

# TRANSCRIPT

## STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

### Inquiry into fire season preparedness

Melbourne — 6 September, 2016

#### Members

Mr David Davis — Chair	Ms Samantha Dunn
Ms Harriet Shing — Deputy Chair	Mr Khalil Eideh
Ms Melina Bath	Mr Cesar Melhem
Mr Richard Dalla-Riva	Mr Daniel Young

#### Participating Members

Mr Greg Barber	Mr James Purcell
Mr Jeff Bourman	Mr Simon Ramsay
Ms Colleen Hartland	

#### Staff

Acting Secretary: Mr Joel Hallinan  
Research Assistant: Ms Annemarie Burt

#### Witness

Ms Lucinda Nolan (sworn), Former Chief Executive Officer, Country Fire Authority.

**The CHAIR** — I declare open this hearing of the environment and planning committee, with its inquiry into bushfire preparedness, and welcome Lucinda Nolan to the table. I also welcome the public to the hearings. I inform you that all evidence taken at this hearing is protected by parliamentary privilege — article 9 of the old Bill of Rights. Therefore you are protected against any action for what you say here today. If you go outside and repeat the same things, those comments may not be protected by this privilege but in here you are absolutely protected.

**Ms NOLAN** — Thank you.

**The CHAIR** — I ask you, Ms Nolan, to first of all make a short statement. You are aware of our terms of reference. You were obviously, until recently, the CEO of the CFA, and you might detail relevant points to our terms of reference and then we will ask some questions.

**Ms NOLAN** — Certainly. I can only, obviously, comment from the activities that the CFA undertook until June in terms of fire season preparedness, but as you would know the emergency management sector has changed significantly since Black Saturday so it is now all emergency services working together with one particular vision and a set of objectives, and it is very big on collaboration and working together to achieve the best outcomes for the community and community safety.

Under the Country Fire Authority Act the CFA has specific responsibilities that are outlined there, particularly around fire season prevention and suppression, and we undertake those activities in a variety of ways, so whether that is by exercising, and that is from the state down to the local level and local communities, multi-agency, single agency — in a variety of ways. We also look at education and awareness raising in terms of particularly local communities, understanding where they are, their environments, how they can best protect themselves and their property.

We also undertake specific activities in relation to fire suppression, whether that is fuel load reduction, burn-offs and also ignition controls. Then probably the last major point is around capability building across the sector. So for us that is specifically local government authorities and similar, so that they understand and undertake their roles in terms of fuel reduction in an efficient and effective way. As far as I know, all of those things are underway, or they certainly were in June.

**The CHAIR** — All right. I am going to ask you some questions with respect to our terms of reference (h), (j) and indeed (k). So that relates to preparation, resources, coordination of planning, preparation with other departments and agencies across government, and the relevant administrative and organisational structures within departments and other relevant government agencies.

**Ms NOLAN** — Can I just say, sir, before we start that in terms of distinguishing between the role of the CEO and the role of chief officer, I will answer to the best of my ability, but this is the domain of the chief officer in terms of control about the CFA's response 24/7, year round.

**The CHAIR** — Preparation, importantly, involves resources and — —

**Ms NOLAN** — Certainly.

**The CHAIR** — Yes. So I am going to ask you whether you have seen the UFU log of claims in relation to the CFA-UFU operational staff enterprise agreement?

**Ms NOLAN** — I have seen a number of versions. It depends on which one.

**The CHAIR** — Okay, and the most recent version you saw?

**Ms NOLAN** — No, I have not seen the most recent.

**The CHAIR** — No, the most recent version that you saw.

**Ms NOLAN** — Sorry, it was the one that contained Justice Roe's final recommendation.

**Ms SHING** — Commissioner Roe.

**Ms NOLAN** — Sorry, Commissioner Roe.

**The CHAIR** — Right. And that would have been around what date?

**Ms NOLAN** — It would have been in the first week of June.

**The CHAIR** — And in your assessment of the log of claims, did you find them to be compliant with the Equal Opportunity Act?

