

TRANSCRIPT

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

Inquiry into fire season preparedness

Melbourne — 25 January 2017

Members

Mr David Davis — Chair

Ms Harriet Shing — Deputy Chair

Ms Melina Bath

Mr Richard Dalla-Riva

Ms Samantha Dunn

Mr Khalil Eideh

Mr Cesar Melhem

Mr Daniel Young

Participating Members

Mr Greg Barber

Mr Jeff Bourman

Ms Colleen Hartland

Mr James Purcell

Mr Simon Ramsay

Witness

Mr Michael Wootten (sworn), Chief Executive Officer, City of Whittlesea.

The CHAIR — I welcome members of the community, committee members and witnesses to the inquiry into fire season preparedness, noting that this is a subcommittee of the environment and planning committee and noting also apologies from Mr Young, Ms Shing and Ms Dunn. I note also that the inquiry into fire season preparedness is an important inquiry and that evidence that you give at this hearing is protected by parliamentary privilege. Therefore you are protected against any action for what you say here today, but outside of this forum, if you repeat any of those comments, obviously they are not protected.

I indicate that Mr Michael Wootten is here. He is currently the CEO of the City of Whittlesea. Pursuant to the inquiry into fire season preparedness, he was also the interim CEO of the CFA in 2015. We will talk about the exact dates of that in a minute. Michael, just before I ask you to provide your initial opening evidence, I might just establish that you were the CEO or interim CEO; is that the correct title?

Mr WOOTTEN — I was acting CEO.

The CHAIR — Acting CEO. I note a news release on 9 February which indicates that Mick Bourke resigned at that point, and you were appointed as interim CEO according to that release at the time. I also just seek to get some clarity. You were the accountable officer until 6 November 2015 according to the annual report.

Mr WOOTTEN — That sounds accurate.

The CHAIR — All right. Thank you. I just wanted to establish that with respect to our report on fire season preparedness, in particular the relationship to the annual reports and a range of other issues. If I could perhaps ask you to give us a very short opening statement, I will then begin with some questions.

Mr WOOTTEN — I am here at the request of the committee, David.

The CHAIR — That is okay. I thought you may have wanted to say something initially.

Mr WOOTTEN — No, I am quite happy to answer any questions the committee might want to put.

The CHAIR — All right. I will get straight into questions in that case. One of the issues that has come up before the inquiry is the issue of fire season preparedness with respect to the resources of the CFA. One of the aspects of the inquiry relates to the annual reports, and I note that there was a settlement with the United Firefighters Union. It is my understanding that that occurred in the period when you were in the role as interim or acting — I will seek clarification on that — in March 2015. Is that the correct date?

Mr WOOTTEN — I cannot remember the date, but certainly I was the CEO at the time.

The CHAIR — Was the date around that period?

Mr WOOTTEN — I believe so. It is a couple of years ago. I have not got any documents to remind me, but that sounds around the time, though.

The CHAIR — To the best of your recollection.

Mr WOOTTEN — Yes.

The CHAIR — What day did you actually start? You had obviously been a senior officer at the CFA prior to that and you had been acting in another role, but then you became the interim CEO. You had been executive director of the business services.

Mr WOOTTEN — Yes, that is right. If you want to go right back to the start, I commenced at the CFA in December 2001 as their director of finance and administration-cum-chief financial officer. I moved into the role of executive director of business services around, I think, 2011, but again I would have to confirm dates. Then I took on the interim CEO role upon the resignation of Mick Bourke, who was the predecessor.

Mr MELHEM — Do you remember when that month was?

Mr WOOTTEN — That was February 2015.

The CHAIR — I certainly have a news release here dated 9 February.

Mr WOOTTEN — That sounds right. I do not remember the exact date.

The CHAIR — Monday, 9 February. Can I understand then that you were in effect the responsible officer for the period when the arbitration process occurred with the UFU?

Mr WOOTTEN — Yes.

The CHAIR — Was that arbitration outcome reported in the annual report?

Mr WOOTTEN — I do not recollect, to be honest, whether it was specifically reported or whether it was just part of the financial statements and the operating expenditure for that financial year.

The CHAIR — Is it correct that the amount was \$2 million?

Mr WOOTTEN — That was paid?

The CHAIR — Yes.

Mr WOOTTEN — No, that is not my recollection at all.

The CHAIR — What was the amount?

Mr WOOTTEN — Again, I have not got any record, so you are just going to have to — —

The CHAIR — Rely on your memory.

Mr WOOTTEN — Absolutely. My recollection is that it was less than \$500 000.

The CHAIR — I note that the UFU made a declaration in their reports. In their reports they list an arbitration settlement of \$484 045 and a reimbursement of legal fees from related parties of \$137 557. Would those have been the figures from the — —

Mr WOOTTEN — I am not familiar with the second figure. The first one sounds like the outcome of the arbitration process that was entered into.

