UFU.
- First Aid training and maintenance of currency qualifications – Improvement is necessary with the delivery of First Aid training for volunteers.
- There has been a lack of organisational and strategic planning for training. Forward strategic planning, in what is a dynamic area, is essential. It needs to be short term (next 12 months), mid-term (next two or three years) and long term (next five to ten years). Such planning needs to include the allocation of resources and training resource levels need to be driven by training need. A solution needs to be found so that capacity can meet demand.
- The need for volunteer training is increasing but the availability is reducing. Availability and accessibility to FTGs (Fire Training Grounds) is another consistent concern and issue. CFA must take initiatives to improve FTG accessibility to volunteers for training;
- CFA Training Instructors - Despite increased demands, there has not been any substantial increase to the instructor base over the last ten years;
- **The availability of career instructors at times that are likely to be convenient to volunteers as governed by industrial agreements is too restrictive.**
- New approaches are needed and they must involve greater and better use of volunteer instructors and assessors;
- **The use of sessional instructors has a role to play in the effective, efficient and cost effective delivery of training. However, again this is being inhibited by industrial arrangements, although, hopefully, some satisfactory outcome can be negotiated.**
- Deployment and Utilisation of Volunteers – CFA volunteers are a valuable resource and it would benefit the CFA to ensure experienced and qualified volunteers are utilised at all levels of the CFA, in leadership, as well as incident management roles;
- existing qualified volunteers are underutilised in Incident Management Teams. There certainly is a perception amongst volunteers that they are a last resort resource. That should not be the case as their better utilisation is beneficial to volunteer morale and the CFA.

There is a range of other findings and recommendations on such matters as consultation and communications processes, internal dispute resolution, disciplinary arrangements and the creation of a Volunteer Ombudsman.

2009 Victorian Bushfires Royal Commission

Extensive Inquiry. Hearings conducted from May 2009 through to July 2010. Final report published in July 2010 included extensive observations plus 67 formal recommendations. It gave particular recognition and acknowledgement to the strength of the CFA volunteer base and specifically the value of 'the surge capacity, the local knowledge and rapid response of volunteers'.

Matters of particular note in the context of future reform:

- Importance of CFA volunteers for surge capacity, local knowledge and rapid response;
- Need for reliable technology for resource identification and tracking when preparing for and responding to incidents;
- Need for reliable and effective communications equipment and need to overcome black spots and other communications problems between vehicles, fire crews and command and control personnel including incident management teams;
- Need for appropriate numbers of command and control vehicles, strategically located around the state for rapid deployment;
- Need for increased numbers of trained, qualified and endorsed personnel for level 3 incident control and specialist incident management roles – including importance of harnessing and effectively utilising the volunteer resource and experience

CFA “Training Delivery” Review (2009) by David Garnock – “Training Delivery” Review

This review was undertaken following concern over the need for CFA to improve its ability to meet a number of the training delivery needs of firefighters.

The review focussed on organisational arrangements and cultural issues, and identified the need to address issues or face continued impediment to CFA's capacity to rectify some longstanding training delivery issues. Relevant to this review, a summary of key findings includes:

- CFA needs to improve flexible scheduling, delivery and availability of training to volunteers.
- There are industrial agreement provisions impeding training of CFA volunteers and these need to be addressed;
- CFA needs to develop options to increase delivery of training in locations and at times more accessible and suitable to volunteers.
- CFA needs to improve duration and review any unnecessary mandatory requirements of training to improve flexibility and ensure training is aligned to actual need
- consistency of training, approaches to skills maintenance training and recording and RPL/RCC processes need to be improved

The report identified that the rectification of the training issues will be largely dependent on additional allocation of resources. The provision of effective and accessible training based on brigade needs to ensure they have the correct profile of active qualified volunteers for the brigade risk and role is fundamental to fire and emergency service delivery.

Issues raised in this review and also in previous/subsequent reviews suggest the problems identified are still pertinent today. VFBV suggests issues requiring close attention is improved funding of training in CFA and the removal of industrial agreement provisions or work practices that inhibit training and better utilisation and empowerment of brigades and volunteers to support their own training and assessment needs.

Successive annual VFBV Volunteer Welfare and Efficiency surveys highlight issues relating to flexibility of, access to, formats and resourcing of training remain the areas of most concern and dissatisfaction amongst volunteers. Not all of these concerns are issues that CFA can address alone and issues of funding, work practices and industrial arrangements have been raised by VFBV with successive Governments.

Victorian Government review of the 2010/11 Flood Warnings and Response (2011)

Examined the emergency management arrangements in response to the significant and widespread floods of late 2010 and early 2011, which were severely tested.

Key findings include:

- The need for CFA volunteers to be sustained, supported and equipped to enable the additional capacity required, and expected of them, to support and respond to other emergencies such as floods.
- The need for Victoria's emergency management arrangements to have scalability for both small and large scale events.
- **Victoria's volunteers must not be disenfranchised as the state relies so heavily on them for emergency management capability.**

Whilst the report focusses on the Victorian SES as primary responders to flood, its relevance is in highlighting that it is appropriate for Victoria to maintain an 'all hazards, all agencies' philosophy for emergency management and therefore resourcing considerations are not to be limited to local fire response.

Senate Inquiry 'Recent trends in and preparedness for extreme weather events' (2013)

Undertaken by the Environment and Communications Reference Committee to review recent trends on the frequency of extreme weather events and an assessment of the preparedness for key weather events from infrastructure, planning, and insurance to prevention and response.

Key findings include:

- There is an anticipated increase in frequency, severity, duration and consequence of extreme weather events, which will likely result in great pressure on emergency services.
- This potential increase in extreme weather events will result in the need to have a standing capacity of agencies both to prepare for, and to respond to, emergencies.
- It is uneconomic to maintain full-time paid fire and emergency services that are capable of combatting all conceivable events.

Consideration of resource requirements for the State need to consider the potential future impact of extreme weather events, and the critical support needed to sustain volunteers to ensure the State's capacity and capability to respond to these events.

Managing Emergency Services Volunteers (2014) - audit undertaken by the Victorian Auditor General to assess the CFA and Victorian SES on their effectiveness and efficiency at managing emergency services volunteers.

Key findings include:

- CFA does not have a sound understanding of the total number of volunteers needed to fulfil its operational requirements.
- CFA does not know how many volunteers it needs.
- An evidence based assessment of the current workforce capacity and capability is needed for CFA to understand what is needed to meet service delivery.
- Weakness in the processes to identify volunteer training needs limit the effectiveness of CFA training. Training is inconsistent and not always available when needed with career firefighter training prioritised.
- **The management of recruitment and lack of focus on retention, particularly through gaining and understanding why volunteers leave needs to be addressed.**

The focus of this report was on the workforce capacity and requirements rather than the needs of volunteers. The report importantly acknowledges that “volunteers are essentially unpaid professionals and valuable assets.”

Emergency Service Response Times (2015)

Victorian Auditor-General’s Report undertaken to assess how accountable emergency service organisations (and others) are for their response time performance.

Key finding included:

- **Targets which relate to the number of minutes for emergency services to arrive at a structure fire are based on outdated scientific research from 1987.**
- **Current response times set for performance standards do not necessarily reflect better outcomes or service efficiency.**
- **Response times do not represent the extent of emergency response activity or adequately describe emergency service performance.**

The work of fire services extends well beyond responding to fires and this must be considered in relation to assessing resource requirements and protecting Victorian communities, this issue is complex and requires significant consideration of all aspects of the work undertaken.

Victorian Fire Service Review -Drawing a line, building stronger services (2015)

Both the Victorian Fire Services Review (2015) report and the State Government response recognise the importance of CFA volunteers and CFA as a volunteer based and fully integrated organisation to Victoria’s emergency management system.

The following is an excerpt from VFBV’s Note to Members following the Andrew’s Government’s release of its response to the 2015 Review:

Note for Members – Government Response to Fire Services Review

16 March 2016

Today the Government released the Fire Services Review report and probably more importantly the Government's response to the report's recommendations.

Both of these documents are available on the VFBV website and also the Fire Services Review website. The Fire Services Review website includes copies of all public submissions including VFBV, CFA and EMV submissions.

I think most CFA volunteers will be pleased overall with the Government's response to the review. A key theme throughout the review is a recognition of the enormous front line and collective capacity of Victoria's fire services. There is a very strong theme of needing to ensure there is a culture and collective respect of the skills, knowledge and professionalism of Victorian firefighters, volunteer and paid staff alike, regardless of pay status. The report calls to improve leadership and to address a concerning culture that has tolerated; treating people differently based on pay status; bullying and harassment; poor front line worker and management relationships; and a them and us approach.

There is a strong call for everyone in the sector to focus more energy on working as one. There is strong recognition of the need for CFA to have more flexibility in the way it deploys resources to support local brigades and community circumstances, and there is an identified need to improve leadership from agency executive level through to Brigade level and across the sector's collective leadership.

The review recognises the strengths of the existing fire services and says that effort should be focussed on ensuring the separate fire services share common effort, reduce duplication and work as one. The report explicitly advises against any contemplation of amalgamating the MFB and CFA, reporting that this would have a negative rather than constructive impact.

The report acknowledges the extensive and essential capacity of CFA's volunteer Brigades and the fundamental value of sustaining and building strong integration in those communities where paid staff are required to supplement volunteer capacity. The report identifies the essential nature of CFA's volunteer Brigade surge capacity for major and concurrent events.

There are 20 recommendations, and the Government has identified an action to address 18 of these. Several recommendations are earmarked for further discussion/work and the Government has committed to work with VFBV and others on the detail of these.

Based on some commonly discussed issues during the review, many volunteers will be particularly interested in the following recommendations and government response;

- Recommendation 9, concerning consideration of a Firefighters' Registration Board – Government response is to initiate national consultation on this over the next five years. The report detail suggests this would need to be open to volunteers and paid firefighters alike and would provide an opportunity to facilitate lateral entry and recognise skills, irrespective of whether they are paid or volunteer.
- Recommendation 18, concerning deploying Leading Firefighters or Station Officers to provide administrative, technical, community engagement and operational support to volunteer Brigades. The Government has supported the intent of finding ways to support volunteer Brigades, but has noted the best means to deliver that support requires further consideration.
- Recommendation 17, includes recommendation that CFA review the process for selecting Brigade Captains. Government response suggests a selection process be developed to enhance the current approach to focus on ensuring the necessary leadership and technical skills needed for the role. This work has a timeframe of the next two years.

