

Submission to Upper House Select Committee

Executive Summary:

- The Government has not made a legitimate case for reform of the fire services.
- The Bill proposes a range of changes, but none can be classified as genuine reform.
- The Bill will create a risk of reduction in service levels, and increased service delivery costs, due to reductions in the CFA volunteer labour force.
- The Bill has been proposed purely as a means of resolving the CFA-UFU dispute. The dispute could easily be resolved at any time by the Government standing up to the UFU and refusing to accept the anti-volunteer and powers of veto clauses in the draft CFA-UFU EBA. Had the Government done so, this Bill would be redundant.
- This Bill will not fully resolve the CFA EBA dispute, and lays the groundwork for future similar disputes by strengthening the UFU's membership and industrial clout.
- The Presumptive Legislation component of the Bill actively discriminates against volunteer firefighters to the point that it is not "presumptive". Firefighters must be protected equally by presumptive legislation, without discrimination on the basis of whether they are volunteer or paid. Cancer cannot tell the difference between volunteer and paid firefighters, and neither should the legislation.
- It is a disgraceful and a cynical ploy by the Government to include Presumptive Legislation with the "Reform" Bill, and to proceed without any consultation with CFA volunteers.
- On the basis that the Bill offers no prospect of genuine reform for Victoria's fire services, and that the Presumptive Legislation is not presumptive for CFA volunteers, it is recommended that the Upper House reject the Bill.

Abbreviations Used:

- Bill: Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017
- CFA: Country Fire Authority
- EA/EBA: CFA Draft Enterprise Agreement for Operational Staff
- FRV: Fire Rescue Victoria – the organisation to be created by this Bill.
- FSL: Fire Services Levy
- FWC: Fair Work Commission
- Government: Victorian State Government, unless otherwise shown.
- UFU: United Firefighters Union
- VFBV: Volunteer Fire Brigades Victoria

The Government Has Not Made It's Case:

- The Government has not made a legitimate case for reform, or the need for this Bill.
- The Bill proposes changes which will only benefit a small militant union and its members. No evidence has been presented that the Bill will produce a cost-effective benefit for Victorian communities, or improved fire service delivery.
- The Bill entrenches the UFU's control of Victoria's fire services. This will guarantee that more disputes will occur in future, but with a UFU that has a much stronger powerbase due to more paid firefighters being employed unnecessarily.

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- It is poor public policy to create legislation to satisfy a union's unreasonable demands.
- In trying to make a case for change in a television and radio advertising campaign, the UFU blatantly lied by suggesting that fire service delivery in the CFA areas of Springvale, Melton, Hoppers Crossing and Craigieburn was deficient. Each of these areas are well served by integrated brigades of CFA volunteer and paid firefighters. The service currently provided by CFA delivers more skilled human resources than if these areas were served by the MFB.
- The Bill will not generate cost savings for Victorians. In fact it will substantially drive up the cost of fire service delivery. The Government has yet to publish a business case with full costings, or a cost-benefit analysis.
- The Bill will not result in improved fire service delivery. It is likely that service delivery will be reduced by the loss of CFA volunteer resources, and the consequent reduction in surge capacity.

Volunteers have already started to leave CFA, including some very senior and experienced members. This trend will reduce the resources available to combat fires and incidents, including structure fires in commercial, manufacturing and domestic premises, hazardous materials, road accidents, and the myriad of other incidents that CFA volunteers attend on a 24/7 basis throughout the year, at no charge for their services.

- There have been a number of reviews into the fire services over the last decade. None of them have recommended the action proposed by this Bill. Indeed, a number have commended the CFA and its integrated model of service delivery.

It is understood that, following a review of fire service delivery, New Zealand has very recently decided to adopt the integrated model. In contrast to the indecent haste and lack of consultation associated with this Bill, New Zealand's actions follow careful consideration and extensive consultation over a period of some years.

- The Bill is not a genuine attempt at reform. Apart from a total lack of consultation, or a determination of actual needs, there has been no consideration of alternative models of fire service delivery (see further comments below).

Why the Bill does NOT resolve the "CFA Dispute:

- CFA will be forced to accept UFU members "made available" from FRV at middle management level. This will require CFA to agree to allow them to work under their FRV EBA which is likely to be similar to the draft CFA EBA and contain anti-volunteer and power of veto clauses. The UFU will retain effective control of CFA without any accountability for their actions.

Alternatively, if it is possible to remove the anti-volunteer and power of veto clauses in the EBA to facilitate "making available" then why can't that happen now? This would immediately resolve the EBA dispute, and render this Bill redundant.