The CHAIR — So almost half a million dollars.

Mr WOOTTEN — Yes, less than half a million.

The CHAIR — What was the basis of that settlement?

Mr WOOTTEN — It was based on the fact that we entered into an arbitration process where both parties agreed they would abide by the outcome of the independent arbitrator. Regarding the reasons for his decision, again, I would have to check the judgement that he provided to us, which I have not got.

The CHAIR — We may obtain that separately.

Mr WOOTTEN — Yes, again, the CFA would have the documents. I have no access to them.

The CHAIR — Were you approached by anyone from the Premier's office or department concerning this matter?

Mr WOOTTEN — No.

The CHAIR — Is it your understanding that the previous CEO, Mr Bourke, was approached by someone from the Premier's office or the department?

Mr WOOTTEN — I have no knowledge of that.

The CHAIR — You have no knowledge of that. Was this ever discussed with Mr Bourke?

Mr WOOTTEN — The only discussion we had was during the very brief handover we had between the day that he announced his resignation and the next day, when he gave me a handover, which was for about an hour and a half. This was one of about probably 30 or 40 matters that he handed over to me.

The CHAIR — Did you make notes at that time?

Mr WOOTTEN — Possibly. I cannot recall.

The CHAIR — Would you have access to those notes?

Mr WOOTTEN — No.

The CHAIR — You would not.

Mr WOOTTEN — My departure from CFA clearly said that I could not take any documents with me, and I did not.

The CHAIR — Would notes have been made by Mr Bourke from that, to your knowledge?

Mr WOOTTEN — I doubt it. He was handing over material and information.

The CHAIR — So was there a formal document that was — —

Mr WOOTTEN — No.

The CHAIR — There was no formal document. So there was a series of matters that were discussed and documents exchanged?

Mr WOOTTEN — There was a variety of documents exchanged, yes. One of them may have been the letter from the UFU that originally commenced this matter, but again, I cannot specifically say it was part of the material.

The CHAIR — Okay. And was there any discussion with the government industrial relations people about this matter, meaning the department or the minister?

Mr WOOTTEN — I certainly discussed it with the department of justice, yes.

The CHAIR — And what was the nature of those discussions?

Mr WOOTTEN — Really it was for me to seek advice about the best way to handle the matter.

The CHAIR — And the advice?

Mr WOOTTEN — Well, pretty much the advice was, 'It's a matter for CFA. You need to explore all avenues to try and resolve it, but ultimately you need to make the decision, as the incumbent CEO'.

The CHAIR — In your time as a senior officer both at the CFA and indeed at other locations, including local government, have you seen an arbitration of this nature before?

Mr WOOTTEN — I have not partaken in one, no.

The CHAIR — What was the basis of the request by the UFU for payment?

Mr WOOTTEN — I do not recall. I would have to check their letter, but I think it was related to the fact that there was a view that CFA had not abided by its obligations in relation to the model litigant rules for public sector agencies.

The CHAIR — And they wanted recompense.

Mr WOOTTEN — On the basis that we had not abided by those model rules.

The CHAIR — A payout of some sort.

Mr WOOTTEN — The original figure I think was in the millions. You mentioned \$2 million. I cannot recall if that is right or not, but certainly the original figure was in the millions, and that is when we commenced the process to try and seek a resolution.

Mr DALLA-RIVA — Thanks, Michael. Just in respect of your current role as the CEO, you would obviously keep the councillors informed of any processes that you would be undertaking now, as part of the normal — —

Mr WOOTTEN — It depends on the nature of the issue, Richard. If it is operational, not necessarily, no.

Mr DALLA-RIVA — In respect of the CFA, on that basic understanding of governance, did you keep the CFA board informed of this process along the way?

Mr WOOTTEN — No, I did not discuss it with the board.

Mr DALLA-RIVA — Given that there was an application from the UFU for \$2 million — that seems to be the ambit claim — with a settlement of 460 being — —

Mr WOOTTEN — Four eighty-four, I think was the figure David mentioned.

Mr DALLA-RIVA — With 484 being the final figure, do you think it would have been incumbent upon you to keep the board informed?

Mr WOOTTEN — I certainly briefed the chair on a number of occasions. We had weekly meetings on a whole range of issues, and this would have been one of the issues that I would have briefed her on.

The CHAIR — That was Claire Higgins.

Mr WOOTTEN — That is correct, yes. But I did not speak to the full board about it.

Mr DALLA-RIVA — But that would have been considered as a liability potential in the — —

Mr WOOTTEN — Well, at that stage it was an ambit claim for costs, and I dealt with the matter in my capacity as the head of the operational arm of the organisation.

Mr DALLA-RIVA — And putting aside your paid position, what was your personal view of this ambit claim? Given that you essentially came into this role in February 2015, I gather this process was in play before you.

Mr WOOTTEN — The matter was certainly in play.