- Recommendation 5, includes developing best practice models for initiation and planning for the establishment of integrated Brigades and the selection of leaders of integrated Brigades, drawing on successful processes adopted to date. Government response is that CFA is to lead a short review to identify best practices.
- There are also recommendations concerning training; health & wellbeing; developing leadership; and better engagement with volunteers and representative bodies.

VFBV will seek to be very closely involved with work on these and the actions proposed for all other recommendations.

Of interest is an acknowledgement to include VFBV on EMV's Fire Services Interoperability Committee. This is consistent with VFBV's previous requests to EMC Craig Lapsley and also an issue covered in our submission to the review. VFBV has previously expressed dissatisfaction to the EMC about not being included in this important forum.

There are several recommendations relating to culture in the fire services and issues specifically relating to bullying and harassment. VFBV has already welcomed the CFA-commissioned Equity and Diversity Review being conducted by VEOHRC.

At a more strategic level, there are recommendations involving consideration of possible future service delivery models, a review of CFA and MFB legislation, and a review of the legislation giving powers to EMV, but no specific direction set down as yet. VFBV will certainly be taking a keen interest to ensure these important issues progress in a positive way.

Please find attached our media release and you can download a copy of the Fire Services Review report and the Government's response from our website www.vfbv.com.au

VFBV has supported the Government's response to the Fire Services Review and commended Minister Garrett for taking the time to make a sensible and considered response. We have also welcomed the invitation to work with Government on the issues requiring further consideration. Over all, our reaction to the Government's response to the review's recommendations is positive and I believe this provides a good foundation for us to work constructively with Government and the CFA. I have said publicly, as you will see in our media release, that in the main the Government's response to the Fire Services Review is on the mark, and for the issues requiring more work, VFBV looks forward to working with Government, the agencies and other stakeholders.

FACT SHEET

Support Required for Volunteer Training

July 2017

Issues associated with training are by far the most frequently raised concern for volunteers and it is distressing to say that many of these concerns are common themes over a number of years. Key recurring themes are:

- Problems with availability of and access to training at times, locations and in formats suitable for volunteers;
- CFA budget constraints limiting training availability rather than training being driven by assessment of need and appropriately funded;
- Inconsistent approaches to the support and delivery of training for volunteers;
- Field Training Grounds that are closed or inaccessible when volunteers need them;
- Industrial arrangements that limit who can deliver training; limit the availability of paid staff instructors for training and assessment; create an effective impossibility of using qualified paid sessional instructors; and place restrictions on filling paid instructor vacancies;
- Inconsistent attitudes and interpretation toward the use of qualified volunteers for instruction and assessment in many parts of the state;
- The length of time it takes to administratively process new recruits, arrange minimum skills training and issue personal protective clothing (PPC) to volunteer recruits for the duration of their minimum skills training;
- Recognition of Prior Learning

These issues are inconsistent with an organisation avowedly seeking to recruit and train volunteers as part of its commitment to maintain and build volunteer capacity.

Generally, volunteers consider access to training, the acquisition of new skills that enhance their role as a CFA volunteer and the chance to maintain those skills in both real incidents and training simulations as a core part of volunteering.

Volunteers freely give up their time to serve their community. They sacrifice time they could be spending on other important personal pursuits. It is important to them that the best use is made of the time they allocate to being a volunteer, of which training is a significant portion.

AVAILABILITY AND TIMING

Important training issues for CFA volunteers include the availability, location, timing, content and mode of delivery for courses and the support available to them in their skill development as well as the opportunities to use their acquired skills as CFA volunteers.

To ensure the best use of a volunteer's time and maximise their participation as a brigade member, courses must be volunteer friendly in location and timing, the mode of instruction geared to their preferred style of

learning and the skills they learn must be relevant to the duties they will perform or be seen as stepping stones to other desired courses or future roles.

Initiatives that need to be actively pursued include:

- targeted ongoing effort to attract, recruit, train and actively deploy volunteers at brigade level;
- conscious effort to target recruitment of underrepresented community demographics (for example: female members, young people, community groups from diverse cultural backgrounds, shift workers and other people who are at home and available at times required for brigade response, people interested in performing non-operational and brigade support roles and so on) ;
- progressing and equipping new recruits to be operationally active as quickly as possible;
- productive and respectful use of volunteers' time always;
- respect and recognition of the skills that the volunteers have; and
- provision of appropriate support, equipment, training etc;

INSTRUCTORS

CFA training for its volunteers has been the subject of many meetings and reviews. One of the most recent focussed reviews on Training was by David Garnock, completed in January 2009.

VFBV has a high regard for the recommendations in the Garnock Report because they seek to directly address critical problems affecting the availability and accessibility of CFA training for volunteers. The report included recommendations on the need to align industrial arrangements affecting the availability of CFA employed instructors and contracted sessional instructors at volunteer friendly times and locations, and ensure similarly flexible access to and provision of hot fire training facilities.

Importantly, the Garnock Report also addresses the need to train, support and empower more volunteer instructors and assessors to improve the availability and access of timely CFA training to the volunteer workforce.

The inconsistency across the state on the use of qualified volunteer instructors and assessors is a continual source of frustration for volunteers. There is no robust state or region quality assurance system for course content as delivered and no mechanism to assure that the provision of courses is responsive to volunteer brigade needs.

The failure to develop and use volunteers for training and assessment, including their use to provide PAD training at Fire Training Grounds when paid staff are unavailable; industrial restrictions on the availability of instructors (lateral entry to instructor vacancies and hours of work); lack of use of paid sessional instructors; and prohibitions on employing part time and casual instructors are critical limitations on CFA meeting the training needs of volunteers.

There is a high frequency of volunteer complaint about course cancellations because instructors are not available, too much theory and not enough practice in training courses, repetitive subject matter from course to course which wastes valuable time, lack of hot fire training (limits to accessing Field Training Grounds), inability to be selected to courses because of restricted course availability.

Under current industrial arrangements the employment of experienced and qualified volunteers (and other non-career firefighters or career firefighters not employed by agreed government fire authorities) as paid

instructors, particularly structural instructors, whether permanent, part time or sessional, is prevented by industrial arrangements.

Years of practical experience and knowledge built up as a volunteer, with commensurate empathy for volunteers and the respect from volunteers that goes with experience, cannot be best accessed and utilised by CFA through paid employment because of industrial arrangements. And while volunteers have been denied access to employment as instructors there has been a persistent problem in filling instructor vacancies with suitable candidates.

In each of these cases management have agreed to industrial barriers that guarantee that only candidates from the ranks of paid career operational staff (covered by the UFU) can be utilised in these roles. Thus the best use of available and suitable volunteer resources that have experience, skills, qualifications and knowledge is restricted, to the detriment of CFA.

Restrictions on the use of volunteer instructors and assessors have directly contributed to delays in the provision of training.

Discrimination and resulting arrangements which serve to limit or restrict potential volunteer utilisation are inappropriate and ultimately destructive to a volunteer based organisation.

TRAINING CAPS AND LIMITATIONS

VFBV contends that conceptually funding and resource allocation for CFA training is approached back to front. The current practice is to determine a level of funding and resources each year that is unrelated to actual training needs in the organisation, and then deliver training to that budget. The annual funds and resources for training are demonstrably insufficient for the task and seriously affect the provision of training for volunteers.

The too rigid application of Brigade Operations Skills Profile (BOSP) as a determinant for selecting course participants above minimum skills is a matter of frequent volunteer complaint.

BOSP sets the ideal number of volunteers required in a brigade with particular skills based on a district risk profile as determined by the District Operations Manager in conjunction with the brigade. The BOSP target should not be used to cap training or volunteer recruitment and there needs to be more flexibility for brigades to consider local volunteer availability patterns etc and therefore recruit and train additional volunteers to maximise the likelihood that volunteers with required skills will be available at each turnout (e.g. first aid qualifications, heavy vehicle license or Breathing Apparatus qualifications.)

LEADERSHIP DEVELOPMENT

Leadership development through a clear and structured pathway, including self paced learning modules, face to face instruction, mentoring and organisational experience is another aspect of volunteer training need raised by VFBV members. Such training should build individual capacity to undertake leadership roles within CFA and develop their capacity for community leadership in preparing communities, responding to emergencies like bushfire and floods and working with communities recovering from such events.

The inclusion of 'human factors' and 'soft' skills to balance operational skills, is vital for the balanced development of future leaders.

Developing, retaining and effectively utilising the pool of experienced volunteers for the range of critical incident management, command and leadership roles is equally important and is an area highlighted in previous reviews as an area needing improvement. Building and sustaining the pool of volunteers needed for incident management and leadership roles requires deliberate, proactive and accountable effort by agencies and EMV.

This includes proactive effort to target the development of volunteers for senior leadership and operational roles; training, recognition of prior learning and support to make this volunteer career progression as easy and mutually beneficial as possible; mentoring; and then utilising these volunteers after they have been trained and endorsed.

SKILLS MAINTENANCE

An essential part of CFA training relates to skills maintenance. A common concern expressed by volunteers is the lack of a systematic set of policies, procedures (including record keeping), resources and facilities for skills maintenance. The failure to include the exercise of skills during incidents (such as the real life use of Breathing Apparatus) towards assessing skills maintenance is a particular bug bear of a cross section of experienced volunteers and must be addressed.

Brigade leaders are trusted to manage CFA service delivery at brigade level but not adequately empowered to verify skills maintenance for important skills such as Breathing Apparatus.

TRAINING CAMPUSES

Access to training facilities is fundamental to hot fire simulation and other practical training for firefighters, operational leaders and volunteers in a range of specialist and support roles. The ongoing priority of ensuring adequate investment in and funding to enable volunteer access to training facilities is a fundamental support requirement. A combination of current circumstances means that access, cost and safety of these facilities needs heightened attention by Government and agencies.

VFBV supports the State Fire & Emergency Services Training Framework released in May 2013 and the EMV State Emergency Services Training Framework which seeks to ensure all VEMTC training centres are affordable, accessible to and efficiently used by all agencies, volunteers, departments and local government.

