



"lyndon.kerry"

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To Consultation/DTF@DTF  
 cc  
 bcc  
 Subject Firefighter Presumptive Rights  
 Compensation and Fire Services  
 Legislation Amendment (Reform) Bill  
 2017

6 June 2017

Dear Assistant Clerk of Committees,

***Inquiry into the Firefighters Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2017.***

My name is Lyndon Paul Clarke and I am a Leading Firefighter employed by the Metropolitan Fire and Emergency Services Board, Melbourne (MFESB).

I have completed 31 years service and hold a Diploma of Conservation and Land Management from the University of Melbourne (2006). I have a current qualification in Emergency Medical Response covering the use of defibrillation and oxygen therapy as required. I was also a UFU shop steward for approximately four years and have previously coached junior football on a voluntary basis.

I reside at;

[REDACTED]. Currently I am stationed at Sunshine Fire Station, Western Zone.

I am writing this submission in support of firefighters presumptive rights and fire services reform.

Furthermore, I wish to provide the following information as evidence supporting the proposed legislative changes and as such, recognise the need for the adoption of the proposed changes.

Background information

In June 2016, Commissioner Roe of the Fair Work Commission, handed down an important decision in relation to the 2016 CFA/UFU Operational Staff Enterprise Bargaining Agreement.

Notably, amongst the amendments handed down by the Commissioner, (viewed as attachment 1), was a particular sub clause that I believe in part, goes to the very heart of the matter now before the committee.

Sub clause 4 of clause 8 (Att 1, pge 3) clearly shows the recognition of;

*'Consistent with the increases in staffing provided in this agreement, the CFA will conduct an extensive range of preventative and preparedness programs and meet its duty of care by ensuring a minimum of seven professional firefighters to fire ground incidents are **dispatched** before commencement of safe fire ground operations.'*

As a career firefighter, I understand this to mean that seven firefighters are only required to be dispatched ensuring;

- Back up support for the initial appliance on scene in the event that a fire/incident is occurring
- Occupational health and safety (OH&S) requirements are complied with regarding the use of self contained breathing apparatus (scba)
- Firefighters are able to work together in pairs in order to perform search and rescue for trapped people
- Fire /incident containment
- Containment of exposures to limit spread of fire to other structures
- Extinguishment and;
- Safe overhaul/salvage, post fire.

For the sake of the argument, career firefighter is preferable so as not to cause offence to any parties.

Importantly, having seven career firefighters on the ground ensures that crews are provided a degree of safety whilst wearing scba, should something unforeseen happen such as, an unplanned extrication having to be performed, i.e. in the event that;

- A firefighter is injured
- Or the fire/incident worsens with crews then working for an extended period in order to bring the event under control.

Added to this is the fact that firefighting is extremely strenuous and crews need to be changed over to avoid fatigue or change scba cylinders.

Any less than seven on the fire ground potentially makes it much harder to achieve your objective and maintain the requisite OH&S for personnel on scene.

Some volunteer firefighters are trained to wear scba whilst some have not been trained.

This is unacceptable and highlights the changing demographic surrounding the integrated stations, where increased urbanisation, businesses and vehicles, in areas which were once rural and had lower population densities, are now the norm.

Another point to highlight here, is the fact that both politicians and the media, omitted the word 'safe' from Roe's statement. This changes the thrust of what is said, completely, and, as a result;

The statement then becomes '...a minimum of seven professional firefighters to fire ground incidents are dispatched before commencement of fire ground operations.'

Hence, the erroneous argument run by sections of the media, politicians and the Volunteers Association, highlighted in attachment 2, used to maximum effect by those who would seek to maximise their own agenda, whilst denying the workplace rights of career firefighters.

**Of particular note is Malcolm Turnbull's false commentary to Allan Jones and Tony Abbott's erroneous statement regarding seven firefighters on the fire ground.**

A further example of false commentary was exhibited by Employment Minister Michaelia Cash in an interview on Sky News in August, 2016, known as '*The train wreck interview with Michaelia Cash*'.