**Ms NOLAN** — We sought significant legal advice on a variety of matters, so for us in terms of due diligence and our fiduciary responsibilities, as a CEO and obviously for the information I provided to the board, we did a very wide-ranging request and search for information, advice and legal opinion, not just pertaining to what we saw as discriminatory or objectionable clauses within the act but also about how we could ultimately resolve it. So we sought as wide as possible a range of information and legal advice. The legal advice that we sought, which was from more than one source, showed quite clearly that there were discriminatory aspects and objectionable aspects within that proposed EB.

**The CHAIR** — And did you provide that legal advice with respect to the Equal Opportunity Act to other parts of government?

**Ms NOLAN** — We put on our website all the information we had to ensure that our members were fully informed about why we were opposing some aspects of the EB. So we put the VEOHRC initial report on the website. After Commissioner Roe handed down his final recommendations, we had VEOHRC review again, in light of those recommendations, whether the discriminatory aspects had been mitigated or ameliorated, and they came back saying that they had not. Then we also sought legal advice from Melinda Richards, Crown counsel, around whether she also felt that they remained, and we provided that information from Melinda Richards to the Minister for Women, Minister Richardson.

**The CHAIR** — Extraordinary.

**Ms SHING** — ‘If they remained’ — do you mean the discriminatory provisions remained in relation to the advice you sought from Melinda Richards?

**Ms NOLAN** — Whether she felt it — she felt that — —

**The CHAIR** — It was her legal view, yes.

**Ms NOLAN** — I may not be quoting her legal view, but it was putting us in an invidious position, I think were her words, in terms of trying to work through the clauses of the EB and our responsibilities under the Equal Opportunity Act.

**The CHAIR** — Could you explain why you, as CEO, would not sign the EBA, or did not support signing the EBA which was presented to you? Was that because it would impede the CFA’s preparation and performance?

**Ms NOLAN** — Certainly. The EB contained a number of aspects, and from a CEO position, where I have got fiduciary responsibilities and I have to make decisions and govern the organisation for the betterment of the organisation and the community, there were four key aspects within the EB. One was the impact on the ability of the chief officer to deploy and allocate his resources. There were the discriminatory aspects within it. There was an overreach of some of the clauses that then negatively impacted either directly or indirectly on our volunteers and other areas of the organisation, such as the BASOs or the brigade administrative support officers.

**The CHAIR** — Sorry, what is a BASO?

**Ms NOLAN** — Brigade administrative support officers. There were aspects or clauses within the EB directly impacting them or that group of workers. The fourth component was really around a requirement of the introduction of 50 clauses stating that we would need to consult and agree with the UFU on particular issues, which we called the veto clauses, and we would say that they were vetoes in disguise, I would say.

**Ms BATH** — Ms Nolan, was that 50 clauses?

**Ms NOLAN** — Yes. There was the ability or the need to consult and agree in the 2010 EB. I think from memory — this is just from memory — —

**Ms SHING** — Sorry, say that again; I missed that. The cameras are going very loudly. I cannot quite hear what you are saying.

**Ms NOLAN** — Sorry. I think there were some clauses within the 2010 EB on the need to consult — and consult and agree. I think — and this is from memory; I apologise — in the proposed EB there were 50 additional clauses, which I think took it to something like 70 within the EB, but that is from memory.

**The CHAIR** — So 70 clauses that consultation and agreement — emphasising the ‘and agreement’ — was required before the organisation could act?

**Ms NOLAN** — Yes, and I apologise; that is from memory. I am confident about the 50 in the proposed EB; the rest, I am going from memory.

**The CHAIR** — Many dozens in any event. What was the impact of the potential requirement for consultation and agreement and an effective veto on the activities of the CFA?