VFBV supports EMV's Victorian Emergency Management Training Centres Strategy – Implementation Plan of **January 2015** which proposes to address:

- Ability of agencies to operate at each facility including:
 - Personnel able to operate facilities
 - Common booking process and system
 - Common business systems and standard business processes
 - Recognition of the differences in operating principles between agencies
- Ability of agencies to operate each facility
- Costing model applicable to achieve a maximisation in the accessibility at all VEMTC facilities by emergency management agencies
- Standard governance arrangements, including establishing facility user groups

Volunteer access to the VEMTC Craigieburn training facility is almost non existent. CFA has advised that the use of VEMRC Craigieburn now and into the future will be heavily constrained by the high cost per head for training at the facility.

The costs associated with undertaking training at state of the art and safe hot fire training facilities is a basic cost of doing business. Volunteer access to training must not be reduced simply because it has become more costly. In the long term the cost of not accessing training will be far greater than the investment in training.

Agency budgets need to reflect the current day cost of accessing the new training facilities and training and as recommended in the Jones Inquiry (2011) training budgets should be driven by training needs not the other way round as is currently the case where volunteers are not able to access essential training because of supposed budget limitations.

If training is required then funding for it should be set aside as a priority in agency budgets and there should be no lesser access to training for volunteers simply because they are not paid or because the requirement to train them is not enshrined in an industrial agreement.

Water quality and firefighter safety concerns raise the need for water treatment facilities at all Victorian firefighter training facilities, which should continue to be a funding priority.

REMOVAL OF INDUSTRIAL BARRIERS TO TRAINING

There should be no organisational or industrial barriers to volunteers being trained, qualified and deployed in any emergency service role, and especially in mentor and instructor roles. In fact, the active promotion and facilitation of volunteer involvement and front line deployment in all facets of fire and emergency management must be an organisational priority.

Barriers that need to be removed are;

- Restrictions on who can apply for Instructor positions to open the field to suitably qualified and experienced volunteers
- More flexibility in the hours and days that paid Instructors are available
- Support for Field Training Grounds to be open outside normal business hours and on weekends
- Bans on part-time and sessional Instructors

VFBV acknowledges that paid staff currently employed as Instructors under existing terms and conditions are entitled to expect that their existing terms and conditions of employment will be honoured and respected and should not be unilaterally forced to accept radical changes to their hours of work and leave entitlements, and VFBV wishes to make clear that it is not suggesting otherwise.

However, new positions could be created and clearly advertised with the intent of matching Instructor positions to the days and times that would most benefit volunteers, with corresponding remuneration and allowances to recognise and reward the out of regular business hours requirement of the job, ensuring future instructors were matched to current demand.



VOLUNTEER FIRE BRIGADES VICTORIA

News Note

NOTE TO MEMBERS – 21 May 2017

VICTORIAN FIRE SERVICES RESTRUCTURE

On Friday this week, the Premier Daniel Andrews and Minister James Merlino announced splitting the CFA, separating paid operational employees and volunteers into different organisations through major structural reform of Victoria's Fire Services. This note outlines what VFBV know so far, about the proposal.

From what has been reported, these reforms have been drawn up by a small group working in secret within the Department of Premier & Cabinet, and has not involved the Fire Agencies. This group and their work has also reportedly been hidden from Cabinet itself. This would be the first time in Victoria's history, that Fire Service Reform has not been the subject of any public scrutiny or consultation.

As a sign of Government's desire to push through these changes before any detail is known, before any expert analysis/impact statements and before any public scrutiny, Minister Merlino has advised his plan is to introduce this legislation to Parliament **next week**.

VFBV's understanding of the structural reforms based on the Premier and Ministers public comment and our discussions with Minister Merlino in a afternoon briefing last Friday after the public announcement, suggest that;

- MFB will cease to be an agency and Government will establish a new fire agency to be called Fire Rescue Victoria (FRV). According to the Government release, this agency will "lead firefighting in major regional cities and Melbourne". This new agency will operate without a Board and CEO and will be led by a new "Commissioner". The FRV Commissioner will "set the strategic direction and make very clear who is responsible when emergencies happen, so that action is immediate, seamless and appropriate."
- All CFA operational paid staff will be transferred to the MFB replacement "Fire Rescue Victoria". This means not just paid firefighters transferring to the new FRV, VFBV has been advised that also all paid CFA operational staff who currently support volunteer brigades across Victoria (Operations Officers, Operations Managers etc) will be transferred to FRV. It is unclear what happens to training instructors, community safety/education managers, Comms and Protective Equipment Staff, and training ground PAD Operators/Supervisors.
- CFA's model of integrated brigades will be discontinued and FRV will be a 100% paid staff only service.

- All current 35 CFA Integrated brigade response area's will be removed from the CFA, and redefined to become FRV first response areas.
- Current integrated brigades will be split into two separate Brigades – a paid firefighter FRV Brigade and a separate CFA Volunteer Brigade, “co-located” in the existing CFA facility. Each agency will own its own assets and equipment, including vehicles.
- The Government will remove the need for Local Councils to request changes to boundaries, and will instead establish an “Independent” Fire District Review Panel that will undertake periodic reviews, to determine any future changes to areas covered by FRV and CFA.

MINISTER MERLINO STATEMENTS ABOUT CONSULTATION WITH VFBV ARE UNTRUE

It is important to understand that none of these reforms have been the subject of consultation with VFBV. The Minister's comments that we have been consulted, are false and misleading.

Despite rumours about the proposed split, circulating for some weeks now, there has been no consultation with VFBV and no briefing of any detail whatsoever.

Following news reports overnight on Thursday 18th May that Cabinet had met and approved reforms, VFBV CEO Andrew Ford requested an urgent meeting with the Minister. The Premier and Minister held their press conference at 10am on Friday 19th May and the Minister met with VFBV later that day at 12:45 and provided a briefing covering the publically released information pack. VFBV raised a number of questions that were not able to be answered and the Minister took these questions on notice.

The only other discussion on this issue was on Monday 8th May 2017 when the Minister informed VFBV he was considering “several options” to change the CFA arrangements because the proposed EBA agreed with the UFU would not pass the volunteer protection amendments to the Fair Work Act. VFBV expressed disappointment with this being the motivation of proposed reform let alone being factually incorrect. The Minister did not provide any detail, nor discuss any options he was considering, and would not be drawn on any detail other than to say an announcement of changes was “imminent.” It is simply inconceivable that just 10 days prior to cabinet approving the reforms that the Minister was not in a position to discuss particular ideas or options and seek volunteer feedback.

A letter from CFA CEO received late afternoon on Friday 19th May 2016 confirmed that significant reforms had been announced by the government. There has been no opportunity for consultation with CFA prior to this because up until late Thursday advice from CFA to VFBV was that there was no information known. Minister Merlino confirmed that even CFA Chief Officer Steve Warrington had not been involved in the discussions until two or three days prior to the announcement, despite the Chief Officer being on annual leave.

Apart from raising serious failure to consult with CFA volunteers in accordance with the CFA Act and Volunteer Charter it beggars belief that such major reform could be contemplated for CFA without detailed assessment and advice about operational impacts, volunteer capacity impacts, cost impacts and future service delivery implications.

Even the Emergency Management Commissioner only recently stated, under oath, that there was no work that he had done towards the new model and that he was not doing any work on changing the CFA service model or boundaries or changes between CFA and MFB.

EIGHT PREVIOUS FIRE SERVICE REVIEWS QUOTED BY GOVERNMENT

The Premier and Minister has inferred that their proposed structural reform has been recommended by previous reviews and they list; 2009 Victorian Bushfires Royal Commission; 2011 Jones Inquiry; 2015 Fire Services Review, 2014/15 Hazelwood Mine Fire Inquiry and the 2015/16 Parliamentary Inquiry into CFA Training College Fiskville.

To be very clear, none of the recent major reviews have ever recommended that the CFA be split into a fully staffed service, and a 100% volunteer service. To suggest or imply otherwise is dishonest.

In fact, the 2009 Victorian Bushfires Royal Commission specifically stated in its final report that it considered the CFA integrated service delivery should be maintained as a viable model.

In the Andrews Government's own Fire Services Review conducted just recently, the Final Report actually calls for the **strengthening** of CFA's integrated model to preserve the vital surge capacity of volunteers.

WHAT DO WE KNOW SO FAR

We have more questions than answers at this point.

The Minister has committed to providing answers to our questions as soon as practicable. He has also invited VFBV to meet with himself, Craig Lapsley and Steve Warrington so they can answer the Operational impacts. We are trying to secure that meeting as soon as possible and have requested that these discussions occur before final decisions are made on the proposed changes and particularly before any legislation change.

The following is a brief list of things we have specifically been able to work out based on the Premier & Ministers media commentary, our discussion with the Minister on Friday afternoon, and the Governments Fire Services website . We are forming an understanding on the following:

- The Government have already drafted Legislation and are planning to introduce it into Parliament this week. This will include amendments to the CFA Act. We have not seen either of these, and have asked for them.
- It appears that all CFA operational career firefighters (ranks from Recruit through to Senior Station Officer), all Operations Officers, all Operations Managers, all Regional Commanders will be transferred to FRV.
- The Minister was unclear about other classifications covered by the UFU such as Instructors, PAD Staff and Supervisors, Managers Community Safety and Communications staff. However, as all these classifications of employees are covered by the UFU and are referred to in the proposed EBA as "operational" we assume these positions are also likely to be transferred. It is unclear what will occur with the District Mechanical Officers who are also covered by the UFU but are under a separate EB.
- The Minister has confirmed there will be \$5 million to meet the additional cost of FRV's rebranding (which we assume to be Stations, Trucks, PPC and Uniforms.)
- While the OO's (Operation Officers) and OM's (Operational Managers) will be transferred to FRV, they will then be "seconded" or contracted back to work in CFA in their existing roles.

This would mean that OM's and OO's would be FRV employees, likely working under their FRV EBA – but then seconded back to CFA under a contract to be drawn up between CFA and FRV. In effect, these employees of FRV would be contracted to provide all of CFA's operational management and volunteer brigade operational leadership support.

