

Submission to the Inquiry into Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017

Note: This submission has been prepared under the difficult time constraints set by the Committee. I am in an outlying part of Japan typing on a non-English friendly IT system. The errors are mine, but I beg the indulgence of the Committee for the imperfections in my typing, layout, fonts and other things that one is used to in the Australian domestic IT environment. I hope that my passion and meaning, however, is adequately conveyed.

I would be pleased to discuss these matters with you if required.

My name is Adrian Nye and I am a former President of the Metropolitan Fire and Emergency Services (MFESB). I served from 2007 until my resignation in 2010.

During my time at the MFESB I witnessed the transformation/degeneration of the organisation through a network of interlocking legal arrangements – the Act, the EBA, consultative devices and the Fair Work Commission (FWC).

The Bill now under consideration is the culmination of many years development of a model of public and administration not seen before. If the Bill passes, the United Firefighters Union (UFU) will have secured a method of managerial control over a state enterprise not seen in any other Victorian public entity, nor to my knowledge in any other Australian or New Zealand public enterprise.

A decision to establish such a precedent should not be made lightly. The history of concessions made to the UFU on these complex administrative devices so as to assert significant control over a public entity cannot easily be unwound. Under these circumstances the public may have expected that extensive consultation, and research might have been commissioned to ensure that the State, on behalf of citizens, is not advantaging a group of rent seekers, contrary to the public interest as it is usually understood in our community.

I know of no public sector body whose employees have negotiated or forcefully asserted a system whereby the normal constraints of public management and freedom from strict adherence to public sector codes of conduct, have been secured through bargaining and force of purpose. If this Bill passes the Parliament, the construction of this transfer of accountability will have effectively been passed to the leadership of the UFU.

The evidence for this view is well documented and many senior and informed commentators from a former Minister for Emergency Services, to several CEO's, to whole Boards, are a testament to the strength and accuracy of their views. These people are not histrionic. They have lived the pain of not having the Act/EBA/FWC/government authority and support for sensible public policy and have exited the quagmire. In the process they have endured frustration, vilification and, on occasions, bullying. And some cases ill-health and psychological damage is their legacy. They have enjoyed only scant support from the responsible Ministers, save for the rational period of Minister Garrett's tenure.

So what is it that will allow the new FRV to experience an administrative and legal framework not seen in operation anywhere else in the Victorian or Australian public sector? The answer is simple. The problem that we are trying to solve through this legislative device is an industrial one.

Little did I know that when I spoke to The Age newspaper some months ago suggesting that one way out of the MFB/CFA gridlock would be to quarantine UFU members in the MFB holding pen, that the Government would draft a Bill giving effect to this inappropriate idea.

The adverse effects that will be experienced if the Bill proceeds include:

- An extremely bad precedent for public policy in Victoria;
- A potential adverse impact on community safety;
- A lost opportunity to introduce modern techniques, quickly, to fire fighting in Victoria;
- Entrenchment of systems that fail to honour the ever-heightening expectation on staff on the public payroll e.g. managing potential conflicts of interest;
- The potential introduction of a procurement regime that is open to corrupt decision-making;
- The disempowerment of government and citizens in the management of a public entity;
- The loss of an opportunity to introduce efficiency measures long understood and implemented in other environments where initiatives are not seen simply as an opportunity to extract an industrial advantage;
- The last opportunity to have MFB (by whatever name) collect, as a matter of course, data and opinions from staff on operations, staff well-being, gender attitudes, bullying behaviour, satisfaction surveys and all the other common techniques of a modern organization.
- The loss of an opportunity to claw back what many service providers effectively call the MFB loading i.e. the extra cost of a job that comes with having to deal with the arcane consultative processes of the MFB (soon to be adopted by (FSV) under the EBA. These processes are interminable, time consuming, serve a purpose but not so significant that it warrants all the EBA process packaging as is currently prescribed.
- The risk that the FSV will be left as a dinosaur in public management, left to manage itself with a 300-page black letter EBA at its side and little flexibility in its operations. In other words, it will remain a rigid trade based and skilled workforce comfortable in rules and regulations and incapable of making a splash in innovation and service delivery as we now see in the highly professional staff rejuvenated under a renewed Ambulance Service Victoria.

Under the proposed Act, one thing could positively affect the potentially adverse consequences that have been identified. That is the appointment of a Commissioner who could, through his established relationship with the UFU, bring the union around to realizing that the future embedded in this Bill does not represent the future. Perhaps a candidate from Canada close to the UFU and knows Australia could perform this role. But we do not know, because in the absence of consultation, and the veil around strategies to accompany the Bill, have not been made known. In the wash up, however, even a friend from British Columbia, may just decide that Victoria is just too hard an assignment to undertake.