- It is poor management practice to create a situation where an employee "reports to two bosses". What recourse will CFA have to managing and disciplining these individuals if they are employed by FRV?
- Current CFA fire stations in the proposed FRV operations area will vest in FRV (refer Clause 111 of the Bill). CFA volunteers will be located in stations that belong to another organisation, and have a highly unionised environment.

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- UFU members are already advocating (in social media and comments to newspaper websites) for the removal of CFA volunteers from integrated stations. This will impact on “surge capacity” for major fires.
- If the bill is passed, there are likely to be demarcation issues on the fireground when paid firefighters are required to support CFA volunteers in the CFA area, because the EBA enables paid firefighters to refuse to take direction from most volunteer fire/incident managers.

Note that paid firefighters may not have the experience and skills to take over from volunteers. A paid firefighter does 19 weeks basic training. That is no substitute for the skills and experience of volunteer fire managers.

The Government - Misleading Parliament and the Community About the EBA:

- The Government claims that the Federal Legislation to protect volunteers prevents the CFA EBA from being approved by FWC under any circumstances.
- The Government also claims that the Federal legislation has implications for other emergency services.
- The Government’s claims have been proven false by the recent FWC approval of the State Emergency Service EBA for paid operational staff (who work with SES volunteers). The SES EBA did not have “anti-volunteer” clauses or “powers of veto”, and it therefore sailed through the FWC process.
- If the “anti-volunteer” and “powers of veto” clauses in the CFA EBA were removed, the Federal legislation would no longer apply, and it too could be approved by FWC without further ado, rendering this Bill redundant.
- The Government is using the Federal legislation as an excuse for its own failure to govern properly by standing up to the UFU’s unreasonable demands.

Impact on the Fire Services Levy:

- Implementing the Bill will drive up the FSL significantly.
- The Government says it will freeze the FSL for two years, but that is irresponsible fiscal management. There will be a significant escalation of the FSL in two years’ time to recover costs. If the Government loses the next election, the incoming government will have to implement unpopular measures to repair the Budget.
- It is likely that rural Victorian taxpayers will pay a higher FSL, with no benefit whatsoever. Country taxpayers will be subsidising fire services in the urban areas. This would be particularly galling because many rural taxpayers are CFA volunteers who provide their services at no cost.

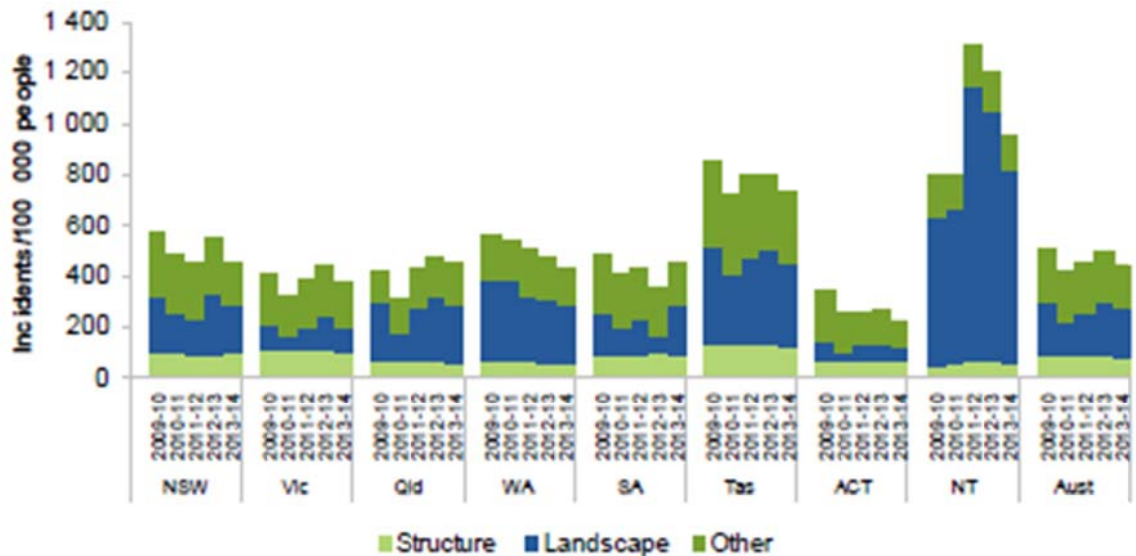
The High Cost of Fire Service Delivery in Victoria:

- Victoria currently pays significantly more for its fire services than other states. In 2015, the Australian Productivity Commission reported that Victorians were paying around \$220 per capita for fire service delivery, whereas NSW were only paying around \$140 per capita. There is no discernible additional benefit for the \$80 per capita premium being paid for fire service delivery by Victorian taxpayers.