- The Minister has confirmed to VFBV that BASO's and Volunteer Support Officers will not be transferred to FRV, and will remain with CFA as they do currently.
- The Minister expects that appliances crewed by staff in integrated stations will be removed from CFA and transferred to FRV. It is unclear which specific appliances but as the Premier and Minister have both said FRV's EB is likely to be very close to what the UFU proposed EB is, it is conceivable that FRV will use appliance based manning, so staff will be rostered to specific appliances, and those appliances will then be transferred to FRV, with the remaining left for CFA.
- It is unclear what will occur with the savings and assets currently owned by the CFA Integrated brigades
- Whilst the Minister has confirmed that there will be no current changes to the operational procedures of the first arriving agency appointing the Incident Controller – it is unclear what will happen if the new FRV EBA includes similar provisions to the proposed CFA EBA which did not allow staff to report to volunteers acting as Sector Commanders and Strike Team Leaders for example. Based on the Governments website it appears that the new FRV Commissioner may be provided additional powers to determine these arrangements in the future. It is not known what powers the CFA Chief Officer will have in relation to the amended CFA Act, the new FRV Act and/or any EBA terms negotiated by FRV.

GOVERNMENTS MOTIVATION BEHIND THIS CHANGE

Despite the spin about this change being to establish a modern and progressive fire service the Governments own acknowledgement is that the motivation for this change is to enable their industrial deal with the UFU to circumvent the CFA Act and Fair Work Act.

Problems with the UFU proposed EBA for CFA operational personnel are well documented, particularly the restrictions on CFA operational and resource decisions and on the way volunteers are deployed, equipped, supported, valued and respected.

To recap in simplest terms, the proposed EBA reached far beyond normal EBA matters of pay and conditions and was seeking to use federal industrial legislation (the Fair Work Act) to override the CFA Act on a number of matters including CFA Chief Officers statutory powers and issues core to CFA operating as a volunteer based and fully integrated modern fire service. The Fair Work Act was amended in late 2016, closing the loophole that the UFU EBA had been seeking to use.

The Fair Work Act amendment has no impact on normal EBA matters and only applies to aspects such as EBA clauses that restrict or limit a body such as CFA engaging or deploying its volunteers; providing support or equipment to those volunteers; managing its operations in relation to those volunteers. Importantly the Fair Work Act amendments simply require that the EBA does not require or permit a body to do something other than in accordance with the powers, functions and duties set down in the CFA Act. In essence it stops Federal legislation being used to circumvent State legislation, such as the CFA Act.

Despite the UFU, Premier Daniel Andrews and Minister James Merlino repeatedly claiming that the proposed EBA has no impact on CFA volunteers, they now say that the impact on volunteers are so

big that the EBA would not pass the above test. And because they are unwilling to put the EBA to the Fair Work Commissions, 'fair umpire' test, they will carve CFA up to get around it. The Governments proposal is cunning and looks simple, albeit flawed – separate the paid staff out into a new organisation and claim that because that organisation doesn't have volunteers in it, the EBA isn't subject to the Fair Work Act tests about restricting or limiting what volunteers do, how they are supported etc – then keep the firefighters separate and contract the operational staff back into CFA under the problematic EBA conditions.

The plan is a sham. It is not about public safety. If it were not a trick, then the Government would not be trying to make these reforms without any public scrutiny or consultation.

And the sham isn't limited to CFA. It should not be lost on people that the MFB EBA is still in dispute and has been since 2013, with the MFB Board and Management refusing to approve their proposed EBA because of their fears about the impacts on public safety and the loss of power and control of their Chief Officer. Changing the MFB to FRV, and removing the MFB Board, MFB CEO and MFB Chief Officer means they can remove the last of the statutory appointed officials who are refusing to sign aspects of an EBA that diminish their statutory control and legislative responsibilities.

Furthermore claims that the proposition that the volunteer protection provisions of the Fair Work Act make it "impossible to implement the operational enterprise agreement at CFA or any agreement for operational staff" are dishonest. The UFU have refused to allow their proposed EBA be sent to the Fair Work Umpire for Fair Work to even make a determination. The Federal Minister of Employment (the person administering the law) released a Statement on Friday evening advising that the Victorian Government's statement that the amended laws prevented a new enterprise agreement being entered into with paid CFA staff is "absolutely false" and using this claim to justify a plan to dismantle CFA, is "based on a deliberate and blatant falsehood."

OPPORTUNITY TO UNDERSTAND DETAIL AND IMPACT IS ESSENTIAL PRIOR TO ANY DECISION

The scant detail that VFBV does have has been outlined above. Clearly there are many more questions than answers. VFBV has been inundated with volunteer concerns about the lack of detail and many are assuming this detail will be provided before any final decision is made.

Please do not be fooled by the lack of detail, it is either an intentional move to gloss over the obvious serious and detrimental impact this change will have; or perhaps, and just as alarming, the detail is not known and the impact analysis, practical implementation challenges, cost impact, etc has not been adequately done.

For any change of this magnitude, there must be due process of review and impact assessment before decisions are made and certainly before legislation is passed.

WHAT HAS VFBV ASKED FOR?

VFBV has requested the Minister:

- Not proceed with legislation or implementation until there is volunteer and community consultation prior to decisions being made, as is the legal obligation under the CFA Act
- Full details of the proposed changes, including answers to detailed operational questions and a full operational impact assessment of changes before a decision is made
- A full volunteer impact assessment of the proposed changes before a decision is made

(2)

- For the draft legislation and amendments to be provided to volunteers for consultation prior to it being considered by Parliament

Further, VFBV has communicated directly to the Minister:

- Its disappointment that the Government has again failed to respect the Volunteer Charter and its Statutory Obligations under the CFA Act
- The CFA Act places a Statutory legal obligation on **both** Government and CFA to meaningfully consult with volunteers, allowing enough time for real involvement on all matters which may impact upon them **before** the adoption or implementation of any new or changed policies, procedures or approaches
- That the Premier and Minister's media messaging suggesting that volunteers are not capable of delivering fire and rescue services in urban areas is deeply offensive
- That the Ministers statement on Neil Mitchell's 3AW on Friday morning where he stated "Well, I would say to you that in a high population, high density areas, the community deserves 24/7 career station delivering urban fire services" ignores the fact that volunteers do and can provide professional services in urban areas and is deeply offensive
- That the reforms outlined, and the way this is being done will have a significant and negative impact and will lead to reduced volunteer capability and decreased public safety

WHAT SHOULD YOU DO?

Volunteers should not sit and wait for the detail given that the Government plan to push the legislation through before they release the detail.

VFBV has already raised a number of vitally important impact, implementation and governance questions with Minister Merlino and we are waiting on the answers to these. We have set down to the Minister our expectation that consultation obligations will be met prior to a decision and prior to legislation being put to parliament.

Volunteers should contact your local MPs and demand that this occur prior to a decision.

You need to be contacting your local MPs immediately, requesting, as a minimum that legislation not be considered before there is formal process of inquiry regarding its impact plus opportunity for volunteer consultation.

NEXT STEPS

- VFBV will continue to try and source details and communicate them to you
- Once the detail is known, we will work with members to allow volunteers to provide feedback. Particular emphasis will be to work with each Integrated Brigade to ensure their specific concerns and questions are addressed
- VFBV will continue to brief MP's and other decision makers.
- We need you to assist by contacting your local MP with your questions and concerns and requesting they do not vote for any legislation **before** due process and opportunity for a more open inquiry into the changes proposed.

Victoria deserves a community and public safety driven solution to the current dispute, not a political one. VFBV is committed to providing a way forward to the current tension and always has been.

Since our first letters to the Fair Work Commission, Premier Andrews, Minister Merlino, and CFA Board/Management when this issue started all we have sought is for an opportunity for constructive, transparent and fair conversation with an opportunity for volunteers to have input.

We believe all firefighters, paid and volunteer alike, deserve respect and recognition for the work they do and the skills they have. We have always maintained that the pay and conditions of paid firefighters is their business. The pay and condition aspects of their EBA has already been agreed and implemented, and the EBA issues should be separated from how we design the best fire service arrangements for Victoria.

It is time for the dispute to end but putting a bad solution on the table is not the answer. VFBV will continue to urge the Government to stop, take a breath and work with us constructively and in consultation with our people delivering the services on the ground to find a model that will modernise Victoria's fire and emergency services, not take it backward.

The Emergency Management Commissioner's vision is "we work as one". Further splitting the fire services is not the answer.

VFBV welcomes any reforms that improve the way Victorian Fire Services work but these reforms need to be developed collaboratively and openly.

Extensive evidence to the Bushfires Royal Commission gave a stark warning on this issue. Professor 't Hart warned:

"Redesigning emergency management systems or organisations often happens as a result of the sheer momentum for change created by the occurrence of a recent high impact tragedy. Unfortunately there is plenty of research to suggest that crisis induced reforms may create as many vulnerabilities as they seek to eliminate – particularly when they are too narrowly focussed on "winning the most recent war".

* * *



VOLUNTEER FIRE BRIGADES VICTORIA

News Note

NOTE TO MEMBERS – 15 June 2017

FIRE SERVICES REFORM LEGISLATION UPDATE AND VFBV LEGAL ADVICE

Attached to this News Note, is a copy of the legal advice provided to VFBV regarding the Presumptive Rights Compensation aspects of the proposed Firefighter's Presumptive Rights Compensation and Fire Services Legislation Amendment Bill 2017 (referred to here as 'the Bill').

This legal advice, provided by Jack Rush QC, a former Supreme Court Judge, former Chairman of the Victorian Bar Council, and Counsel Assisting the 2009 Victorian Bushfires Royal Commission confirms that the proposed presumptive rights legislation:

"...establishes two distinct mechanisms for the operation of the presumption that specified cancers are due to the nature of firefighting – one for career firefighters and one for volunteer firefighters. The Bill discriminates against volunteer firefighters, is inequitable to them, has been drafted in a manner that is prejudicial to volunteer firefighters' entitlements and rights to claim for specified forms of cancer when compared to the claims process created by the Bill for career firefighters for precisely the same cancer conditions."