Mr DALLA-RIVA — So you have had a meeting where you have walked in. As you said, you have had a variety of meetings and a changeover of an hour and a half. This perhaps would have been one of those issues. What was your immediate reaction when you heard that?

Mr WOOTTEN — Oh, I was deeply concerned about the allegations made against CFA and its conduct.

Mr DALLA-RIVA — Just reflect again, what were the allegations?

Mr WOOTTEN — That we had breached the model litigant rules.

Mr DALLA-RIVA — So what was one example that stood out in that?

Mr WOOTTEN — Oh, look, again, I would have to check all the documentation, but I do remember it was about those rules, but I cannot specifically state which ones and how we might have been alleged to have breached them. My concern was that it went to CFA's reputation and conduct.

Mr DALLA-RIVA — Was this something lodged by Peter Marshall or by the UFU?

Mr WOOTTEN — I cannot recall who signed the letter, but it certainly came from the UFU. Whether Peter signed it or someone else, I do not know.

Mr DALLA-RIVA — Were you happy with the end result, personally?

Mr WOOTTEN — No, I was disappointed.

Mr DALLA-RIVA — A final question along the lines: where did that \$484 000 come from?

Mr WOOTTEN — CFA I think at the time treated it as part of its overall budget for legal costs. We have a budget annually for a whole range of things. This was part of that budget.

Mr DALLA-RIVA — So what percentage of your — again, it might be something you would not know, but was it — —

Mr WOOTTEN — I would hazard a guess, Richard, that our annual budget for legal fees is in the millions.

Mr DALLA-RIVA — Is that because of your engagement with the UFU or is it just generally?

Mr WOOTTEN — Not just the UFU. There is a variety of industrial bodies and other legal matters that CFA is involved in every day. They are not all industrial, and there is an overall budget.

Mr DALLA-RIVA — I said it was my last question, but the money was paid out. Without putting words into your mouth — I can hear Harriet in the background — you were not happy with the outcome.

Mr WOOTTEN — Well, we believed we had a strong case and we entered into the arbitration. When I say we, I mean me and our legal advisers. They prepared our submission. We felt that we had a case to state that we had not in fact breached the model litigant rules, but the arbitrator found otherwise.

Mr DALLA-RIVA — Who was the arbitrator again?

Mr WOOTTEN — Damien Cremean. I think he had been a deputy president at VCAT.

Mr MELHEM — Thank you, Mr Wootten. You said you were not happy with the arbitrated outcome. It is quite normal. If you go to arbitration, you want to win; you do not go there to lose. So it is quite natural to have that.

Now going back to a number of questions that Mr Davis asked you in relation to whether or not there was any pressure from the Premier's office or the minister in relation to settling or making a payment, you did say no; is that correct?

Mr WOOTTEN — I had no contact with either my minister's office or the Premier's office throughout the whole process. The decision to enter into arbitration was mine alone.

Mr MELHEM — In relation to the UFU claim in relation to the payment, did the arbitrator make any recommendations or rulings in relation to costs? Was there any discussion in relation to costs?

Mr WOOTTEN — I cannot recall. There may have been, Cesar, but again without having the arbitrator's report in front of me I honestly cannot say.

Mr MELHEM — Would you agree that it is not uncommon that, if parties go to an arbitration or court system, the loser tends to pay the cost? It is not uncommon for this sort of thing — —

Mr WOOTTEN — Well, I had not partaken in this sort of process before, but it may not be uncommon. But again, I had not been involved in an arbitration.

Mr MELHEM — So what I am trying to say is it is not unheard of. In the world of litigation, when a party litigates against another party, in most cases costs are actually awarded to the winner of that outcome, and in this particular case and my understanding, the arbitrator ruled in their favour — right or wrong that it was ruled in their favour.

Mr WOOTTEN — Yes, he ruled in their favour, but in the context of a \$2 million claim he ruled in their favour for a figure less than \$500 000.

Mr MELHEM — Yes, and I will accept that. They put in an ambit claim and all of that; I am not getting into that. I am just more interested in the final amount which was paid, I think less than \$500 000. That was the settlement. So to your best knowledge, that is not uncommon in litigations where parties agree to pay some costs. In a lot of cases you do not get your full costs. Maybe they spent \$2 million, but the court would not necessarily award them \$2 million.

Mr WOOTTEN — I would not know what they spent, obviously, but the claim was for \$2 million or whatever figure was mentioned. From my point of view we dealt with it as an ambit claim. That is why I was keen to resolve it through some sort of process and to confirm that we had behaved in accordance with the model litigant rules, but the arbitrator found otherwise to an extent.

Mr MELHEM — It was within your level of responsibility to make that decision as a CEO.

Mr WOOTTEN — Yes. It was within my financial delegation, yes.