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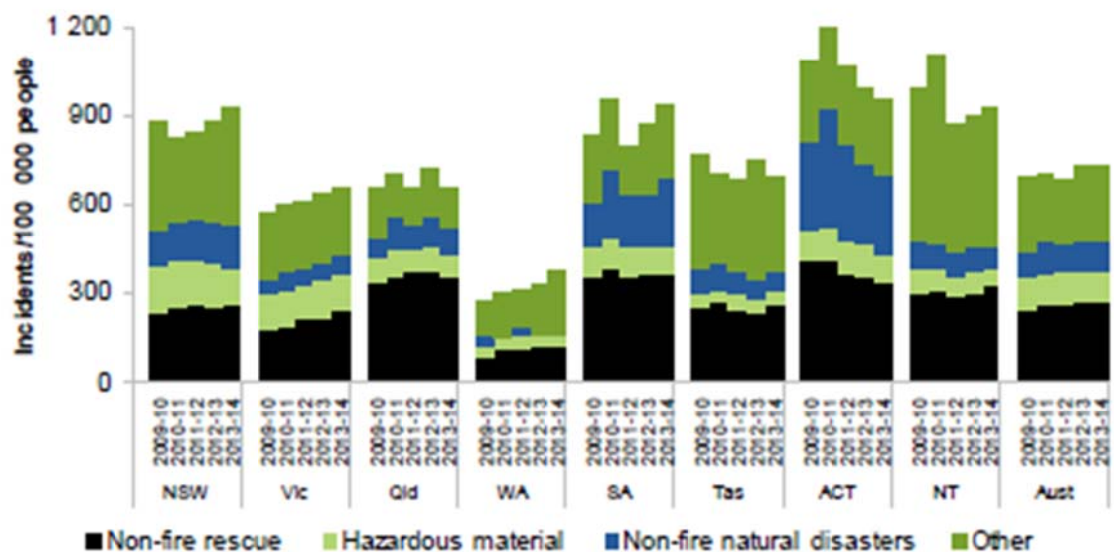
- The following “per capita” graphs extracted from the Productivity Commission Report are instructive:
- **The number of fires attended per capita in NSW and Victoria is about the same:**

Figure 9.2 Fire incidents that fire service organisations attended, per 100 000 people^{a, b, c, d, e}



- **The number of non-fire incidents attended in NSW is substantially higher than in Victoria:**

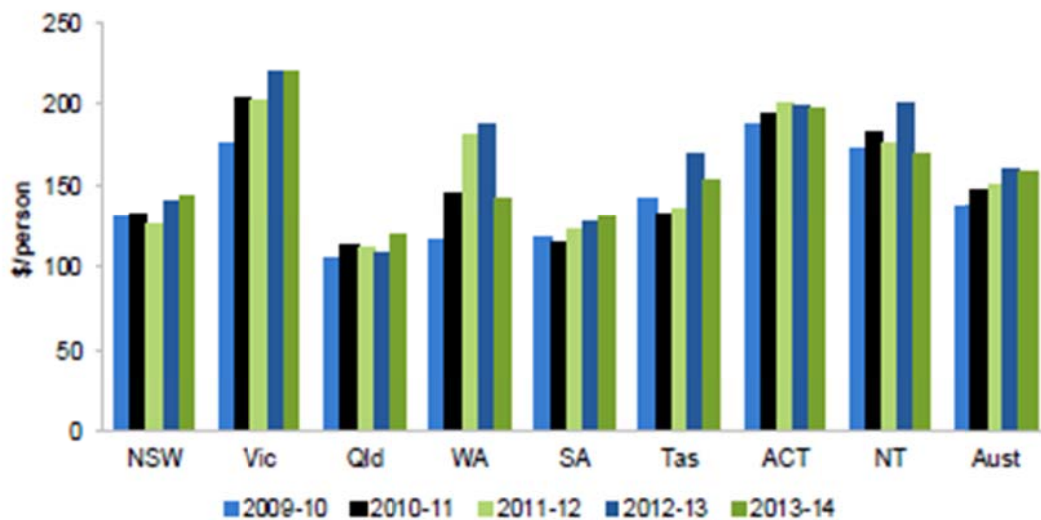
Figure 9.3 Non-fire incidents that fire service organisations attended (excluding false alarms), per 100 000 people^{a, b, c, d}