This directly contradicts the Governments statements:

- Career Firefighters and Volunteers will get equal treatment – *They do not*
- That it is the same or better than the QLD model – *It is not*
- That the proposed legislation is what VFBV asked for – *It is not*

Bill scheduled to go to Upper House for vote next Tuesday

The Bill has been passed in the Legislative Assembly (lower House) and is supposedly scheduled to be put to the vote in the Legislative Council (Upper House) next week, probably Tuesday 20th June 2017. This is very disappointing for volunteers who have raised serious concerns about the lack of consultation regarding the Bill; the negative effect dismantling the existing CFA integrated service model; the potential erosion of Victoria's vital volunteer surge capacity; the lack of transparent process, operational or cost impact analysis; and the ambiguity, confusion and interference that will flow if this change is adopted.

Volunteers are supportive of genuine and cost effective fire service modernisation but we continue to urge the decision makers to withdraw or stop the adoption of the current Andrews' government

proposal. The approach to modernisation needs to be re-thought. Our strong view is that those aspects of the Bill relating to the split up of the integrated CFA model and the creation of FRV are so fundamentally flawed they should be rejected and at a minimum require a major rethink and review before being considered by the Legislative Council.

We are continuing to have asked MPs to take this legislation off the table for now or at least agree to a transparent and proper process of scrutiny and review before the legislation is passed.

Previous VFBV communiques have outlined VFBV broad concerns regarding the Bill and these concerns remain.

Bill should be split to separate presumptive rights compensation from the aspects relating to structural changes to Victoria's Fire Services

As stated above, VFBV concerns regarding the broader reform aspects of the Bill remain and are in addition to the Presumptive Rights Compensation aspects of the Bill. VFBV and many other respected public officials and bodies have already expressed our deep disappointment that the Bill combines two totally separate issues. One being firefighters' presumptive rights compensation and the other being proposed changes to the fire service structure and arrangements for Victoria. It is highly offensive and morally wrong to combine an issue so important as firefighter cancer protection with the proposed reforms to the fire services that essentially carve up CFA, one as a ransom note for the other.

VFBV has met with MPs from all sides of politics seeking support to separate those aspects of the Bill which relate to presumptive rights from the remaining aspects relating to the broader restructure of the fire services.

At this point in time our efforts have been unsuccessful however we remain hopeful that this issue will be respectfully resolved by a resolution to split the Bill when the legislation is considered in the Upper House.

It is untrue and blatantly misleading to say the Firefighters Presumptive Rights Compensation aspects of the proposed Bill is the same as the QLD presumptive legislation

Regarding the presumptive rights compensation aspects of the Bill I refer you to the attached legal advice provided to VFBV. This advice from Jack Rush QC confirms VFBV concerns that the proposed firefighter presumptive rights legislation is being sold as something that it clearly is not. The proposed Victorian legislation does not provide a simple process for volunteers, it does not treat volunteers and paid firefighters equally, it is not the same as the well regarded QLD model and it sets up potential for ambiguous protracted legal debate and bureaucratic hurdles for sick volunteers.

To sell the cancer protection as being the same as other simple and equitable models such as the QLD approach is false. The proposed Victorian cancer protection legislation is not the QLD model, it sets up a complex and ambiguous legal battle for volunteers and a much simpler process for paid firefighters. VFBV is pleased that paid firefighters will be provided with simple and compassionate cancer protection but why discriminate against volunteers?

All volunteers are urged to read the attached legal advice as it sets out a compelling case for there to be further work done on the presumptive rights protection aspects of the Bill before it is adopted.

VFBV believes this work could be done quite quickly if the true spirit of the QLD model is genuinely applied for both paid and volunteer firefighters in Victoria.

Serious concerns regarding the proposed fires services reform echoed by counsel assisting the 2009 Bushfires Royal Commission

All members are encouraged to read the attached opinion of Jack Rush QC regarding the adverse effects of the proposed Bill on CFA volunteer capacity, Victoria's capacity to deal with major fires, CFA operations and support for volunteer.

VFBV have argued strongly that the proposed fire service reform change triggered by the legislation is not a modernisation of the fire services.

It creates less flexibility for the fire services to adapt to changing risk and service demands. The Government, the Emergency Management Commissioner, and the CFA Chief Officer are yet to be able to explain to the Victorian public what public safety improvement will occur in communities currently serviced by CFA's 35 Integrated Brigades. They are yet to explain how changing the logo on a truck that sits in Dandenong, Geelong or Bendigo today, somehow makes that community better protected tomorrow.

It further fragments Victoria's fire services when all recent reviews have said fire service modernisation needs to be about joining up effort.

It creates 35 separated fire service islands spread throughout regional Victoria creating confusion, duplication and complex chains of command.

Contrary to the Governments claim, none of the recent major reviews, and certainly not the 2009 fires Royal Commission, recommended splitting the world-renowned CFA model. This is confirmed and the propaganda being pedalled by the Government has now been called out by Jack Rush QC as 'nonsense'. Jack Rush has confirmed that the 2009 Bushfires Royal Commission applauded the CFA model as being 'the nations pre-eminent firefighting organisation.

Jack Rush has confirmed that the 2009 Bushfires Royal Commission recognised the importance of maintaining and strengthening the existing CFA model that fully integrates volunteers and paid firefighters. The 2009 Bushfires Royal Commission and other recent reviews recognised the absolute importance of the existing CFA model as the best way for Victoria.

The Government is marketing these reforms as restoring CFA to a strong and independent volunteer service. They omit the fact that all those operational positions covered by the UFU that support, lead and manage those same volunteers will now cleverly be forced to be contracted back in from the metro service - supposedly doing the same jobs they were doing before – but employed and grown by another service.

A clear motivation underpinning the proposed change is a blatant desire by those pushing it to avoid a simple test that now sits with the legislated Fair Work Commission umpire – the very same umpire that Victoria's Premier Daniel Andrews said we should all listen to up until the day the umpire's rules also require volunteers rights, capacity and contribution to be respected valued and recognised. The so called Fair Work barriers to any industrial agreement are only about ensuring industrial agreements don't restrict or limit how a body such as CFA supports, equips, deploys or respect volunteers. These tests are not only common sense; they essentially already exist in CFA legislation.

What is VFBV's vision for the future?

Based on volunteer feedback and consultation from the 2015 Fire Services review, and as submitted to last year's Senate enquires, our view has been stated as the following:

Because volunteers are fundamental to Victoria's emergency management capability, fundamental to community resilience and at the core of communities sharing responsibility for their own safety, it is vitally important to ensure that they are involved in decision making on all issues that affect them, both to make the most of their frontline knowledge and to help sustain Victoria's essential volunteer resource.

VFBV wants to make it very clear that CFA volunteers appreciate and respect the dedication, skill and work of our CFA paid colleagues. Our vision for CFA is for it to be a modern and contemporary emergency service where volunteers and paid staff work side by side, as equals and respect one another.

We are against anything that tries to create a wedge between volunteers & paid staff, and any arrangements that seek to demoralise, discriminate or segregate volunteers from our paid colleagues.

We are all CFA members who want to put our communities first.

Our desire is for a modern approach, focussed on all people working together to maintain and build volunteer and community safety; a respectful culture focussed on empowering and supporting local volunteer brigades and community with the flexibility and agility to enable CFA to tailor resources and support to local community's needs.

The Governments proposed legislation is not modern, it is not flexible, it does not further community safety outcomes, and it does not promote interoperability or connectedness, and it does not build and strengthen community resilience before, during and after natural and other disasters.

The Bill should not proceed

Volunteers are supportive of fire service modernisation but we continue to urge the decision makers to stop and have a re-think.

Our strong view is that those aspects of the Bill relating to the split up of the integrated CFA model and the creation of FRV are so fundamentally flawed they should be rejected and at a minimum require a major rethink and review before being considered by the Legislative Council. Jack Rush has thankfully called the Bill for what it is 'motivated by a political and ideological outcome', 'it will most certainly not produce a positive operational outcome, it weakens rather than strengthens the CFA and support for CFA volunteers'

What you need to do

Volunteers should not give up. Please continue to write, email or visit your local MPs, particularly Upper House MPs, and ask them to vote against the legislation. At a minimum ask them, if they are not prepared to take this legislation off the table for now, at least agree to a transparent and proper process of scrutiny and review before the legislation is passed.

* * *

The CFA and the adverse effects of the Firefighters Presumptive Rights Compensation and Fire Services Legislation

The Royal Commission into the Black Saturday fires of February 2009 is the most thorough and comprehensive investigation of firefighting operations in this State in the last 50 years.

The evidence and findings of the Royal Commission established that the CFA was the Nation's pre-eminent firefighting organisation. Yet this State Government, led by Premier Andrews, over its years in office, continues to demonstrate a determination to undermine the CFA to the destruction of the very essence of what makes that volunteer organisation so strong, the ethos, integrity and independence of volunteer firefighters across Victoria.

The legislation before Parliament the "Firefighters Presumptive Rights Compensation and Fire Services Legislation" is an extraordinary document.

Introduced without any form of consultation with volunteer firefighters the Bill, without explanation, discriminates against volunteer firefighters concerning their rights and entitlements to claim compensation for specified cancers said to be a primary reason for the introduction of the legislation.

This Bill establishes two different mechanisms for the operation of the presumption that specified cancers are due to the nature of firefighting – one for career firefighters and one for volunteer firefighters. The mechanisms of claim for volunteers involve statutory hurdles not in place for career firefighters. This leads to the remarkable outcome that a volunteer firefighter and career firefighter may attend exactly the same fires, be exposed to exactly the same toxins but only the career firefighter will have the advantage of the presumption and a straight forward route to compensation. For volunteers the Bill is capricious and unfair.

But more than this, the Bill, if passed, will serve to divide the CFA, weaken its capacity and effectiveness. To make the point crystal clear – the ability of the CFA to mobilise the tens of thousands of volunteers to meet the threat of catastrophic bushfire as was done on Black Saturday, is severely threatened by this legislation.

The Bill abolishes the CFA's 35 integrated brigades, those stations in outer Melbourne and the larger regional centres of Victoria operated by CFA volunteers and

CFA operational career firefighters. This integrated station model was noted by the Royal Commission to have worked extremely well. Unilaterally, the State Government proposes by this Bill to dismantle all these brigades. In place at each of these stations will be a new entity “Fire Rescue Victoria” which is largely based on the Metropolitan Fire Brigade model made up of only career firefighters. Volunteer firefighters are meant to be co-located in the same station their role and status diminished.

