



30th May, 2016

The Premier of Victoria
The Hon Daniel Andrews MP
Level 1, 1 Treasury Place,
East Melbourne, Vic. 3002

Dear Premier

RE: CFA / UFU Operational Staff Enterprise Agreement

VFBV remains deeply concerned about the organisational and operational effects on CFA and CFA volunteers of the above proposed Agreement, in particular the CFA meeting its statutory duties, requirements and responsibilities and potential limitations to its current powers and the ongoing maintenance and growth of CFA volunteer capacity to deliver fire and emergency services to their community.

We have recently applied to Commissioner Roe of the Fair Work Commission (FWC) to include VFBV as the representative of CFA volunteers in discussions on the matter. We sought to participate because of our interests in aspects of the matters under consideration and to assist the Commission.

We made clear in our application that our interests in the matter were limited to issues that may affect CFA volunteers and the effective delivery of CFA services under the integrated system of CFA operations as required by the CFA Act.

Further, we explicitly made clear that our interests in the matter did not include matters relating to remuneration (i.e. pay and allowances) or related to employment conditions of individual paid employees such as leave and rosters.

Unfortunately, our application to participate was denied by Commissioner Roe.

This was despite the comments of the Premier to media, that the FWC was the 'umpire' in the matters covered by the proposed Enterprise Agreement. Thus we seem to be left without a voice in a process developing critical recommendations directly impacting CFA volunteers and operational and organisational issues that affect volunteers and their capacity to provide CFA services.

We have asked the President of FWC to examine this situation and give direction in having the Commission facilitate a more cohesive and comprehensive assessment of relevant matters crucial to CFA volunteers. This morning we received his reply, dated 29 May 2016. He stated that he did not have the legal power to direct that we be allowed to participate or voice our concerns in the matter of the CFA-UFU dispute. In his letter he said:

"I understand your concern that the outcome of the conferences before Commissioner Roe may impact CFA volunteers, but I do not have the power to grant the relief you seek."

Thus it is clear that the FWC is incapable of acting as a fair umpire in this matter in that volunteers have not been granted any capacity to present or have the Commission consider our concerns and the effects of the proposed Agreement on community safety.

It does seem to us from what we know of matters detailed in the proposed Enterprise Agreement that there are a number of clauses inconsistent with the CFA Act. If the Agreement containing such clauses was signed, they would seem to have the constitutionally anomalous effect of overriding or setting aside provisions of the CFA Act of the Victorian Parliament and other relevant legislation. It seems inappropriate in the extreme that legislation by a sovereign parliament can be overridden or set aside by a non-parliamentary, non-judicial process of another jurisdiction.

In order to avoid such matters arising and to protect CFA's organisation and operations fully and effectively utilising its volunteer workforce, which of course constitutes approximately 97% of its total workforce, we strongly request that offending clauses be removed from the final Agreement.

Further, to make explicit the position that the Enterprise Agreement is not to override or set aside relevant Victorian legislation or to marginalise CFA volunteers or relegate them to a lesser role than paid staff, there are three simple clauses we propose to you for insertion in any CFA related Enterprise Agreement. These are in addition to such other amendments as are deemed necessary to ensure that CFA's capacity to make timely decisions on operational and other resource allocation remains unencumbered.

The first is to make sure that wherever there is an inconsistency between an Enterprise Agreement and the CFA Act or other relevant Victorian legislation that the Victorian legislation would prevail. A suggested form of wording is:

The Act and related Victorian Legislation shall prevail

Nothing in this agreement shall override or set aside in anyway the powers, duties, requirements and responsibilities of the CFA Board, CEO, Chief Officer or CFA management, officers, staff and members including volunteer officers and members as set down in the CFA Act, Emergency Management Act, Public Sector Management Act and relevant Victorian State Legislation. Where matters contained in this agreement are inconsistent with or contrary to the Victorian CFA Act, Emergency Management Act, Public Sector Management Act or other relevant Victorian State Legislation that legislation will prevail.

Secondly, a volunteer protection clause similar to that incorporated in previous CFA-UFU Operational Staff Agreements. A suggested form of wording is:

Volunteers may perform duties:

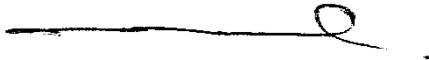
Nothing in this agreement will prevent or constrain CFA Volunteers performing any duties or tasks of classifications covered by this agreement for which CFA considers them qualified provided the performance of such duties are undertaken by volunteers who do not receive remuneration for such duties or tasks. For the purposes of this clause remuneration does not include reimbursement to volunteers for out of pocket expenses incurred by them whilst undertaking their volunteer duties.

To aid absolute clarity in any Enterprise Agreement we further suggest that the words and meaning of s.6F of the CFA Act be incorporated into the objectives of the Enterprise Agreement.

This Agreement recognises that CFA is first and foremost a volunteer-based organisation, in which volunteer officers and members are supported by employees in a fully integrated manner. Provisions of this Agreement must be interpreted and applied consistent with this.

You are respectfully reminded that before any decision is made by CFA or Government on matters that may affect Volunteers and the non-remuneration content of the proposed CFA-UFU Operational Staff Enterprise Agreement are clearly such matters, you are legally required under the CFA Act to have meaningful consultation with elected representatives of VFBV.

Yours Sincerely,



Andrew Ford
Chief Executive Officer

c.c. Hon James Anthony Merlino, Deputy Premier

This letter has also been sent to The Hon Jane Garrett MLA, Minister for Emergency Services