Mr MELHEM — Yes. You are delegated to do that. The other question I want to take you to is in relation to the culture. I just want to talk a bit about the culture within the CFA, and I think that was subject to the fire services review. One of the concerns raised was internal culture and impact on the organisation, underlying tension, and it was also noted in the Victorian royal commission. A particular note was in relation to, on page 36, recommendation 8 of that report, and I will just quote from that:

The review recommends that committed and sustained effort be made by the senior leadership of the fire services to reset its relationship with firefighters and their representative bodies, through adopting a genuine, collaborative and consultative approach in place of the adversarial, win/lose dialogue. The immediate focus must be on restoring a cohesive work culture and addressing firefighter operational and safety concerns.

This recommendation aligns with SAP Priority C ...

My question is: that would be one of the drivers, I suppose, for you to settle the matter, move on and basically address that cultural thing instead of just going to court on every single issue.

Mr WOOTTEN — Yes. That is probably a fair statement. I think there is a history of litigation between the fire services and the UFU which precedes my time at the CFA, and ultimately probably in court is the last place you want to end up with those matters. Sometimes it does end up there. So any alternative dispute resolution process that we could use I think would be preferable. So that is why I agreed to enter into the arbitration.

Mr MELHEM — And you will agree or disagree and have your own comments on that. So it is fair or reasonable for the UFU, for example, to actually ask for their costs to be paid, because it is the firefighters' — CFA employees' — money, because they are the ones who paid membership to the UFU. It is not unreasonable for them to actually seek some sort of reimbursement of the legal costs which they incurred. I am not talking about the \$2 million, but it is not unreasonable to seek some sort of costs.

Mr WOOTTEN — The basis of the seeking of those costs was the model litigant rules, and therefore that was the platform upon which the argument was run. As I said, we believed — and my advice from our legal advisers was — that we had a strong case that we had not breached those model litigant rules.

Mr MELHEM — There is just one final area I want to talk to you about. Your current role is as the CEO of the City of Whittlesea, one of the fire-prone areas, and it has got CFA-MFB integrated stations, so quite a mix. Can you tell me how the fire season is going so far in relation to preparedness and resources? Would you like to see — —

Mr WOOTTEN — From council's point of view?

Mr MELHEM — From a council point of view and whether or not you reckon you have got adequate resources and staff levels, volunteers versus full-timers.

Mr WOOTTEN — I cannot talk about the firefighter numbers, obviously — that is not my responsibility — but from council's point of view there are a couple of key areas that we play a role in in terms of our municipal fire prevention role and our statutory role in relation to that, and we commenced our activity with landowners in about September last year in terms of mail-outs to 1500-odd properties and then followed up those ones that had

not responded, just confirming what their obligations were in relation to managing the fire risk on their properties. This is vacant land obviously, so risk of grassfire.

In addition to that we have also worked with local brigades and the community around slashing of grass on public land, roadsides, those sorts of things. We are very much on track, even though we have had some fairly wet weather. We met with the Kinglake West brigade about three weeks ago. Obviously they are in one of those key fire-prone areas and were deeply affected during Black Saturday, and we just confirmed to them that our processes around slashing of roadsides were on track in partnership with VicRoads.

Mr MELHEM — Thanks. One last question from me on the same subject. Whittlesea has become more and more an urban suburb, with the new suburbs that are coming up every day. Would you like to see more full-time firefighting resources in your region?

Mr WOOTTEN — Again, that is a matter for the CFA and the chief officer. From my point of view — —

Mr MELHEM — Based on your background as a CFA person from — —

Mr WOOTTEN — Ultimately it is about resources, whether they are paid or volunteer, from my perspective. The model, in my experience, works very well from a community safety point of view. Volunteer recruitment and retention is equally important as the paid firefighters who support those volunteers at those integrated brigades. I think that integrated model has been successful.

Ms BATH — Now, Michael, I do not have a legal brain; I have a science background, so if I ask some elementary questions, please bear with me. One thing that I have been interested in and have read and made comment on is the review that the former minister, Jane Garrett, undertook — the CFA-MFB review. That was chaired by David O’Byrne.

Mr WOOTTEN — Yes.

Ms BATH — There have certainly been some ties with Mr O’Byrne in terms of the Labor Party — the ALP — and the UFU. I wonder, during your time, what your thoughts? Did you have any concerns about that gentleman undertaking the review?

Mr WOOTTEN — No. I met with David on numerous occasions as part of the fire services review. We made a submission, as did many other agencies. I then met with him probably on two or three occasions with follow-up questions around a range of issues that he had collected when he was out and about around the state. In all those dealings with David it was very even-handed. He asked reasonable questions. I felt that he was trying to get the best information he could to deliver his report, and I did not see any reason for concern about roles that David had had previously.

Ms BATH — Thank you. Between 2010 and 2014 the CFA and the UFU had ongoing arbitration discussions or work within that. You made mention a number of times that when that had finished, I think it was model of — I have model Egan. You have made mention around the rules — —

Mr WOOTTEN — The basis of the claim. The model litigant guidelines.