**Ms NOLAN** — Certainly. Again, because this was a very serious issue — the CFA and our ability to operate as an emergency management organisation — we again sought significant advice, significant legal advice and significant legal interpretation. I also spoke at length with MFB, particularly Jim Higgins, around how it actually plays out in practice — —

**The CHAIR** — Who was that?

**Ms NOLAN** — Jim Higgins, the CEO of the MFB.

**The CHAIR** — Jim Higgins, yes.

**Ms NOLAN** — How this actually plays out in practice — because the written word then on how that actually plays out can be sometimes quite different.

**The CHAIR** — Because they have a similar arrangement in their EBA.

**Ms NOLAN** — They do. I think the UFU were seeking to have that similar arrangement with the CFA.

**The CHAIR** — Right, despite it being a very different organisation, given that it is primarily a volunteer organisation.

**Ms NOLAN** — So the current consultation — every good organisation will consult extensively with its membership and its union bodies.

**The CHAIR** — The stakeholders.

**Ms NOLAN** — Without a doubt. It is the agreement that becomes problematic. When you think about an emergency service organisation that has to make timely decisions in terms of capacity and capability, whether that is short term or longer term, when you have to consult and agree, there are a number of ramifications. Obviously you can consult and if you do not come to an agreement, then obviously you can lodge that dispute to go to arbitration. The problem is then the union can, say, lodge a dispute saying that we haven’t consulted enough, and it becomes this vicious circle of having to have — —

**The CHAIR** — Ping-pong.

**Ms NOLAN** — Well, you have to have the consultation dispute resolved before you can actually go to the main issue of the dispute to be resolved, and in the interim, the status quo remains.

**The CHAIR** — Could that happen in a fire season in a difficult, threatening environment?

**Ms NOLAN** — When you look at the proposed clauses around the need to consult and agree, it could occur at any time at any stage about anything. Similarly with the EB, there was an additional change that moved from

having to consult on significant change to having to consult on any change, and that opens obviously the floodgates for us to be held up at Fair Work on a daily basis.

**The CHAIR** — Did you fear in this context that the ability of the organisation could be compromised by this consultation/veto clause?

**Ms NOLAN** — I think from the legal advice that we received and from the experience of the MFB that was definitely my concern.

**The CHAIR** — Would that have put Victorians at risk potentially?

**Ms NOLAN** — I think it would certainly hamper the ability of the organisation to make strong decisions when they needed to —

**The CHAIR** — Swift.

**Ms NOLAN** — in a timely, agile and flexible manner.

**The CHAIR** — I have another question, and that is with respect to the former minister, Jane Garrett. Did she meet with the board and with you as the CEO?

**Ms NOLAN** — Yes. The minister came out and met with the board on a number of occasions, just as the minister and her expectations obviously of the CFA and other emergency service organisations. In terms of the EB specifically, we would have a weekly meeting at the minister's office for not only the MFB but also the CFA to discuss progress we were at and how it was tracking.

**The CHAIR** — Would you say that you had a good relationship, and the board had a good relationship, with the former minister?

**Ms NOLAN** — Yes, I would.

**The CHAIR** — Thank you.

**Ms SHING** — Thanks, Ms Nolan, for your evidence this morning and for answering the Chair's questions. I would like to take you to a number of the elements of the evidence that you have given already around what you have indicated to be a potential impact on the capacity of the organisation — to quote you back at yourself — to 'make strong decisions in a timely, agile and flexible manner'. Now, we have had witness evidence to this inquiry from so many different witnesses who have indicated that community safety is at the very forefront of what the CFA does, what the VFBV prioritises, what the UFU prioritises and what volunteers and brigades all over the state prioritise, so why is it that with a former agreement, or an agreement that remains in place while the proposed agreement is yet to be determined, that community safety was not compromised previously but is now all of a sudden at risk to the point where you could not continue in your role?

**Ms NOLAN** — I think, because the proposed EB has not been implemented yet, we are still relying on the 2010 enterprise agreement, and therefore the 50 clauses where there is a requirement to consult and agree have not been implemented yet.