In that interview, the minister was unable to specifically say how the proposed Agreement would affect volunteers and maintained the line that '*it was a hostile union takeover*' , perpetuating the myth.

Importantly, clause 17 of the proposed EBA stated that;

*'Incident controllers maintain their discretion as to the management of resources in the interest of public safety.'*

Further, Roe stated (pge 4 Att 1) that;

*'...nothing in this agreement shall prevent volunteers in the CFA from providing the services normally provided by such volunteers as volunteers without remuneration' .*

Roe's decision also provided for a 'Dispute Resolution Officer' who would '*... act independently of the parties*'

(pge 4 Att 1).

Thus, the result of these afore mentioned, politically opportunistic actions;

- Misleading the public, before, during and after a Federal election
- Inflicting psychological pain and suffering on career firefighters and;
- Promoting the fraudulent perception of a 'UFU takeover' of the CFA aided by the Andrew's government.

Returning to Commissioner Roe's decision, importantly, he stated that;

*'...the Agreement only applies to paid professional firefighters and does not apply to volunteer firefighters or affect their important role'* and '*..that the provisions only relate to integrated stations and to the work of professional firefighters'* and that, "*The role of volunteers in fighting bushfires and*

*maintaining community safety and delivering high quality services to the public in remote and regional areas and in integrated stations is not altered by this Agreement' (Attachment 1, clause 7 page 2).*

Since the time of Roe's decision, however, the world has moved on with the proposed FRV materialising.

As a result, there will be some displacement of volunteers from integrated stations.

**Let's keep this in context; 35 stations out of approximately 1,200 fire stations across the state.**

Surely if the volunteers believe in their cause and want to help the community, then it is in the realm of possibility that those displaced volunteers can assist at a station which is not integrated into FRV, still be a part of the CFA and perform their role as volunteers.

I believe firmly that the communities covered by those integrated stations should expect nothing less than the dispatch of seven career firefighters before safe firefighting operations can commence. This factor is highlighted in attachment 3, which is evidence of the proposed change that is needed as a minimum response in recognition of;

- Roe's recommendations
- The massive demographic change around the integrated stations as rural has become urban and;
- Recognition of the fact that households in CFA areas already pay a higher fire services levy than their counterparts in the metropolitan fire district, for less service.

The statistics found in attachment 3, highlighting the above point, have been gleaned from both the Australian Bureau of Statistics (ABS) and FRV.

With regard to emergency response by integrated stations, it has been assumed that appliances will respond, in the event of an emergency, into the larger local government area denoted as (SA 2, 3 or 4), i.e., Ballarat City station will respond into the greater area of the City of Ballarat (S4) and as such, recognises an increased volume of statistics obtained from the ABS in comparison to FRV statistics, shown as;

- Increased population densities
- Households
- Number of businesses and;
- Motor vehicles; in comparison to the figures supplied by Fire Rescue Victoria.

(Dispatch times remain as per FRV guidelines of less than eight minutes).

The statistics show, I believe, the massive volumetric changes in the above that has occurred in these regions and strengthens the case for seven firefighters dispatched onto the fire ground.

Further, with regard to the area integrated stations are protecting;

- Statistics were not available showing the number of extra people holidaying in places such as Geelong, Frankston, Mornington, Ocean Grove, Rosebud and Warrnambool seen as apartments or units, over the summer period and;
- Statistics were unavailable to show the current trend which has seen an increase in the number of apartments or units developments, thereby increasing the number of dwellings, people and vehicles at residential locations.

### Presumptive Rights

I support the UFU's long running campaign for presumptive rights, and commend both Colleen Hartland's excellent work and the state governments commitment to seeing this important matter

through to its potential fruition.