Ms BATH — Can you — —

Mr WOOTTEN — Litigant.

Ms BATH — Thank you. I did not actually hear that terminology.

Mr WOOTTEN — That is okay.

Ms BATH — With all of those dealings, just for clarification, the UFU did not win a case. It was legal costs associated with, I guess, ongoing disagreements rather than a case being won.

Mr WOOTTEN — I was not involved in the case because I was not the CEO at the time, but there was a Federal Court case running around the enterprise agreement. Ultimately the CFA was unsuccessful in that court case, and that is where the legal costs arose for the UFU as part of that legal proceeding.

Ms BATH — Right.

Mr WOOTTEN — That had concluded and then there was a claim for legal costs which came through, as we have discussed previously.

Ms BATH — Thank you. And I guess in a sense you were standing up for the rights and the credibility of the CFA in that.

Mr WOOTTEN — Certainly the CFA's reputation in terms of its conduct, yes.

Ms BATH — Just another question. In terms of the overall budget of the CFA, what would that be per annum?

Mr WOOTTEN — When I was at the CFA it was bordering on \$500 million a year.

Ms BATH — Sure. So the percentage of the legal budget would have been — —

Mr WOOTTEN — I could not give you a figure, Melina. As I said, it is probably in the millions — we would spend millions on legal fees every year. I do not know whether it is 5, 10 or 20. I could not give you an exact figure.

Ms BATH — And if, for example, that legal budget is not completed every year, what would happen to the leftovers? Is that rolled back into the legal budget, or can it be used and accessed elsewhere within the budget?

Mr WOOTTEN — You would not leave it until the end of the year. The budgetary process is there are monthly financial reports to the board. You would see how you are tracking against budget. There would be items that would be under budget for whatever reason; there would be items that would be over budget for whatever reason. Ultimately our objective was to achieve budget, so if we overspent in one area, we would have to find savings in another to balance it out.

Ms BATH — Glean it from somewhere else.

Mr WOOTTEN — We would review that data on a month-to-month basis and report it to the board to give them confidence that we were meeting our obligations around the budget being met.

Ms BATH — Ideally any costs that are not delivered elsewhere in terms of legal fees could be potentially spent on acquisition of equipment or the like. Is that a potential?

Mr WOOTTEN — It is possible.

Ms BATH — It is interesting. I have a direct experience with the CFA. My son is a member of the volunteers in South Gippsland. Twelve months ago he completed a structural — he undertook training to become — —

Mr WOOTTEN — Structural firefighting.

Ms BATH — Yes, correct. He has now received his gear 12 months later. It has been in waiting. It shows that there are not always funds available to directly deliver that sort of equipment as needed. He has now got it. He said to me it cost around 1500 for that. There has been a hold-up somewhere in the system. Is that common?

Mr WOOTTEN — There are a variety of reasons that could explain that, Melina. From a firefighting point of view, the chief officer would determine what resources he needs for structural firefighting as opposed to other types of firefighting. That would then compare to the number of people who have been trained. Sometimes he might have had more people trained than were required in terms of our minimum numbers. That might then go to the distribution of protective equipment and when it occurred. So I would not say it was common, no.

Ms BATH — Thank you.

Mr RAMSAY — My question gets back to the impact on fire preparedness for this season in relation to UFU activities. We have already had some discussion around the outcome of an arbitration commission finding in favour of the UFU in relation to — what did you call the model? What was it?

Mr WOOTTEN — Model litigant.

Mr RAMSAY — Litigant, yes — where an arranged payment was made. To me that gives some courage to the UFU to be seeking more litigation in relation to the recent commonwealth legislation protecting volunteers across the state. As we know, they have publicly sought funding from either the government or the CFA to help fund their litigation. I am interested to know what your view might be, given that a precedent has almost been set now in relation to CFA moneys. That is our fire service moneys, I might add, being used to help fund UFU legal action against the state in relation to an EBA. But I noticed just as of yesterday the UFU has put out a bulletin to staff notifying them that they are taking protected industrial action from 25 January which requires a whole lot of bans and stoppages on responding to fire, training, supervision, badging, accounts, doing the administration, refusing to provide ministers with reports, and this will be going on on a daily basis. So I would expect that to have a significant impact on the ability to respond to fires if in fact there is this ongoing industrial action by the UFU, which they have notified their membership will start on 25 January. So I was wondering if you might like to comment on what you would see as being impacted by the sort of quite aggressive behaviour of the UFU in relation to responding to what will be a very dangerous fire season.