**Ms SHING** — But, as by your own evidence, you have indicated that there were already 20 in the agreement from 2010 that operated and were in place that did not prevent you from doing your work.

**Ms NOLAN** — I think you will find that those 20 are not in any way, shape or form in the way that the 50 are; and the 50 are, as I said, moving from 'significant change' to 'any change' and then covering off any decision or any accountability of the CEO and the chief officer. It makes it quite difficult for us to make any decisions in a timely manner, and I think you will find in my discussions with the MFB — so with Jim Higgins and others — that they struggled continuously to make timely decisions.

**Ms SHING** — But the MFB is a very different organisation to the CFA, is it not? The CFA is a volunteer-based organisation.

**Ms NOLAN** — I think the ability for management to make decisions is irrespective of what emergency service organisation it is. So whether it is policing, whether it is MFB, whether it is CFA or whether it is

ambulance, management must have the ability to make those timely decisions because we wear the accountability. So for any issues that go wrong, any concerns that happen — if there is another Black Saturday — we will be the ones who will be called to give evidence about why we did or did not do things.

**Ms SHING** — So how can you say, then, with any confidence, given the existence of those 20 provisions and given a proposed agreement which still is not yet settled in terms of its legal standing, that these issues were of such a dire nature that you were not in a position to be able to implement them?

**Ms NOLAN** — Because nothing has changed. Those issues are still there. Because the EB has not been signed, it does not make them any less powerful or impacting on the organisation. I left the organisation because I was given a clear alternative whether to sign the EB or to resign, and obviously I chose the latter.

**Ms SHING** — And why was it that you chose not to be part of delivering organisational and operational and structural change to improve a fire service that has in fact been the subject of so much criticism from so many reports and inquiries about relationships that need to be repaired and that have been in such a fragile state for so many years that they warrant a group effort to fix?

**Ms NOLAN** — When I took on the role of the CEO my entire hope and want was to make the CFA a better place when I left. I certainly was not going to make any decisions or sign any agreements that would make the organisation a worse place.

**Ms SHING** — And why is it that you were so convinced that this proposed agreement — which, again, still has no legal standing — would make the place so much worse in light of the fact that what we have heard from serious and significant inquiries is that there are operational, structural and systemic challenges and problems right the way through the organisation that go much further than an EBA? Why did you not see fit to actually remain to address those challenges if your desire was to improve the CFA and to leave it in a better state than you had found it?

**Ms NOLAN** — Two reasons. No. 1 was because there was not an opportunity to stay if the EB was not going to be signed or supported by me, in its current form, in June. There was not an opportunity to say, ‘These are still up for negotiation’ or ‘This is going to change’. The EB was accepted as it was. It was not going to make the organisation a better place. It is destructive and divisive. I could not stay and oversee the destruction of the CFA.

**Ms SHING** — You think this will mean the destruction of the CFA?

**Ms NOLAN** — I think this has the potential to negatively impact the organisation, community safety, our volunteers and our volunteer contribution and other groups within the organisation that are not covered by the UFU or not covered by this particular EBA. The discriminatory aspects that discriminate against women and people with disabilities — —

**Ms SHING** — That is not what the legal advice actually says though. Melinda Richards — the legal advice says there are some elements of this proposed agreement which may be unlawful.

**Ms NOLAN** — Can I refer you to the advice provided by Corrs Chambers Westgarth and the advice provided to us by VEOHRC.

**Ms SHING** — I would like to also ask you in relation to the Roe recommendations that resulted in the final version of the agreement that was then the subject of a resolution by the board. There is a provision there, 7A, which refers to

... nothing in this agreement shall prevent volunteers —

from doing their work as —

volunteers without remuneration.

You have just referred to the destruction of the CFA as a consequence of this proposed agreement, and yet there are specific provisions in the proposed agreement which go to the very heart of the issues you have referred to. You will forgive me, but what I am hearing around this sky-is-falling-in evidence from you is not dissimilar to

that which the VFBV raised in its evidence, which is not dissimilar to a letter which was written to the fire services head in 2006 around the agreement which was being negotiated then.