The introduction of this Bill was surrounded by the usual spin and propaganda of the political process. At the forefront of the misinformation campaign are the statements that the findings of the Royal Commission support this restructure thrust on the CFA by the Andrews Government closely supported by the United Firefighters’ Union. Premier Andrews justified the comment “our firefighters are let down by outdated structure” by reference to findings of the Royal Commission. This is nonsense.

The Royal Commission in fact stated there was no compelling reason to support fundamental structural change, further the Royal Commission stated the integrated stations work well and provide important surge capacity in times of need to rural areas and acknowledged “the substantial part the CFA plays on the fringe of Melbourne and its responsibilities in regional cities and large towns”. A role effectively ended by this Bill.

The Royal Commission noted the submission made on behalf of the Victorian Government that the model for non-integrated stations (read Fire Rescue Victoria) would be much more expensive and in the end the cost would be borne by ratepayers.

This Government fails to understand the culture of the CFA, what motivates volunteers to sacrifice so much for their community. No one will deny change when it is demonstrated to be needed, effective and based on proper investigation and process. That is not this Bill. The Bill is motivated by a political and ideological outcome, it most certainly will not produce a positive operational outcome, it weakens rather than strengthens the CFA and support for CFA volunteers.

JACK RUSH
13 June 2017

Queensland Presumptive Legislation Bill	Victorian Bill introduced 24/5/2017 – relevant to volunteer firefighters	Victorian Bill introduced 24/5/17 – relevant to career firefighters
NOT MATCHED	5 Construction of the Act (1) This Act is to be read as if it formed part of the Workplace Injury Rehabilitation and Compensation Act 2013 . (2) If there is an inconsistency between this Act and the Workplace Injury Rehabilitation and Compensation Act 2013 , this Act prevails to the extent of the inconsistency. (3) Unless inconsistent with the context or subject-matter, words and expressions defined in section 3 of the Workplace Injury Rehabilitation and Compensation Act 2013 have the same meaning in this Act as they have in that Act. (4) If a firefighter satisfies the presumption under Division 2 or 3, their disease is to be taken to be an injury within the meaning of the Workplace Injury Rehabilitation and Compensation Act 2013 .	
12 Entitlements of persons mentioned in sdiv 1 (2) The contract must not cover the payment of damages for injury sustained by the person. (2A) However, the contract must cover the payment of damages if the person is a specified volunteer firefighter who sustains an injury that is a specified disease. <i>Note – See also section 236A about the application of chapter 5 to specified volunteer firefighters.</i>		
14 Rural fire brigade member (3) A person covered by the contract is entitled to compensation for injury sustained only while performing duties, including being trained, as a member of the rural fire brigade . (4) However, a person covered by the contract is also entitled to compensation if the person is a specified volunteer firefighter who sustains an injury that is a specified disease. (5) Subsections (3) and (4) do not limit section 12(2A)		
15 Volunteer firefighter or volunteer fire warden (3) A person covered by the contract is entitled to compensation for injury sustained only while attending at a fire, or practicing, or performing any other duty, as a volunteer. (4) However, a person covered by the contract is also entitled to compensation if the person is a specified volunteer firefighter who sustains an injury that is a specified disease. (5) Subsections (3) and (4) do not limit section 12(2A)		
Subdivision 3A When latent onset injuries arise 36A Date of injury (2) The following questions are to be decided under the relevant compensation Act as in force when the injury was sustained – (a) whether the person was a worker under the Act when the injury was sustained; (b) whether the injury was an injury under the Act when it was sustained (2A) However, subsection (2)(b) does not apply if the latent onset injury is a specified disease and section 36D applies to the person.		
Subdivision 3B Injuries sustained by firefighters 36B Definitions for sdiv 3B In this subdivision – employ includes engage. firefighter means – (a) a fire officer under the <i>Fire and Emergency Services Act 1990</i> ; or (b) a member of a rural fire brigade registered under the <i>Fire and Emergency Services Act 1990</i> , section 79; or	Part 1 – Introductory 1 Purpose The purpose of this Act is to – (a) provide a rebuttable presumption for – (i) career firefighters suffering from specified forms of cancer that the cancer is presumed to be due to the nature of their employment for the purposes of claiming	Part 1 – Introductory 1 Purpose The purpose of this Act is to – (a) provide a rebuttable presumption for – (i) career firefighters suffering from specified forms of cancer that the cancer is presumed to be due to the nature of their employment for the purposes of claiming

Queensland Presumptive Legislation Bill	Victorian Bill introduced 24/5/2017 – relevant to volunteer firefighters	Victorian Bill introduced 24/5/17 – relevant to career firefighters
<p>(c) a volunteer firefighter or volunteer fire warden engaged by the authority responsible for the management of the State’s fire services; or</p> <p>(d) a person appointed or employed under the repealed <i>Fire Brigades Act 1964</i>, section 24; or</p> <p>(e) a person appointed or employed under the repealed <i>Rural Fires Action 1946</i>, section 9.</p> <p>specified disease means a disease mentioned in schedule 4A, column 1.</p>	<p>compensation under the Workplace Injury Rehabilitation and Compensation Act 2013; or</p> <p>(ii) volunteer firefighters suffering from specified forms of cancer that the cancer is presumed to be due to the nature of their service as a firefighter for the purposes of claiming compensation under the Workplace Injury Rehabilitation and Compensation Act 2013; and</p>	<p>compensation under the Workplace Injury Rehabilitation and Compensation Act 2013; or</p> <p>(ii) volunteer firefighters suffering from specified forms of cancer that the cancer is presumed to be due to the nature of their service as a firefighter for the purposes of claiming compensation under the Workplace Injury Rehabilitation and Compensation Act 2013; and</p>
<p>36D Presumption of injury</p> <p>(1) This section applies to a person who –</p> <p>(a) is diagnosed by a doctor for the first time as having a specified disease; and</p> <p>(b) at any time before the diagnosis, was employed as a firefighter for at least the number of years mentioned in schedule 4A, column 2 opposite the specified disease.</p> <p>(2) For the purpose of an entitlement to compensation, the specified disease is taken to be an injury.</p> <p>(3) However, this section does not apply if it is proved that –</p> <p>(a) the specified disease did not arise out of, or in the course of, the person’s employment as a firefighter; or</p> <p>(b) the person’s employment as a firefighter is not a significant contributing factor to the specified disease.</p>		
<p>36E Deciding number of years</p> <p>(1) This section applies for deciding the number of years of the person’s employment as a firefighter for section 36D(1)(b).</p> <p>(2) A period of 12 months may be included only if, throughout the period, the person –</p> <p>(a) was employed for the purpose of firefighting; and</p> <p>(b) attended fires to the extent reasonably necessary to fulfil the purpose of the person’s employment.</p> <p>(3) However, the number of years may be made up by taking into account –</p> <p>(a) more than 1 period of employment; or</p> <p>(b) periods of employment as more than 1 type of firefighter.</p> <p><i>Example –</i> <i>A person was employed for firefighting and attended fires for 10 years before working in administrative and management roles for another 20 years. For section 36D(1)(b), the person was employed as a firefighter for 10 years.</i></p> <p>(4) In this section –</p> <p>firefighting means extinguishing, controlling or preventing the spread of fires.</p>	<p>10 Determination of the qualifying period</p> <p>(1) For the purposes of determining a period under section 9, any period during which the volunteer firefighter was employed as a career firefighter may be combined with service as a volunteer firefighter.</p> <p>(2) For the purposes of subsection (1), any consecutive or non-consecutive periods during which a volunteer firefighter has been employed or has served as specified in subsection (1) may be combined.</p> <p>(3) If a volunteer firefighter has been employed or has served as a volunteer firefighter and a career firefighter at the same time, that period of concurrent employment or service is to be counted once only for the purposes of subsection (1).</p> <p>11 Determination of whether a firefighter is a volunteer firefighter for the purposes of this Division</p> <p>(1) Subject to section 8(2), if a firefighter is serving as a volunteer firefighter at the time the injury occurs, they are to be taken to be a volunteer firefighter for the purposes of this Division.</p> <p>(2) Subject to section 8(2), if a firefighter has ceased employment or service as a firefighter, they are to be taken to be a volunteer firefighter for the purposes of this Division if their most recent service or employment as a firefighter was as a volunteer firefighter.</p>	<p>7 Determination of the qualifying period</p> <p>(1) For the purposes of determining a period under section 6(1)(c), the following periods may be combined—</p> <p>(a) any period during which the worker was employed as a career firefighter; and</p> <p>(b) any period during which the worker served as a volunteer firefighter.</p> <p>(2) For the purposes of subsection (1), any consecutive or non-consecutive periods during which a worker has been employed or has served as specified in subsection (1)(a) or (b) may be combined.</p> <p>(3) If a worker has been employed or has served as specified in both paragraphs of subsection (1) at the same time, that period of concurrent employment or service is to be counted once only for the purposes of subsection (1).</p> <p>8 Determination as to whether a firefighter is a career firefighter for the purposes of this Division</p> <p>(1) If a firefighter is employed as a career firefighter at the time the injury occurs, they are to be taken to be a career firefighter for the purposes of this Division.</p> <p>(2) If a firefighter has ceased employment as a career firefighter, they are to be taken to be a career firefighter for the purposes of this Division if—</p> <p>(a) their most recent employment or service as a firefighter was as a career firefighter; or</p> <p>(b) on balance, the majority of their employment or service was as a career firefighter.</p>