Mr WOOTTEN — Look, I can probably speak about it from a distance, Simon. Obviously my role at the CFA, apart from the 10 months I was CEO, was very much being accountable for most of the back-office activity. So I did not have a lot to do with industrial relations issues, firefighters or the UFU, quite frankly. My understanding of the bans is that there are some limiting factors in place in terms of public safety. I am assuming that in any industrial action that any union might take that they would abide by those public safety rules and not put community safety at risk. But again, you know, that is a matter for the UFU ultimately, in terms of the action they determine they want to take, and they would be responsible for that.

The CHAIR — All right. Can I just return to the period when you were CEO, or acting CEO, at the CFA, just to try and understand what occurred with this payment to the UFU. It is my understanding that the jurisdiction in which the industrial matters were dealt with was a no-cost jurisdiction.

Mr WOOTTEN — Right.

The CHAIR — Is that correct?

Mr WOOTTEN — I do not know, David.

The CHAIR — You do not recall?

Mr WOOTTEN — No, I do not.

The CHAIR — Right. So proceeding to this arbitration process, you were not aware that this was a no-cost jurisdiction at Fair Work?

Mr WOOTTEN — No.

The CHAIR — That is my understanding, that it is generally a no-cost jurisdiction.

Mr WOOTTEN — Right.

The CHAIR — But then you proceeded to go to an arbitration on a \$2 million claim — hush money, fundamentally.

Mr MELHEM — That is outrageous, Mr Davis. I mean, I just — —

The CHAIR — No, I just — —

Mr MELHEM — Well, it is. Coming from the Chair, asking a witness and making an allegation like this, which you cannot substantiate, I think is an insult.

The CHAIR — Well, Mr Wootten can answer.

Mr MELHEM — It is an insult to Mr Wootten and to the CFA.

The CHAIR — Mr Wootten can answer.

Mr WOOTTEN — So, the question is, David?

The CHAIR — Was this hush money?

Mr WOOTTEN — No. This was a — —

The CHAIR — So this arbitration that occurred, when there is a no-cost jurisdiction from which the matters proceeded, and then there is a claim that in some way the CFA had done something wrong as a model litigant, you reject that, and certainly the CFA, as I understand it, has rejected that. The arbitration was on a \$2 million claim. It is fundamentally hush money.

Mr MELHEM — Well, the Federal Court is a cost jurisdiction, for your information, Mr Davis.

The CHAIR — Well, it is my understanding that this is generally in these legal matters not a — —

Mr WOOTTEN — I am not aware it was not.

Mr MELHEM — I can give you the mail. The Federal Court is actually a cost jurisdiction, and so is the Supreme Court.

Mr WOOTTEN — All I can tell you, David, is that the matter went to the CFA's conduct and reputation, and that is why I was concerned to resolve it, and our legal advice was that we had very good prospects of success in the arbitration process. We were disappointed with the outcome, but we agreed to abide by it.

The CHAIR — And you made that decision alone?

Mr WOOTTEN — Yes.

The CHAIR — You sought legal advice on this matter?

Mr WOOTTEN — I did.

The CHAIR — You sought advice from the Department of Justice?

Mr WOOTTEN — Yes, I discussed it with senior officers.

The CHAIR — Who at the Department of Justice?

Mr WOOTTEN — I would have had conversations certainly with Craig Lapsley about the matter. I cannot recall if there were others, but certainly Craig I asked for advice.

The CHAIR — And what was his view?

Mr WOOTTEN — His view was that it was a matter for the CFA to resolve and if he could do anything to support us, he would.

The CHAIR — Right. And you discussed it with the board chair but not with the board?

Mr WOOTTEN — Yes, correct.

The CHAIR — And in your period there was no contact from the Premier's office, the minister's office or their respective departments on this matter?

Mr WOOTTEN — Apart from the Department of Justice, which I have already referred to, no contact whatsoever.

The CHAIR — And you do not recall who at the Department of Justice?

Mr WOOTTEN — Well, I think Craig Lapsley.

The CHAIR — Craig is the only one.

Mr WOOTTEN — Yes. I think Craig and I had a couple of conversations about it, yes.

The CHAIR — Right. The fact of the matter is that almost \$500 000 was expended, and that money could have been used for a range of CFA purposes if it were not paid to the UFU.

Mr WOOTTEN — Certainly if the payment had not have been made, it could have been used for other legal costs, and if the legal costs were underspent, then it could have been used for other things, yes.

The CHAIR — Yes. So it is a straight hit on the capacity of the CFA to undertake the work that it needed.

Mr WOOTTEN — I do not think it affected the capacity of the CFA, given the sum involved in the context of a half-a-billion-dollar budget.

The CHAIR — Mr Dalla-Riva, you are next.

Mr DALLA-RIVA — No, I am right.

Mr MELHEM — To come back to Mr Davis's questions about the cost jurisdictions, and if you want to take that on notice as well, it would be good. It is my understanding that some of the proceedings were in the Federal Court and some in the Supreme Court and the arbitration. In relation to my understanding, I think I am about 99.99 per cent certain that these two courts are cost jurisdictions. The Fair Work Commission is a non-cost jurisdiction, so I accept that. Are you able to sort of take that on notice and maybe double-check that and get back to us on that issue, or now with my explanation, would that refresh your memory in relation to that?