It should be noted that Victoria remains one of the last states in Australia to recognise this vital legislation, needed to support both volunteer and career firefighters ongoing health as a result of their exposure to;

- Chemicals
- Products of combustion, post fire
- Diesel particulates such as benzene, a known carcinogen and the;
- Cumulative impact of trauma experienced via;
- Emergency Medical Response; during the course of their careers, serving the public and the wider community.

Yours sincerely,  
Leading firefighter  
Lyndon Clarke

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Roe recommendations.pdf



Media statements.docx



CFA Integrated stations statistics.docx



## FINAL RECOMMENDATION

*Fair Work Act 2009*

s.240 - Application to deal with a bargaining dispute

**United Firefighters' Union of Australia**

v

**Country Fire Authority**

(B2015/1496 & B2015/1498)

COMMISSIONER ROE

MELBOURNE, 1 JUNE 2016

*Alleged dispute concerning various agreement clauses.*

[1] I provided the parties with a draft recommendation on 14 January 2016. Parties were required to respond to the draft by 25 January 2016. Both parties advised of some matters which they sought to vary in the draft recommendation. I assisted the parties to narrow the differences in respect to the outstanding matters. However, on 19 February 2016 the CFA advised the Commission that it did not support the making of final recommendation as they did not believe it would resolve the dispute. On 8 March 2016 the Commission decided not to make a final recommendation at that stage and adjourned the matter. At the request of the UFU the matter was relisted and a number of further conferences have been held in May 2016. The CFA advised the matters which they consider to be outstanding.

[2] The parties have provided me with detailed submissions concerning the outstanding matters. I have taken the material they have provided into account in finalising this Recommendation. I also provided the parties with a draft of this Recommendation and I have considered the comments of the parties in respect to that draft. The CFA expressed the view that further discussions about a number of matters would be fruitful. Based upon my long experience with the matters in contention I am confident that at this stage there is no capacity for agreement to further amendment and that this Recommendation offers the best prospect for resolution of this long running dispute.

[3] The history of the matter before me is extensive and dates back to early November 2015. Unlike many bargaining disputes there was a significant issue between the parties as to what matters had been agreed and what matters were still in dispute. The only way I could see the matter progressing was to at least have some level of shared understanding about the matters that were properly before me. Accordingly, the first piece of work undertaken by the parties when they were before me in November 2015 was to identify the matters that were not agreed. This process was not without difficulty and contention but ultimately we arrived at an agreed document setting out the matters that were properly before me (even though there was still major disagreement between the parties as to which of those items had been agreed at some point in the process). What came to be known as the 23 November document contained not

only the matters that the CFA had identified as not agreed but also the solutions to those matters from their perspective. It was on the basis of the 23 November document that the matter proceeded before me. The parties accepted my position that it was inappropriate to subsequently raise issues which were not identified in the 23 November document. I note that there were only a small number of matters included in the 23 November document which the CFA and Government representatives indicated had been previously agreed in bargaining but where their position had changed.

[4] In the more recent conciliation sessions it appears to me that the CFA have sought to ignore the long and sensitive bargaining process that has been before me since November 2015. In the context of good faith bargaining and the general clause by clause approach that has been adopted before me, I find it difficult to now disturb the agreements that have been made during the course of bargaining. It is also important to note that the reason or basis upon which it was put to me that the CFA are at liberty to re-agitate matters previously agreed was not clear. Although I note the clear and unambiguous concerns put to me by the CFA in the most recent conferences in relation to various matters, it is difficult for me to reconcile this against previous agreements reached and the fact that at all times before me I have had the benefit of senior members of both the CFA and different areas of government advocating for certain outcomes. I would also note that no explanation was provided as to why the most recent suggested outcomes varied significantly from the outcomes previously sought by the CFA in the 23 November document. The most recent claim or proposal from the UFU has not changed in any significant particular since it has been before me and presumably for some time prior to that. In those circumstances I have felt that I am somewhat constrained in the matters that I am able to properly deal with given the good faith bargaining regime under the Act.