	<p>12 Determination of whether section 9 requirement is met</p> <p>(1) For the purposes of determining whether a volunteer firefighter attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter under section 9, the Authority must seek an expert opinion from the advisory committee.</p> <p>(2) In providing the expert opinion to the Authority, the advisory committee must have regard to—</p> <p>(a) any relevant records, brigade records, CFA data, employer data and local knowledge; and</p> <p>(b) any other matter prescribed by the regulations.</p> <p>(3) The Authority—</p> <p>(a) must have regard to the expert opinion provided to the Authority under subsection (1); and</p> <p>(b) is not required to make a determination that is consistent with the expert opinion provided under subsection (1).</p>	<p>DOES NOT APPLY</p>
<p>236A Application of ch 5 to specified volunteer firefighter</p> <p>(1) This chapter applies to specified volunteer firefighter who –</p> <p>(a) is covered by a contract entered into with WorkCover for chapter 1, part 4, division 3, subdivision 1; and</p> <p>(b) sustains an injury that is a specified disease; and</p> <p>(c) is entitled to seek damages.</p> <p>(2) For applying this chapter to the specified volunteer firefighter –</p> <p>(a) the firefighter is taken to be a worker; and</p> <p>(b) the activity covered by the contract mentioned in subsection (1)</p> <p>(a) is taken to be the firefighter’s employment; and</p> <p>(c) the party with whom WorkCover entered the contract is taken to be the firefighter’s employer; and</p> <p>(d) an amount paid to the firefighter under the contract as compensation is taken to be compensation paid to the firefighter under chapter 3; and</p> <p>(e) a document given, or a thing done, under the contract in relation to the payment of compensation to the firefighter is, to the extent chapter 3 provides for an equivalent document or thing, taken to have been given or done under chapter 3.</p> <p><i>Examples for subsection (2)(e) –</i></p> <ul style="list-style-type: none"> • a notice of assessment given to the firefighter • an election made by the firefighter to seek damages • the acceptance by the firefighter of an offer of lump sum compensation • an assessment of the injury to decide if the injury has resulted in a DPI 	<p>Division 3 – Operation of presumption in relation to volunteer firefighters</p> <p>9 Rebuttable presumption as to cause of certain diseases in relation to volunteer firefighters</p> <p>(1) An injury to a volunteer firefighter is presumed to be due to the nature of their service as a firefighter if –</p> <p>(a) the injury –</p> <p>(i) is a disease referred to in column 1 of the Table in Schedule 1; and</p> <p>(ii) occurs on or after 1 June 2016; and</p> <p>(b) the injury occurs during a period in which the volunteer firefighter served as a firefighter or within the 10 year period after the volunteer firefighter ceases to serve as a firefighter; and</p> <p>(c) before the date on which the injury that is a disease referred to in column 1 of the Table in Schedule 1 occurred, the volunteer firefighter served as a firefighter for at least the qualifying period specified in column 2 of that Table opposite the disease, and the volunteer firefighter attended fires to the extent reasonably necessary to fulfil the purpose of their service as a firefighter—</p> <p>in the absence of proof to the contrary.</p> <p>(2) For the purposes of this section, if a volunteer firefighter suffers an injury that is a disease specified in column 1 of the Table in Schedule 1, the injury is to be taken to have occurred on the day on which the volunteer firefighter—</p> <p>(a) is first diagnosed as suffering from the disease; or</p> <p>(b) dies by reason of the disease—</p> <p>whichever occurs first.</p> <p>(3) If a volunteer firefighter has been employed or has served as a volunteer firefighter and a career firefighter at the same time, that period of concurrent employment or service is to be counted once only for the purposes of subsection (1).</p>	<p>Division 2 – Operation of presumption in relation to career firefighters</p> <p>6 Rebuttable presumption as to cause of certain disease in relation to career firefighters</p> <p>(1) An injury to a career firefighter is presumed to be due to the nature of their employment as a firefighter if—</p> <p>(a) the injury—</p> <p>(i) is a disease referred to in column 1 of the Table in Schedule 1; and</p> <p>(ii) occurs on or after 1 June 2016; and</p> <p>(b) the injury occurs during a period in which the worker is employed as a career firefighter or within the 10 year period after the worker ceases to be employed or served as a firefighter; and</p> <p>(c) before the date on which the injury that is a disease referred to in column 1 of the Table in Schedule 1 occurred the worker is or was employed, or served as a firefighter, for at least the qualifying period specified in column 2 of that Table opposite the disease—</p> <p>in the absence of proof to the contrary.</p> <p>(2) For the purposes of this section, if a worker suffers an injury that is a disease specified in column 1 of the Table in Schedule 1, the injury is to be taken to have occurred on the day on which the worker—</p> <p>(a) is first diagnosed as suffering from the disease; or</p> <p>(b) dies by reason of the disease—</p> <p>whichever occurs first.</p>

<p>Part 3 Amendments commencing on introduction</p> <p>712 Firefighter diagnosed with specified disease before commencement Section 36D, as inserted by the amendment Act, does not apply to a person who was diagnosed by a doctor for the first time with a specified disease before the commencement.</p>		
<p>713 Particular WorkCover contracts covering volunteers</p> <p>(1) This section applies to a contract of insurance entered into with WorkCover for chapter 1, part 4, division 3, subdivision 1 that –</p> <p style="margin-left: 20px;">(a) was in force at any time during the transitional period; and</p> <p style="margin-left: 20px;">(b) covered a volunteer firefighter.</p> <p>(2) The contract is taken to have covered the payment of damages to a specified volunteer firefighter who, during the transitional period, sustained an injury that was a specified disease.</p> <p>(3) In this section –</p> <p style="margin-left: 20px;">introduction day means the day the Bill for the amendment Act was introduced into the Legislative Assembly</p> <p style="margin-left: 20px;">transitional period means the period starting on the introduction day and ending on the date of assent of the amendment Act.</p>		
	<p>Division 4</p> <p>13 Special consideration</p> <p>(1) If a firefighter—</p> <p style="margin-left: 20px;">(a) suffers an injury that is a disease referred to in column 1 of the Table in Schedule 1; and</p> <p style="margin-left: 20px;">(b) would not be entitled to the presumption under Division 2 or 3 only because the firefighter does not satisfy the relevant qualifying period; and</p> <p style="margin-left: 20px;">(c) can prove in accordance with this Division that the firefighter has had an exceptional exposure event in a firefighting capacity whether within or outside Victoria while employed or serving as a firefighter—</p> <p style="margin-left: 20px;">the injury is presumed to be due to the nature of their employment or service as a firefighter.</p> <p>(2) A firefighter who intends to rely on subsection (1) must make an application for special consideration in accordance with section 15.</p> <p>14 What is an exceptional exposure event? For the purposes of determining whether a firefighter has had an exceptional exposure event, regard must be given to the following—</p> <p style="margin-left: 20px;">(a) the nature of the event;</p> <p style="margin-left: 20px;">(b) whether there are any relevant findings from a coroner, any court proceedings or other official inquiry regarding an event known to have exposed firefighters to carcinogens, and if so, the nature of the findings;</p> <p style="margin-left: 20px;">(c) any relevant records, brigade records, CFA data, employer data or local knowledge;</p> <p style="margin-left: 20px;">(d) any other matter prescribed by the regulations.</p> <p>15 Application for special consideration</p> <p>(1) An application for special consideration must be—</p> <p style="margin-left: 20px;">(a) in the manner and form prescribed by the regulations; and</p> <p style="margin-left: 20px;">(b) made to the Authority.</p> <p>(2) An application for special consideration may only be made—</p> <p style="margin-left: 20px;">(a) at the same time as a claim for compensation is made; or</p> <p style="margin-left: 20px;">(b) after a claim for compensation has been made but before the claim has been accepted or rejected; or</p> <p style="margin-left: 20px;">(c) within the period of 60 days after the claim for compensation has been rejected.</p> <p>(3) In subsection (2) and section 16, a claim for compensation means a claim for compensation under the Workplace Injury Rehabilitation and Compensation Act 2013 in respect of which the presumption under Division 2 or 3 is invoked.</p> <p>16 Determination of application for special consideration</p> <p>(1) The Authority must determine an application for special consideration only if the Authority has rejected a claim for compensation by the applicant.</p>	

	<p>(2) The Authority must forward an application for special consideration to the advisory committee for an expert opinion as to whether the firefighter has had an exceptional exposure event.</p> <p>(3) The Authority must forward the application for special consideration as soon as practicable after the Authority has— (a) received the application for special consideration; or (b) has rejected the claim for compensation— whichever occurs later.</p> <p>(4) The Authority must within the period of 10 days after receiving the expert opinion from the advisory committee determine the application for special consideration having regard to the expert opinion.</p> <p>(5) The Authority is not required to make a determination of the application for special consideration that is consistent with the expert opinion.</p> <p>Division 5 - General 17 Claim for injury occurring on or after 1 June 2016</p> <p>(1) If before the commencement of this Part— (a) a firefighter has made a claim for compensation under the Workplace Injury Rehabilitation and Compensation Act 2013 in respect of an injury that is a disease referred to in column 1 of the Table in Schedule 1 which occurred on or after 1 June 2016; and (b) the Authority has rejected the claim for compensation— the firefighter is entitled to make a new claim for compensation in accordance with this Act.</p> <p>(2) If before the commencement of this Part— (a) a firefighter has made a claim for compensation in accordance with Part 6 of the Country Fire Authority Regulations 2014 in respect of an injury that is a disease referred to in column 1 of the Table in Schedule 1 which occurred on or after 1 June 2016; and (b) the CFA has rejected the claim for compensation— the firefighter is entitled to make a new claim for compensation in accordance with this Act.</p>	
	<p>18 Compensation for certain diseases due to firefighting by volunteer firefighters</p> <p>(1) Subject to section 19, if an injury to a volunteer firefighter is deemed under this Act to be due to the nature of their service as a firefighter, the volunteer firefighter must make a claim for compensation under the Workplace Injury Rehabilitation and Compensation Act 2013 in respect of that injury.</p> <p>(2) The compensation must be paid in accordance with and subject to the Workplace Injury Rehabilitation and Compensation Act 2013 as if the volunteer firefighter were a worker within the meaning of that Act and the disease were an injury arising out of or in the course of their employment.</p> <p>(3) A claim for compensation must be made to the Authority in accordance with the Workplace Injury Rehabilitation and Compensation Act 2013.</p> <p>(4) All matters relating to compensation must be determined in accordance with the Workplace Injury Rehabilitation and Compensation Act 2013 by the Authority, the Conciliation Service, a Medical Panel, the County Court or the Magistrates' Court, as the case requires.</p> <p>(5) In making a determination in relation to any matter referred to in subsection (2), the Authority, the Conciliation Service, a Medical Panel, the County Court or the Magistrates' Court must, as far as practicable, be guided by reference to the applicable provisions of the Workplace Injury Rehabilitation and Compensation Act 2013 governing the corresponding matter in that Act.</p>	