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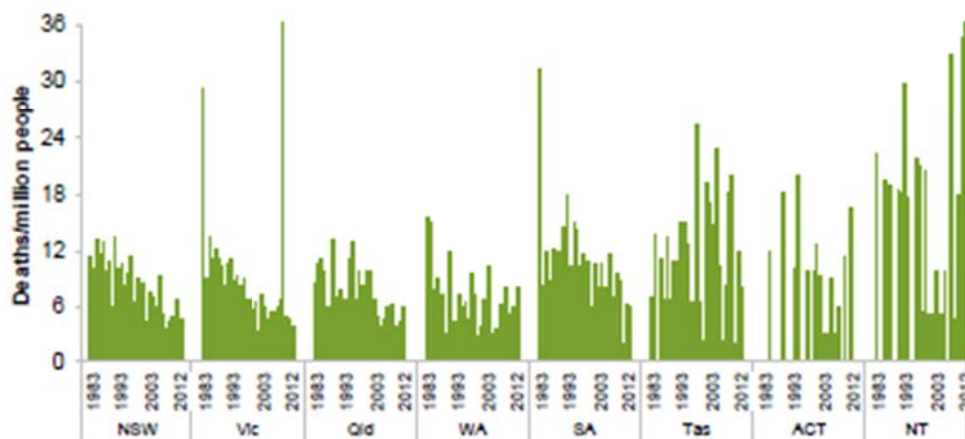
- **The cost of fire service delivery is substantially more expensive in Victoria than in NSW. Further, costs are increasing annually faster in Victoria, despite fewer fire and non-fire incidents being responded to in Victoria:**

Figure 9.13 Fire service organisations' expenditure (2013-14 dollars)^{a, b, c, d}



- **The Annual Fire Death Rate in NSW is about the same as in Victoria:** (after correcting Victoria's figures to allow for the abnormal and extreme events on Ash Wednesday and Black Saturday):

Figure 9.15 Annual fire death rate, 1983–2012^{a, b, c, d, e}



- **Conclusions:**
 - NSW firefighters attend more fires and incidents than Victoria, yet fire service delivery costs in Victoria are around 30% higher than in NSW.
 - The Annual Fire Death Rate is slightly less in NSW and Victoria (after correcting Victoria's Annual Fire Death Rate for the abnormal and extreme events of Ash Wednesday and Black Saturday).
 - There is no benefit being derived by Victorian taxpayers for the substantially higher costs (approx 60%) they pay for their fire services.

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- It seems that reform may be required in Victoria, but the Government is ignoring the real issue. Rather than addressing the costs issue, the Government is proposing a Bill that will worsen existing problems and further escalate fire service delivery costs in Victoria.
- The Government and the UFU are trying to convince Victorians that the employment of even more paid firefighters (which will further drive up costs) improves fire safety. If that was true, then there would be no fire-related deaths in the MFB district (where there are only paid firefighters – no volunteers) but this is not the case.
- Paid firefighters are being put into CFA stations in many locations on a 24/7 basis when a proper assessment would reveal this is not required. In many cases the volunteer brigades only require staff support during normal business hours when many volunteers are at work. Overnight and at weekends there is no problem as there is a greater availability of volunteers. However the current EBA (and the draft EBA) require that “daytime manning” is only permissible for a period of 12 months, after which the station must be staffed 24/7 – irrespective of the need.
- A former CFA Chief Officer, when questioned at a VFBV forum about whether CFA had asked for the additional paid firefighters promised by the Labor Party prior to each of the last two state elections, replied “No”. These political promises:
 - Did not reflect a genuine need for additional paid firefighters.
 - Were not requested by the fire services.
 - Have driven up fire service delivery costs unnecessarily – both recurrent (salaries) and capital (for expanding fire stations to accommodate additional staff).

The Loss of “Surge Capacity”:

- The loss of CFA’s “surge capacity” (the ability to quickly deliver concentrated labour and resources to deal with major fires and incidents) will have a substantial economic and social impact on Victoria. The loss of life, property and economic assets in major fires is likely to increase in direct proportion to the loss of CFA volunteers, particularly in the outer metropolitan areas and provincial cities where their role is likely to be diminished by the proposed introduction of FRV.
- If the volunteers feel that they can no longer make a worthwhile contribution, they will seek out other opportunities to serve their communities. To quote a statement recently made by a volunteer in this situation (with apologies for the verbatim language): “I just don’t need this shit!” Why would they stay, especially now it appears that they have become the sacrificial lambs on the State Government’s industrial relations altar?
- The Government and the UFU have suggested that there will be no loss of volunteers, and that CFA volunteers currently located in integrated stations can remain there, or have new premises acquired for them. There are several problems with this proposal:
 - Paid firefighters have already started advocating for removal of volunteers from integrated stations, in both social media and in newspaper forums.
 - The Bill does not define the role of volunteers in this co-location proposal.
 - The relationship between volunteers and staff in the same station is likely to be problematic as a consequence of the UFU’s activities designed to marginalise volunteers.