Mr WOOTTEN — I do not know, Cesar. I think if the committee needs clarity on that, then they should seek it, but I am certainly not in a position to give that clarity. It is not my area of expertise.

Mr MELHEM — I think we might do that, just to clarify that issue. That is all I have got. Again, thank you for taking time and attending today. We appreciate that from my point of view, so thank you.

Mr DALLA-RIVA — I just have a couple of follow-up questions in relation to the EBA.

Mr WOOTTEN — Yes.

Mr DALLA-RIVA — During the process when you were there, were there any findings from the fire services report that indicated that a culture of bullying and harassment plagued the fire services, and do you believe that was exacerbated by the EBA process?

Mr WOOTTEN — I was not directly involved in any issues around bullying or the other matters that were mentioned there, Richard. But I would say it has for a long time been a complex industrial environment. I am sure the committee is familiar with the size of the enterprise agreement, let alone anything else. It is very hard to navigate a path through a document that is 400 or 500 pages long.

In my experience with the CFA the key change we made to the enterprise agreement was around removal of the veto clause, and we were successful in that in the prior negotiation. From recollection, the current negotiation is seeking to reinstate the veto clause for the CFA. It has always been in the MFB one, as far as I am aware. That would cause me concern from a managerial perspective, absolutely.

Mr DALLA-RIVA — And that is the evidence we have heard from previous CEOs and board members that have gone or moved on or been sacked. So you were there in your tenure as the CFA CEO. Why did you not sign the EBA?

Mr WOOTTEN — At that time — well, the negotiations had obviously been going on a long time before I got into the chair — we were not prepared to accept some of the propositions that were in the log put forward by the UFU, so we continued to bargain in good faith.

Mr DALLA-RIVA — Did you ever speak to then Minister Garrett in respect of the EBA in your position as the CEO?

Mr WOOTTEN — No. The discussions around the EBA were weekly meetings with senior officers from the department of justice, so certainly Craig Lapsley and Neil Robertson, and generally someone from the IR section of the department of justice.

Mr DALLA-RIVA — Nobody that you are aware of from the ministerial office?

Mr WOOTTEN — No-one from the minister's office attended those meetings.

Mr DALLA-RIVA — And the UFU? Were any issues raised about the UFU's claims like the veto clauses and all that?

Mr WOOTTEN — Certainly from the CFA's perspective, we took the position that we could not accept that the veto claim be reinstated.

Mr DALLA-RIVA — So it was probably known within circles that you were perhaps not supportive of the EBA as it stood when you were the CEO?

Mr WOOTTEN — Not supportive of some of the claims in the log, yes. The EBA as it stood we had obviously signed previously.

Mr DALLA-RIVA — So we fast-forward to the period when there was a process for the appointment of the full-time CEO.

Mr WOOTTEN — Yes.

Mr DALLA-RIVA — You made application for that?

Mr WOOTTEN — I did.

Mr DALLA-RIVA — You were unsuccessful.

Mr WOOTTEN — That is correct.

Mr DALLA-RIVA — Reasons given, do you know?

Mr WOOTTEN — My discussions with the chair of the committee at the time were that the successful applicant brought better skills, capabilities, experience to the table.

Mr DALLA-RIVA — Who was the successful applicant?

Mr WOOTTEN — Lucinda Nolan.

Mr DALLA-RIVA — And where is she now?

Mr WOOTTEN — I do not know.

Mr DALLA-RIVA — She is not the CEO.

Mr WOOTTEN — No, she is not. She resigned.

Mr DALLA-RIVA — She was not in favour of the EBA either.

Mr WOOTTEN — You would have to ask Lucinda really.

Mr DALLA-RIVA — We did.

Mr WOOTTEN — I had one meeting with Lucinda. We did a handover. I left in early November. She started the following Monday. We spent 2 hours together, I handed over the issues that were on foot, and I left the CFA.

Mr DALLA-RIVA — So do you suspect that the reason you were not successful was because of your opposition to the EBA?

Mr WOOTTEN — No, that was never given as a reason, and I do not believe that was the case.

Mr DALLA-RIVA — I know it was not given as a reason, but do you suspect in hindsight, given what has occurred since, that perhaps that may have been one of the issues around your non-appointment?

Mr WOOTTEN — No, I do not believe so. The board and I were at one in terms of our position on things like the veto clause, and it was a board committee that made the recommendation on the new CEO.

Ms BATH — It is interesting that you are experienced — you have actually worked in and around the CFA for 15 years technically, have you not?

Mr WOOTTEN — Yes, almost — 14 years, yes.