Under the proposed Bill an EBA will/must emerge. Unless some extraordinary negotiations and several changes of heart have occurred, the new EBA will contain a range of mandatory consultation and approval clauses that must be observed by FSV. It is not an error to call the existing EBA provisions “vetoes” and nothing has been said to suggest that the new EBA version will be any different. As this point is so central to what seems, on the face of it, such a harmless Bill, it would be appropriate to know the substance of the new EBA before the Bill proceeds.

In response to Term of Reference (d) therefore my view, as above, is that the Bill is an act of bad faith. Few of stated reasons for its introduction relate to the touchstones of why legislation may ever be required. Will it:

- Enhance public safety?
- Improve efficiency?
- Protect rights and freedoms?
- Respond to changing public expectations; provide for timely modernization?
- Provide for continuity in management practices across the public sector e.g. oblige the FSV to observe the objectives of the Equal Opportunity Act

Sadly, none of these goals will be met; none of the alleged objectives have actually been tested, or fully explained. Why cannot we be plain and call the Bill out for what it is, a device to settle an industrial dispute that the Government has failed to explain adequately to the public or to settle through other means.

Had the Government wanted a template for how to do this project properly (i.e. assuming that it really does want to improve our fire services) it could look no further than New Zealand. Its change program took 5 years, and commenced on 1 July this year. It involved research, costings, consultation, discussion papers, public engagement, surveys etc. etc. Its stages were agreed regularly by Cabinet and the entire process was public and transparent. The outcome is harmonious and NZ is on its way to an integrated fire service model – country and urban working together.

Our process and outcome will produce neither harmony nor any productive results. There is in fact a high probability that the public perception of firefighters may diminish as they resist and veto improvements in their governance and operations that most of the rest of us take for granted. At some point regulatory authorities in government will be forced to take note of the lack of transparency and accountability in their operations and make critical comment on those failings. The intimidation and vilification of Chief Fire Officers CEOs, Commissioners etc, however styled, can only last so long even if the employer is the beneficiary of the patronage of the perpetrator.

Cost impact

In brief, the cost impact in both the short and long term will be significant. In the absence of decent Treasury estimates, it is hard to be precise. But based on the UFU influence on the MFB budget, it is not possible to imagine a decline in expenditure or even a flat lining in years to come.

One issue which ought to be covered in the Bill is a requirement that all FSV budgetary expenditure come out of the fire service levy. That is, we should not allow government to effectively subsidize the fire services so as to convey to ratepayers is that the concessions it has made to rent seekers through industrial agreements are without cost, If this were done, then ratepayers could every year be able to assess for themselves whether hikes in the FSL is matched by perceptible improvements in delivery, satisfaction and the like. New Zealand has a strict policy in this regard.

Effect on volunteer engagement

This horse has bolted. In my own local brigade in the country I sense a withdrawal from the goings on in Melbourne. It is hard to see that things will improve significantly unless the contribution of volunteers is truly respected.

This means that when the next procurement of uniforms, if required, CFA members are not simply directed to accept the UFU approved materials and suppliers; that when trucks are required, there is some meaningful reference to the CFA's field conditions in acquiring vehicles and we do not all end up with trucks that that the UFU did not veto. That in establishing or maintaining interoperability of communications there is a sensible, and not an industrial, relationship between the two parties and their managements (to the degree that they will have say) that enable them to communicate well, without the shadow of the UFU's preferences overshadowing the decision-making.

Impact on service delivery

Since we do not know how surge capacity management will occur and how and when trucks are called to the fire ground, and who will be in control etc. it is just too early to say. Again, was it too much for the Government to accompany the Bill with a discussion paper on this point to ease tensions and reduce the amount of abusive emails circulating about who will end up top dog in this new regime? Some consultation would have highlighted the harmonious outcome implicit in this intention is far from tested or assured.

A note concerning lost opportunities.

Had Victoria undertaken a real analysis of the good and the bad of our fire services and aimed at fixing longstanding issues, it might have incorporated in the Bill measures to tidy up things that bring the service into disrepute and may actually affect public safety.

1. Make stronger the role of the regulator the capacity to determine the boundaries of authority between the union and the management of FSV where deadlocks occur that are maintained without reason, other than for industrial reasons that affect the cost and efficiency of FSV or public safety. The functions are in an amateur fashion current located with FWC whose record is dismal in providing a balance for untampered industrial action.
2. We may lose an opportunity to clarify how to quarantine procurement processes within an organization so bound by externally imposed vetoes and processes. In public sector management, the deep involvement in procurement is rarely countenanced. With the power of the EBA under consideration, it would be wise to remove any possibility that a claim could be made that decisions of FSV have been inappropriately influenced by the UFU through whatever means, and that FSV adheres strictly to sound procurement policy. Normally a reference such this would be redundant in an Act, but the risk is sufficiently significant that in this case reference to probity in purchasing operations would steel management to not settle on purchases under industrial pressure.