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- Despite promises by the Government to build new CFA stations for the volunteers in these areas, there have been reports (which could not be substantiated in the time available to prepare submissions) that the Bill includes a provision that prevents CFA from acquiring land to accommodate volunteer brigades in FRV areas. This would render worthless the Government's statements that CFA volunteers could choose to move to their own separate fire station.
- Surge Capacity is not limited to bushfires. This was again demonstrated as recently as 22 June 2017 in Tyabb, where a large contingent of volunteers quickly attacked a fire in a B-double pair of large Liquefied Petroleum Gas tankers within minutes of it occurring, and prevented a disaster that would have impacted everything within a 1 to 2 km radius. This incident demonstrated a number of principles:
 - The requirement for surge capacity is not confined to bushfires.
 - CFA volunteers are highly trained, and were able to tackle this complex incident without problems.
 - CFA volunteers train for all types of incidents, and regularly attend major fires in commercial and industrial premises.
 - It is very important that the Select Committee note that CFA volunteers are NOT just there for bushfires – they deal with everything that paid firefighters deal with.
 - A paid work force could not have delivered the numbers of people and resources required in time to prevent a disaster. It is unlikely that FRV could have mustered any more than 2 or 3 appliances on scene in under 15 to 20 minutes – and that is nowhere near good enough.

Alternative Models Of Fire Service Delivery:

A genuine Reform Bill would have considered alternative models of fire service delivery, and the cost-benefits of each. Fanciful ideas about “not being able to put a price on safety” are a nonsense. The State cannot afford to build a fire station on every street corner. It is therefore up to the State Government – not the UFU - to determine what is an acceptable standard of fire service delivery, and the most cost-effective manner of providing it.

Passive Fire Protection:

Active fire protection (fire stations, firefighters and appliances) are only part of the solution. They must be supported in their work by Passive Fire Protection measures. These include a regulatory environment that, inter alia, ensures the use of fire-safe building materials, and the installation of fire alarms and sprinkler systems.

Victoria could further improve fire safety by introducing a requirement for compulsory residential sprinkler systems. No amount of additional firefighters – paid or volunteer – would save as many lives and reduce property losses as much as introducing these systems. Indeed it is possible that, following a thorough review of statistical outcomes, that the amount of active fire protection could be reduced in the future.

Some examples of alternative models for fire service delivery to that proposed by the Bill that should be considered are as follows:

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Contracting out the staff requirements of individual CFA stations:

Advantages include:

- Cost effective fire service delivery that includes, and works seamlessly and harmoniously with, CFA volunteers.
- CFA would have the flexibility to provide paid firefighters only where support for volunteers is actually required, for example business hours (daytime manning), or specific periods such as peak periods in popular tourist destinations. (This is currently prevented by the EBA requirement for 24/7 staffing of fire stations, which is unnecessary in many cases.)
- Cost savings of many millions of dollars, particularly on a recurrent basis.
- “Island” stations (those staffed stations located in a sea of volunteer stations, for example Bendigo, Mildura, Warrnambool, Shepparton, Wangaratta, Wodonga) could remain with CFA, with conditions of contract including a commitment to a strong alliance with CFA volunteers.

This alliance is critical to the integrated model, but in recent years has unfortunately broken down in some locations due to the activities of the UFU management and some (but not all) UFU members.

- Removal of the legislative and administrative difficulties caused by FRV “islands” located within CFA’s operations area, eg declaration of fire danger periods.
- Removal of the UFU influence from CFA, thereby resolving the CFA EBA dispute.
- CFA would again be able to manage its own business, as opposed to the current situation where the UFU is in effective control of CFA due to its various Powers of Veto in the current EBA.

The “Contract Model” has already been proven. Defence Force bases around Australia have contractors providing effective fire service delivery. This model has many other reasons to commend it, but the Government hasn’t even considered it. It’s no surprise that the UFU has included a self-serving clause in the EBA that bans CFA from using contractors. The tail is wagging the dog!