Ms BATH — So that is a breadth of experience, and in effect you teased apart and knew every part of the finances within that organisation. As someone who organises our own finances, we often know that organisation very, very well by knowing the finances. I guess that is a comment, but you can comment on my comment, if you like.

Mr WOOTTEN — I was across at a high level. I would not say I was into the detail of the budget. It is just too large an organisation for one person to have their finger on every particular issue that is occurring. But, you know, it is about what sort of team you build around you and what sort of reporting and monitoring processes you have got in place from a governance point of view.

Ms BATH — The other comment that you might like to comment on is that we have heard in our hearings in Morwell in particular that there were country CFA volunteers who had been donating their own personal money from their own household budgets to the VFBV to fight the Supreme Court case against the UFU, and the VFBV have subsequently stopped that.

Mr WOOTTEN — They have, yes.

Ms BATH — It is interesting that in effect the CFA has in this instance paid almost \$500 million — —

The CHAIR — Thousand dollars.

Ms BATH — Five hundred thousand dollars — thank you — or half a million dollars, to fund the organisation that they are personally paying to fight, because of these approximately 50 clauses of veto.

Mr WOOTTEN — Yes. As I said at the start, we entered into the arbitration process thinking that we would be successful, so we were disappointed with the outcome, but we had agreed to abide by it.

The CHAIR — As you were CEO in that period from late February through until November, you had responsibility for preparing the 2014–15 annual report.

Mr WOOTTEN — Yes, that would be right. Yes.

The CHAIR — The annual report, to my knowledge and on my examination, makes no comment about the legal case and the almost \$500 000 paid to the UFU in settlement.

Mr WOOTTEN — Right.

The CHAIR — Why is that?

Mr WOOTTEN — I guess it was considered immaterial.

The CHAIR — Half a million dollars, immaterial?

Mr WOOTTEN — The Auditor-General goes through the financial statements. They confirm that they are true and accurate. That is what they did. They certainly did not question the presentation of the accounts or any of the notes to the accounts. We would not highlight other legal transactions that might be \$500 000 regardless of — —

The CHAIR — A very unorthodox legal transaction. I am not aware of a similar case of this nature.

Mr WOOTTEN — From a financial reporting point of view the Auditor-General was satisfied.

The CHAIR — The union reported it.

Mr WOOTTEN — They are not subject to the Auditor-General's purview.

The CHAIR — Did you consider reporting it?

Mr WOOTTEN — No.

The CHAIR — No? I think it would have been material for the community to see a settlement of this nature, and clearly the union felt it was material, but \$500 000 — or almost \$500 000 — of community money that could have been spent elsewhere I think is material. I will record that point. Others may have a different view, but I am surprised that it was not in some way reflected in the annual report. Are there any other questions?

Mr MELHEM — Just one on the last question from Mr Davis in relation to the reporting. If it was a donation from the CFA to the UFU, you would have reported it as a separate item, would you not?

Mr WOOTTEN — If it was a donation?

Mr MELHEM — Yes.

Mr WOOTTEN — It would have been reported in the operating statement as a donation rather than as a legal expense, yes.

Mr MELHEM — And the reason you do not report it as a specific item is because within your budget you will have an X amount toward legal costs, and within that you would have had in your budget an estimated cost toward legal in relation to the EBA discussions. So that is within the budget items; it was not an extraordinary item, so therefore that is why you do not need to report it. There was no requirement to report it.

Mr WOOTTEN — It would have been wrapped up in the total figure for legal expenses, I am presuming from memory.

Mr MELHEM — That is right.

Mr WOOTTEN — We would have had a figure for legal expenses in our other expenses grouping. This payment would have been included in there.

Mr MELHEM — And the Auditor-General would have actually seen that particular item as part of their audit. They would have had access to the breakdown of — —

Mr WOOTTEN — They would have had access to every single transaction. Absolutely.

The CHAIR — If they looked, yes.

Mr MELHEM — So they would have seen it.

Mr WOOTTEN — Whether they looked at it or not I cannot say, though they would have had access.

Mr MELHEM — They would have had access to it, and if that was, according to them, an anomaly, they would have highlighted that to you and said, 'Put it in'.

Mr WOOTTEN — Yes.

Mr MELHEM — Thank you.

The CHAIR — Are there any further questions? Mr Wootten, I thank you and indicate that we may be back to you with further questions, if need be, from the secretariat. I ask you also whether there are any — you took no documents when you left the CFA, so there are no documents to be obtained?

Mr WOOTTEN — I have no documents from the CFA whatsoever.

The CHAIR — And to just reaffirm, there were some documents handed over at the time of handover from Mr Bourke to your recollection?

Mr WOOTTEN — The only document that may have been handed over was the original letter from the UFU seeking payment of legal costs. There was nothing else.

The CHAIR — So we will seek to obtain that document. Thank you, and I appreciate your appearance here today.

Mr WOOTTEN — You are welcome.

Witness withdrew.