A reading of the report by Judge Gordon Lewis is a required reading for MPs wondering how the Judge assessed the role of the UFU in the MFB trying to make a decision to purchase new personal protective equipment. Judge Lewis sounded a warning about institutionalising the power of union veto in the EBA. A warning, sadly, not heeded by subsequent governments.

3. A major issue in respect of public safety is the health and fitness of our firefighters. This issue was recently the subject of an Auditor-General's report in NSW. The report found that public confidence in the capability of firefighters would be enhanced by regular, objective fitness tests for staff who are on active duty i.e. on the trucks. The regime recommended by the A/G was not as demanding as in the Paris fire services, where physical checks are undertaken at the beginning of each shift. A failure to perform the assigned tasks has staff removed from duty that day. In light of these practical measures, how confident that we have the fittest force available? The answer is, we

just do not know and I believe that in the interest of public safety and public confidence in the service, we ought to know.

4. The subject of second jobs and firefighters has often been the butt of jibes. Behind the issue, however a serious matter is that other jurisdiction has taken very seriously from an OHS and public safety point of view. Should we allow firefighters to self-regulate their second job hours and is the absence of a standard introducing a public safety risk into our operation? Again, in many jurisdictions, particularly in the US, states have legislated/regulated a requirement that there is a maximum number of hours a week over which an employee may not work in addition to their fire services. From memory, these hours are not permitted to be continuous out of respect for the risk of tiredness on the job. If we were as the Government says, really serious about our safety when attended by firefighting staff, it would be a confidence booster that they had not just come off a session of second job activity and may not have the acuity for the task at hand. We neither know, nor have the mean to provide this comfort,

5. Another aspect of second jobs that could be enhanced is the operation of whether there should be an auditable register of potential conflicts of interest amongst staff. In a modern management, identifying potential conflict has slowly shifted the onus from the employee advising if they think that they have a conflict to management challenging staff a little more to identify even tangential possibly perceived conflicts. When I last saw the MFB register of potential conflicts it was a very thin one or two-line listing. Not what one would expect of a large diverse workforce. Overworking in second jobs is one potential conflict with a staff member's duty to arrive at work alert coming to work and not cancelling a shift to finish an aspect of a second job assignment ought to constitute a conflict; working for a fire services private company ought to be a conflict; engaging in employment that exposes a staff member to significant injury and a subsequent incapacity to undertake MFB activities could qualify as a perceived conflict. There are many other potential examples. Sadly, left to FSV to regulate itself in this regard looks unpromising to me and this Bill might have provided an opportunity for the Government to put its foot down with Parliamentary authority to say, "we do not acquiesce to this lack of transparency in the balance of the public sector, so why should we make an exception for you"

A note concerning my concerns

In case Members are inclined to ask, "well what did you do about these things" I offer the following

First, I worked for three years discovering how immovable an organization the MFB was. It is full of great people who are massively constrained by their industrial setting. Their management room to move is next to zero. MFB is unable to implement admirable initiatives, even those consistent with government policy e.g. equal opportunity, Public Sector Code of Conduct etc.

Second, I resigned my presidency when the then Responsible Minister declined to issue a Ministerial direction in respect of the upcoming EBA. I considered the EBA outrageous in its constraint on the legislated responsibilities of a professional Board of directors and would not agree to endorse it without a Ministerial Direction. Clearly, such a direction would have too closely implicated the Government of the day in a profoundly erroneous decision.

For the record, during and since my resignation from the MFESB I have maintained a keen interest in its operations, I agree with the stand of the existing Board that it is unacceptable to enter into a new EBA based on the last one and augmented with even more elaborate vetoes that do in fact impact on volunteers, however the Act is styled,

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During my tenure as President I sought advice from various agencies of government as to how I should try to handle the intractable campaigns of the UFU and the damage that its interventions were having on the well-being of the organizations, and more particularly the individuals tasked to deal with their leadership obligations day by day.

The following agencies were advised of problems emerging in the fire services and the increasing rigidity in their management and the compromise of public sector standards in their administration. At its worst, they were put on notice that circumstances might conspire to cause concern about the probity of the fire services in Victoria.

Whether these agencies chose to interest themselves in these concerns expressed is not known to me.

What was and remains obvious to me, is that the agencies or tackle the “UFU issue”. The danger to the careers and reputation of individuals and agencies from applying the standard rules of government to UFU affected agencies appears “too hot to handle”.

The agencies that should be in command of this information and who have been briefed on these matters include:

- Department of Premier and Cabinet
- Department of Treasury and Finance
- Department of Justice
- Office of the Public Service Commissioner
- The then Acting Auditor-General
- Equal Opportunity Commission
- Independent Broad-based Anticorruption Commission

Adrian Nye

6 July 2017

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