Casual Staff Employment on “As Needs Basis”:

Employ suitably qualified personnel, including CFA volunteers, on a casual basis as required, providing local jobs for local people who know their area.

Key Performance Indicators/Measures:

Genuine reform should also include a review of measures used to report on performance. It is clear that current performance measures are an issue because they do not accurately reflect the effectiveness of fire service delivery. Examples include:

- **8 minutes from time of call to on-scene:**
This is an arbitrary figure with no scientific basis – it is noted that Ambulance Victoria require a 15 minute response time. Eight minutes provides no guarantee of results in terms of life or property saved. Further, the “pass/fail” nature of this measure is inappropriate – consider a response of 7 minutes and 59 seconds, and another of 8 minutes and 1 second. One is considered a pass, and the other is considered a fail, but there is no consideration of the results actually achieved. A range of factors affect the results achieved, and “8 minutes to on-scene” does not reflect this. Indeed, the above example could mask better results being achieved by the second response.

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- The recent Grenfell Tower fire in London illustrates this principle. The paid firefighters of the London Fire Brigade would have responded promptly, but various factors intervened (including what appears to be issues with building standards) that resulted in the tragedy that occurred.
- “90 seconds out the door” (truck leaves within 90 seconds of receipt of call): Again, this is an arbitrary figure which does not necessarily improve incident outcomes. The UFU has used this figure to portray volunteer brigades in a bad light. However, if the performance measure was sound, there would be no fire-related deaths or serious damage in the MFB district, where there are no volunteers.

There are many factors that govern the outcome of fires and incidents. The performance measures outlined above provide no guarantee of better outcomes. Time of call vs time of fire start, building standards, ability to concentrate responding resources quickly, are all factors that determine the outcome.

It is the role of the Government to determine the standard of fire service delivery required, and the most appropriate method to measure performance. This will require research, and consultation with experts and fire services both in Australia and overseas. It is not the role of an EBA, or a union, to dictate these standards.

Presumptive Legislation:

- It is disgraceful that the Presumptive Legislation has been ‘lumped in’ with the reform legislation on the basis that “if you vote for one you have to accept the other”.
- Members of the Government have said that the presumptive legislation is similar to the legislation enacted in Queensland. It isn’t. It is deficient in a number of respects when compared with the Queensland model.
- Initial reviews of the Bill indicate that the proposed legislation actively discriminates against CFA volunteers to the point that it is no longer “presumptive”.

This means that CFA volunteers, who attend the same fires as their paid counterparts and are therefore exposed to the same carcinogens, are to be made to jump through hoops to prove their cancer was firefighting-related. This completely at odds with the presumptive principle.

- Presumptive legislation must be non-discriminatory. There must be no mention of “paid” or “volunteer” – you should only need to be, or have been, an operational firefighter.

If anyone does not believe the Bill discriminates against volunteers, then try switching the references to “volunteer” with “paid firefighter” in the Bill. It is certain that the UFU would reject this discrimination against their members – and rightly so!

- The proposed termination of cover after 10 years of leaving the fire service demonstrates no understanding of the latency periods of some cancers. For example, the latency period for mesothelioma (asbestos-related) is now considered to be up to 40 to 50 years following exposure. There should be no “sunset clause” on presumptive legislation coverage. Firefighters perform a dangerous, but necessary activity. The least the Government can do is ensure that they remain covered for the rest of their life.
- The version of presumptive legislation set out in this Bill is of little comfort to CFA volunteers, and they will have no problem seeing the Bill rejected.

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Conclusions:

This Bill should be rejected because:

- It offers no prospect of worthwhile fire services reform, or more effective fire service delivery.
- It does not address the issue of the excessively high costs paid by Victorian taxpayers for fire service delivery.
- It has not considered alternative models of fire service delivery.
- It has not been costed, nor analysed to determine if it will deliver a nett benefit to Victorian communities.
- It fails to capitalise on existing volunteer resources, and is likely to diminish them resulting in a loss of “surge capacity” for major emergency events.
- It is certain to drive up the cost of the Fire Services Levy paid by all Victorian ratepayers.
- The Presumptive Legislation component is not “presumptive” for CFA volunteers, and actively discriminates against them.
- It entrenches the control of Victoria’s fire services by a small militant union.
- It guarantees an ongoing climate of industrial disputes, but with a union that has increased its’ membership through Government largesse, not a demonstrated community need.
- There has been zero consultation with CFA volunteers and Victorian communities during the drafting of the Bill.

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7 July 2017