**The CHAIR** — Albeit true.

**Mr RAMSAY** — There will be a question here in a minute, I assume.

**Ms SHING** — Thanks, Mr Ramsay. This is my good opportunity, and I do not intend to squander it. So on that basis, when does the sky fall in? Because the sky did not fall in after 2006. The sky did not fall in because of an industrial instrument that had to be negotiated to provide fair terms and conditions for workers. There are structural and operational and organisational challenges — huge cultural problems with the organisation. Why did you walk away from that?

**Ms NOLAN** — I repeat: in terms of due diligence and the appropriate fiduciary responsibilities as a CEO and the advice that I gave to the board, I sought advice, wide and far, from a variety of legal people with different expertise — renowned experts within Australia and Victoria in terms of either industrial relations, in terms of discrimination, in terms of objectionable terms — and their information, their advice, their legal opinion is what has guided me in making my decisions. I did not make my decisions off the top of my head and leave a very secure job that I loved; I left because my integrity was called into question and I was not going to sign that EB.

**Ms SHING** — You referred to updating people on the website and making sure the information was current. Were you part of developing or authorising documents such as *Ops EBA information*, a document dated 20 May, which was published on the CFA site, that contains two columns: ‘What is being said’ on the one hand and ‘The facts’ on the other? Were you part of developing that?

**Ms NOLAN** — Yes, I was. I am sorry; part of developing it in terms of the content?

**Ms SHING** — Yes.

**Ms NOLAN** — That was probably undertaken by people other than me.

**Ms SHING** — By other people, and yet it ultimately rested with you.

**Ms NOLAN** — Certainly.

**Ms SHING** — Sure. I will take you to one element of it:

The UFU clause does not mean 7 paid firefighters will need to be on-scene before volunteers can start firefighting.

That is the claim. You put out a fact on the side of that, authorised by you:

While volunteers will be able to begin firefighting immediately, paid firefighters will not be able to join them in fighting the fire until there are 7 staff present at the incident.

**Ms NOLAN** — Yes.

**Ms SHING** — That is not correct; is it?

**Ms NOLAN** — It was at the time, yes.

**Ms SHING** — So as at 20 May that was correct?

**Ms NOLAN** — Yes.

**Ms SHING** — Right; so that has changed since then?

**Ms NOLAN** — Yes. Once we went to the Fair Work Commission under Commissioner Roe, Commissioner Roe made modifications to the seven on the fireground. He moved it from having to be physically present on the fireground to deployed.

**Ms SHING** — Dispatched?

**Ms NOLAN** — Dispatched.

**Mr RAMSAY** — That is what we heard at the last inquiry.

**Ms SHING** — Yes. There is another claim there:

The operational EBA will not undermine volunteers.

And then you go on in the fact column on the right-hand side:

There are numerous clauses that either directly or indirectly impact on volunteer members —  
for example, a requirement that paid firefighters report only to other staff. And:

Clause 45.15 prevents volunteers and paid firefighters working on the same truck ...

Clause 45.14 requires 4 paid staff on every truck unless otherwise agreed ...

Clause 90 ... seeks to limit uniforms to only paid firefighters ...

Clause 55 requires rehabilitation units be operated only by paid firefighters.

Clause 17 restricts delivery of community education by predominantly staff, and mandates that volunteers may only do so when paid firefighters are unavailable.

**Mr RAMSAY** — Are you going to read the whole EBA, are you?

**Ms SHING** — I am reading a document that has been produced — —

**Mr RAMSAY** — Four hundred pages.

**Ms SHING** — Well, if we are going to go to the issues here around your capacity not to do your job under the circumstances of the proposed agreement, Mr Ramsay, then I suggest this is directly on point. These clauses also fall away as terms of contention following the Roe recommendations, do they not?

**Ms NOLAN** — I would have to have a look at them, but I do not think so. In what regard — —

**Ms SHING** — Nothing in this agreement shall prevent volunteers from doing their work as volunteers without remuneration.