[5] For these reasons I have particularly focused on the matters which were still outstanding as at 19 February 2016 some of which are resolved by Version VF1-0 of 13 April 2016. I consider that this is appropriate having regard to:

- Principles of good faith bargaining. In this respect I am satisfied that many of the matters now in contention have been conceded at some point in the process.
- The very long history of this matter.
- The lack of consensus as to what was agreed between the parties at various stages of the negotiating process which has been exacerbated by the lack of continuity of personnel involved.

[6] I do not consider it necessary to recommend any variation to Clause 12 as I consider that Clauses 12.14(g) and (h) only apply where an employee has a right to progression in accordance with the other provisions of Clause 12.

[7] I do consider it necessary to recommend changes to the Agreement to underline that the Agreement only applies to paid professional firefighters and does not apply to volunteer firefighters or affect their important role. The changes also underline the maintenance of the discretion of incident controllers in managing resources in the interests of public safety. The changes to clause 83.5 are also designed to emphasise that the provisions only relate to integrated stations and to the work of professional firefighters. The role of volunteers in fighting bushfires and maintaining community safety and delivering high quality services to the public in remote and regional areas and in integrated stations is not altered by this Agreement. Recommendations 1, 4, 7, 8, 9, 12 and 13 below are directed to this outcome.

[8] I recommend that the dispute be settled by making the following amendments to Version VF1-0 of 13 April 2016.

- 1) Add a definition of integrated station at clause 11.24. "Integrated Station is a fire station which includes professional firefighters appointed to the station."
- 2) Clause 45.16 drivers – Alter 46.16 to read  
 "In addition to the other requirements of this clause (including the requirements of the Charts in Schedule 1 as applicable from time to time), above-strength career firefighters or career firefighters who are OSG personnel from either CFA or MFB can be used where necessary to act as drivers for on shift Commanders"
- 3) Move Clause 84 diversity to after Clause 147
- 4) Revised wording for 7 on fire ground Clause 83.5 (replace the relevant paragraph with the following)  
 "Consistent with the increases in staffing provided in this Agreement, the CFA will conduct an extensive range of preventative and preparedness programs and meet its duty of care by ensuring a minimum of seven professional firefighters to fireground incidents are dispatched before commencement of safe firefighting operations. This requirement applies to integrated stations in Districts 2, 7, 8, 13, 14, 15 and 27. Consistent with the increases in staffing provided for in this Agreement, CFA will also ensure that there is a minimum of seven professional firefighters to fireground incidents that professional firefighters are dispatched to before commencement of safe firefighting operations for the following integrated stations being Shepparton and Midura professional firefighters by no later than 1 January 2017 and Warrnambool professional firefighters by no later than 1 January 2018."
- 5) Clause 99.1 revert to the wording of the 2010 Agreement at clause 38.1.  
 "The monetary amounts of the allowances provided for in this agreement set out in Schedule 4 (with the exception of Clause 99.6 Personal Expenses and Accommodation) shall be paid in accordance with Australian Tax Office legislation. However, in the case where an employee receives less than the net amount stipulated in Schedule 4 the parties agree to have discussions regarding the reduced quantum. Each party reserves their rights to pursue any reduction in net entitlements in accordance with the above so no employee is disadvantaged."
- 6) Clause 100.2. Vary to make it clear that the initiatives are not agreed by altering the preamble as follows: Replace "to discuss and pursue the following agreed initiatives" with "and agree to discuss and pursue the following initiatives".
- 7) Vary Clause 36.4 to add "except in the case where the incident is a level 3 multi-agency incident or to a CFA/MFB incident controller at an incident"

- 8) Alter Clauses 44.2.7 and 45.13 to be consistent with 83.5.
- 9) Add a provision that "For the avoidance of doubt, except as provided in Clause 64- Peer Support, nothing in this agreement shall prevent volunteers in the CFA from providing the services normally provided by such volunteers as volunteers without remuneration."
- 10) Clause 3 Objectives Add: "In implementing this Agreement the parties will act consistently with equal opportunity and anti-discrimination legislation."
- 11) Add a provision that "The additional staffing resources implemented in accordance with Schedule 1 are sufficient to meet the staffing requirements of other provisions in this Agreement which have staffing implications."
- 12) 152.3. Delete the last sentence.
- 13) Clause 16.4 add the word "administrative" before "reporting line" in the last line.
- 14) Replace Clause 27 with Clause 21A as follows:

"21A DISPUTE RESOLUTION OFFICER

Any dispute from a party regarding consultation shall be dealt with in accordance with this clause and the dispute resolution clause of this agreement. The Dispute Resolution Officer is responsible for ensuring consultation proceeds pursuant to this Agreement in a fair, timely and effective manner. The Dispute Resolution Officer is to act independently of the parties.

21A.1 Where there is a dispute regarding consultation, before referring the matter to the Fair Work Commission, a party may notify the Dispute Resolution Officer. When a dispute has been notified, the Dispute Resolution Officer shall arrange a meeting within seven days of the CFA CEO and the Secretary of the UFUA Victorian Branch (or their respective delegates), each with one other person accompanying them if necessary having regard to the nature of the dispute.

21A.2 The Dispute Resolution Officer, the CFA and the UFU Secretary shall attempt to resolve the dispute by consensus. They may decide to refer the matter for further consultation, decide that the matter is at an end or resolve it in another manner. If there is no resolution by consensus, a party may refer the matter to FWC pursuant to the dispute resolution clause.

21A.3. The Dispute Resolution Officer is either an employee as agreed to between the UFU and the CFA, or an independent third party as agreed between the UFU and the CFA. All costs incurred by the establishment and operation of a Dispute Resolution Officer shall be carried by the CFA."



[9] If the Recommendation is accepted by the parties then, with the above amendments, the document should be put to employees for endorsement and, in the event of a positive vote, submitted to FWC for approval in the normal manner.



COMMISSIONER

Media statements

'UFU's \$127k deal' by James Campbell and Alex White, Herald Sun 17/06/2016

Statement; *'Under the government backed takeover of the CFA'.*

'Federal election 2016: Turnbull has chance to punish a union stooge' by Gary Johns , The Australian 17/06/2016

Statement; *'The union insisted on a minimum of seven professional firefighters to attend each incident.'*

'CFA fires up at plan, union bid upsets volunteer firefighters' by Rick Edwards, Macedon Ranges Leader 21/06/2016

'Bill wimps a burn off', Opinion, author unknown ,Herald Sun 22/06/2016,

*'People were asked whether they supported the Andrews government's attempts to unionise CFA volunteers'.*

*'Union firefighters in uniform parked their trucks outside polling booths'.*

*'Sell out of tens of thousands of CFA volunteers to a hard line union'.*

*'...unionisation of a revered volunteer organisation'.*

'Labor's assault on the CFA attacks our heart and soul' by Tony Abbott, Herald Sun 22/06/2016

Statement: *'Volunteers won't be deployed until seven paid firefighters are already available. Fire trucks won't be dispatched as soon as they're ready but only when the union says they can'.*

*'...insisting that paid staff are available before any one else can respond is a recipe for disaster'.*

Malcolm Turnbull interview with Alan Jones on 2GB 22/06/2016

Statement: *'It is extraordinary how Daniel Andrews has caved in to the United Firefighters Union to take on 60.000 volunteers' and;....'They now, under this new agreement that Andrews wants to bring in, they will now be subject to the direction of the Fire Fighters Union. That's to say the employed Fire Fighters and they will not be allowed under this EBA to go on to a fire ground unless there are seven union members present'.*

'Dan drives a Labor defeat', Opinion, author unknown, Herald Sun 25/06/2016

Statement: *'...to ram through the takeover on behalf of the hardline United Firefighters Union'*

*'Firefighters...parked outside polling booths in their fire trucks to hand out how-to-vote cards'.*

'Andrews burning Labor' by Ellen Whinnett Herald Sun 25/06/2016

Statement: *'The union takeover of the CFA'.*

'Firey's war hots up as booths a battlefield' by Rob Harris Herald Sun 25/06/2016

Statement: *'Unionised firefighters have been accused of attempting to 'hoodwink' voters by suggesting they represent the CFA'.*

'Final charge', front page Herald Sun 02/07/2016

Statement: *'...a backlash over the union takeover of the CFA'.*

'Firey's fight continues to trouble Labor' by Ellen Whinnett, Rob Harris and Annika Smethurst.