	<p>(6) For the purpose of assessing compensation, the pre-injury average weekly earnings of a volunteer firefighter is to be computed by the Authority, the Conciliation Service, a Medical Panel, the County Court or the Magistrates' Court—</p> <p>(a) by reference to the volunteer firefighter's employment by any employer or employers during the relevant period before the injury; or</p> <p>(b) if the volunteer firefighter was not then working under a contract of service, on any basis that, in the opinion of the Authority, the Conciliation Service, a Medical Panel, the County Court or the Magistrates' Court, is best calculated to give the appropriate compensation for the volunteer firefighter's loss of earning capacity—</p> <p>but so that any relevant maximum limits imposed by the Workplace Injury Rehabilitation and Compensation Act 2013 are not exceeded.</p> <p>(7) For the purposes of enabling a return to work of a volunteer firefighter, the Authority may do any of the following—</p> <p>(a) plan the volunteer firefighter's return to work;</p> <p>(b) approve a provider of occupational rehabilitation services for the purposes of planning the volunteer firefighter's return to work under paragraph (a);</p> <p>(c) provide alternative assistance or programs to the volunteer firefighter or in respect of the employment of the volunteer firefighter.</p> <p>(8) The Authority must make any payment of compensation under this section out of the WorkCover Authority Fund.</p> <p>(9) For the purposes of subsection (8), any reasonable costs and expenses (including legal costs) incurred in administering claims under this section are taken to be a payment of compensation.</p> <p>19 Compensation under the Workplace Injury Rehabilitation and Compensation Act 2013 and the Country Fire Authority Regulations 2014</p> <p>(1) A volunteer firefighter is not entitled to make a claim for compensation in respect of the same injury under the Workplace Injury Rehabilitation and Compensation Act 2013 and in accordance with Part 6 of the Country Fire Authority Regulations 2014 at the same time.</p> <p>(2) Subject to subsection (4), if a volunteer firefighter's claim under Division 3 is rejected, the volunteer firefighter may make a claim for compensation in accordance with Part 6 of the Country Fire Authority Regulations 2014 in respect of the same injury and is entitled to have the claim determined in accordance with that Division.</p> <p>(3) The rejection of a volunteer firefighter's claim under Division 3 does not prejudice the volunteer firefighter's claim for compensation in accordance with Part 6 of the Country Fire Authority Regulations 2014.</p> <p>(4) A volunteer firefighter is not entitled to make a claim for compensation in accordance with Part 6 of the Country Fire Authority Regulations 2014 if the volunteer firefighter's claim in</p>	
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Queensland Presumptive Legislation Bill	Victorian Bill introduced 24/5/2017 – relevant to volunteer firefighters	Victorian Bill introduced 24/5/17 – relevant to career firefighters
	<p>respect of the same injury is rejected under Division 3 because the Authority proved that the injury was not due to the nature of the volunteer firefighter's service as a firefighter.</p> <p>(5) If the volunteer firefighter's claim in accordance with Part 6 of the Country Fire Authority Regulations 2014 is rejected, the volunteer firefighter may make a claim under Division 3 in respect of the same injury and is entitled to have the claim determined in accordance with that Division.</p> <p>(6) The rejection of a volunteer firefighter's claim for compensation in accordance with Part 6 of the Country Fire Authority Regulations 2014 does not prejudice the volunteer firefighter's claim under Division 3.</p> <p>(7) A volunteer firefighter is not entitled to compensation in relation to the same injury under the Workplace Injury Rehabilitation and Compensation Act 2013 and in accordance with Part 6 of the Country Fire Authority Regulations 2014.</p> <p>(8) The Authority and the CFA may exchange any document produced or served or information acquired in respect of a proceeding or claim for compensation by a volunteer firefighter in relation to the same injury under the Workplace Injury Rehabilitation and Compensation Act 2013 and in accordance with Part 6 of the Country Fire Authority Regulations 2014.</p>	
	<p>20 Establishment of advisory committee</p> <p>(1) The Minister must establish an advisory committee for the purposes of this Act in accordance with the regulations.</p> <p>(2) The purpose of the advisory committee is to provide an expert opinion to the Authority as to—</p> <p>(a) whether a volunteer firefighter has attended fires to the extent reasonably necessary to fulfil the purposes of service as a firefighter as required by section 9(1)(c); or</p> <p>(b) whether a firefighter has had an exceptional exposure event.</p> <p>(3) Without limiting the generality of section 22, the regulations may make provision for or with respect to—</p> <p>(a) the appointment of the advisory committee, including—</p> <p>(i) the number of members; and</p> <p>(ii) the experience or qualifications of members; and</p> <p>(iii) remuneration of members; and</p> <p>(b) the powers and procedures of the advisory committee, including conditions of confidentiality of information provided to the advisory committee; and</p> <p>(c) the form of an expert opinion and the process for providing an expert opinion to the Authority.</p>	<p>20 Establishment of advisory committee</p> <p>(1) The Minister must establish an advisory committee for the purposes of this Act in accordance with the regulations.</p> <p>(2) The purpose of the advisory committee is to provide an expert opinion to the Authority as to—</p> <p>DOES NOT APPLY</p> <p>(b) whether a firefighter has had an exceptional exposure event.</p> <p>(3) Without limiting the generality of section 22, the regulations may make provision for or with respect to—</p> <p>(a) the appointment of the advisory committee, including—</p> <p>(i) the number of members; and</p> <p>(ii) the experience or qualifications of members; and</p> <p>(iii) remuneration of members; and</p> <p>(b) the powers and procedures of the advisory committee, including conditions of confidentiality of information provided to the advisory committee; and</p> <p>(c) the form of an expert opinion and the process for providing an expert opinion to the Authority.</p>
	<p>21 Payments</p> <p>(1) The Authority must make any payments necessary for the purposes of the administration of this Act (other than section 18) out of the WorkCover Authority Fund.</p> <p>(2) There is to be paid into the WorkCover Authority Fund out of the Consolidated Fund, which is to the necessary extent appropriated accordingly, the amount of any payments under section 18.</p> <p>22 Regulations</p>	

(1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

(2) The regulations may—

(a) confer powers or impose duties in connection with the regulations on any specified person or specified class of persons; and

(b) apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person—

(i) wholly or partially or as amended by the regulations; or

(ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or

(iii) as formulated, issued, prescribed or published from time to time.

Schedule 4A Specified diseases

Sections 36B and 36D

Column 1	Column 2
Disease	Minimum number of years
primary site brain cancer	5 years
primary site bladder cancer	15 years
primary site kidney cancer	15 years
primary non-Hodgkins lymphoma	15 years
primary leukaemia	5 years
primary site breast cancer	10 years
primary site testicular cancer	10 years
multiple myeloma	15 years
primary site prostate cancer	15 years
primary site ureter cancer	15 years
primary site colorectal cancer	15 years
primary site oesophageal cancer	25 years

Schedule 1

Schedule 1		
Column 1	Disease	Column 2
		Qualifying Period
1	Primary site brain cancer	5 years
2	Primary site bladder cancer	15 years
3	Primary site kidney cancer	15 years
4	Primary non-Hodgkins lymphoma	15 years
5	Primary leukaemia	5 years
6	Primary site breast cancer	10 years
7	Primary site testicular cancer	10 years
8	Multiple myeloma	15 years
9	Primary site prostate cancer	15 years
10	Primary site ureter cancer	15 years
11	Primary site colorectal cancer	15 years
12	Primary site oesophageal cancer	25 years

Schedule 1

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Column 1	Disease	Column 2
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1	Primary site brain cancer	5 years
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7	Primary site testicular cancer	10 years
8	Multiple myeloma	15 years
9	Primary site prostate cancer	15 years
10	Primary site ureter cancer	15 years
11	Primary site colorectal cancer	15 years
12	Primary site oesophageal cancer	25 years

Schedule 6 Dictionary

employ for chapter 1, part 4, division 6, subdivision 3B, see section 36B.

firefighter see section 36B.

specified disease see section 36B.

specified volunteer firefighter means a person whom section 36D applies, if the person was a volunteer firefighter for any period of the person’s employment as a firefighter mentioned in section 36D(1)(b)

volunteer firefighter means a person mentioned in section 36B, definition *firefighter*, paragraph (b), (c) or (e)

Part 2 – Firefighters’ Presumptive Rights Compensation

Division 1 – Preliminary

4 Definitions

(1) In this Act –

advisory committee means the advisory committee established under section 20;

Authority means the Victorian WorkCover Authority;

career firefighter means a person who is or was employed by a fire services as a firefighter in a role in which firefighting duties are or were a substantial portion;

CFA means the Country Fire Authority established under the **Country Fire Authority Act 1958**;

firefighter means –

(a) a career firefighter; or

(b) a volunteer firefighters;

firefighting means exposure to the hazards of a fire scene, including extinguishing, controlling or preventing the spread of fires;

volunteer firefighter means a person who is or was a **volunteer officer or member** within the meaning of the **Country Fire Authority Act 1958** in a role in which firefighting duties are or were a substantial portion.

(2) A reference in this Act to **employment** in relation to a career firefighter includes **appointment**.

Part 2 – Firefighters’ Presumptive Rights Compensation

Division 1 – Preliminary

4 Definitions

(1) In this Act –

advisory committee means the advisory committee established under section 20;

Authority means the Victorian WorkCover Authority;

career firefighter means a person who is or was employed by a fire services as a firefighter in a role in which firefighting duties are or were a substantial portion;

CFA means the Country Fire Authority established under the **Country Fire Authority Act 1958**;

firefighter means –

(a) a career firefighter; or

(b) a volunteer firefighters;

firefighting means exposure to the hazards of a fire scene, including extinguishing, controlling or preventing the spread of fires;

volunteer firefighter means a person who is or was a **volunteer officer or member** within the meaning of the **Country Fire Authority Act 1958** in a role in which firefighting duties are or were a substantial portion.

(2) A reference in this Act to **employment** in relation to a career firefighter includes **appointment**.