Statement: *'...efforts to force a union backed deal on the volunteer CFA'.*

'Firey finish to Shorten's bid, author unknown, Opinion Herald Sun

Statement: *'...push for union veto over the CFA'.*

Integrated station	Population 2015*	2015 – 2016 Calls received*	Households 2011*	Businesses 2015*	M.V. 2016*	Greater local gov area per ABS
Ballarat City	155,920	1,591	56,293	12,758	141,758	SA 4
Belmont	14,205	1,191	5,751	870	10,938	SA 2
Bendigo	149,919	1,222	53,844	11,858	136,036	SA 4
Boronia	26,523	856	9,605	1,820	20,757	SA 2
Caroline Springs	31,083	967	8,068	1,509	19,646	SA 2
Corio	26,671	1,349	9,771	883	18,462	SA 2
Cranbourne	21,688	955	6,544	1,140	17,715	SA 2
Craigieburn	48,301	834	10,491	2,219	29,551	SA 2
Dandenong	188,317	2,382	57,044	15,881	143,081	SA 3
Eltham	63,158	Not available	7,550	2,390	18,693	SA 2
Frankston	135,971	1,370	47,404	9,490	106,335	SA 3
Geelong City	273,951	2,255	94,993	20,671	227,818	SA 3
Greenvale	14,245	716	3,474	1,318	12,103	SA 2
Hallam	11,008	1,940	3,245	1,559	10,980	SA 2
Hoppers Crossing	39,208	1,501	12,321	2,356	33,951	NTH & STH SA2
Melton	132,752	803	34,974	6,434	92,229	SA 2
Mildura	32,969	676	11,848	2,861	27,652	SA 2
Mornington	24,372	493	8,954	2,391	20,388	SA 3
Morwell	13,981	681	5,713	817	12,573	SA 2
Ocean Grove	21,117	401	6,611	1,699	17,023	SA 2
Pakenham	45,244	820	11,773	2,312	32,942	NTH & STH SA2
Patterson River	11,695	821	4,383	1,041	9,208	SA 2
Point Cook	47,207	1,010	10,171	2,815	29,803	"
Portland	10,744	168	4,225	756	10,101	"
Rosebud	20,997	589	8,287	1,345	17,845	"
Rowville	15,272	495	4,894	1,124	11,932	"
Shepparton	41,633	931	13,810	3,942	37,059	"
South Morang	59,314	483	12,070	2,552	39,551	"
South Warrandyte	10,370	Not available	3,069	1,419	9,114	"
Springvale	21,918	1,224	6,488	1,988	14,396	"
Sunbury	39,111	461	12,713	2,403	31,603	SA 3
Traralgon	26,835	681	9,739	1,781	24,449	SA 2
Wangaratta	27,065	329	10,634	3,050	27,038	LGA
Warrnambool	33,644	2,785	12,013	2,785	28,789	"
Wodonga	38,559	533	13,223	2,714	36,517	"

## Attachment 3

Chart showing statistics for current CFA integrated stations.

## \*Notes;

- Population, household, businesses and motor vehicle statistics provided by Australian Bureau of Statistics [www.abs.gov.au/databyregion/search](http://www.abs.gov.au/databyregion/search) accessed 06/07/2017
- Call statistics provided by Fire Rescue Vic <https://fireservices.vic.gov.au/search> accessed 06/07/2017
- MV is an abbreviation of motor vehicles
- LGA is the local government area where S code was unavailable.