**Ms NOLAN** — I refer you to Frank Parry's legal advice that we sought after Commissioner Roe's recommendations. His advice is quite clear that those side agreements or statements contained within that make no impact on the actual content of the EB.

**Ms SHING** — It is part of the EB.

**Ms NOLAN** — That is right.

**Ms SHING** — The provision that says that nothing in the agreement shall impact on volunteers or prevent them from doing their work as volunteers is a part of the proposed agreement.

**Ms NOLAN** — Correct. However, it does not override the specific clauses as mentioned in that column that actually do impact on the volunteers, according to Mr Parry, a legal expert.

**Ms SHING** — So you said you got legal advice from far and wide, and on that basis — —

**The CHAIR** — No, she said very specifically Frank Parry.

**Ms SHING** — No, in earlier evidence you said you sought advice from a range of different sources on a number of different things; you said operational, discriminatory, permissible or non-permissible clauses. In the course of doing that you actually sought advice from a firm by the name of Seyfarth Shaw, did you not?

**Ms NOLAN** — We did, yes.



**Ms SHING** — Yes, and that recommended a process of undermining the union’s capacity to represent its members, did it not?

**Ms NOLAN** — The request to them was: ‘Can you give us some options around how this EB will play out? What are some options we can have to resolve it?’.

**Ms SHING** — Why did you go to a firm in the US that specialises in union-busting?

**Ms NOLAN** — We did not go to a firm in the US. I went to a — —

**Ms SHING** — They have got form in relation to union busting in other jurisdictions.

**Ms NOLAN** — I certainly have no idea what their background is in the US. They were recommended to us as being experts in terms of industrial relations and EBs.

**Ms SHING** — Who recommended them to you?

**Ms NOLAN** — That is a very good question. I think one of the members from CFA, from our organisational leadership team.

**Ms SHING** — And how did you select the way in which legal advice was sought? Was that done through the chair or the board?

**Ms NOLAN** — Well, it depends. It normally would have been done by the organisational leadership team and our IR team specifically.

**Ms SHING** — And how was the board kept up to date in relation to the legal advice that was being sought?

**Ms NOLAN** — To the legal advice? It depends. They would be given general briefings around where we were at and what we were doing. We would also inform them about specific areas that we might be seeking further advice in. We also relied heavily on Corrs Chambers Westgarth in terms of who actually had the expertise in particular areas to make sure that we were targeting the best legal minds in the country in terms of these regards.

**Ms SHING** — So would the chair have known about the sorts of strategic and legal advice that you were seeking?

**Ms NOLAN** — The chair would have known that we were seeking all advice on how best to deal with the more contentious components of the EB and how best to resolve it for the board. Now, whether the chair knew the specifics — because with that Seyfarth advice, obviously we never implemented those more contentious or hardline approaches, because that is not our intent. Our intent was always to ensure that we were open and transparent with our membership, that we provided them the information that they needed so they could form their own decisions and that, because of the history prior to me arriving, around the breakdown of the relationship between management and its membership, we would never take a hard line around the union and we certainly would not take a hard line in terms of disciplining our membership while this EB was going.

**Ms SHING** — Did you seek advice on withholding pay from firefighters in relation to the negotiation process?

**Ms NOLAN** — No, I did not.

**Ms SHING** — No. Mr Peberdy has previously given evidence to this inquiry that he was not part of any decision in relation to excluding the union from representation of employees at a workforce level and he was not part of receiving any advice in relation to exercising a course of action that involved individual workplace agreements or contracts being offered. Were you?

**Ms NOLAN** — No, that is exactly what I am saying. Seyfarth came back with a series of options across the spectrum, so, ‘Here are the different avenues or options you can take to resolve the EB’. Obviously we were not going to go hardnose, and I think that is very, very obvious in terms of the solutions or the outcomes we sought to address. So obviously our no. 1 aim was to roll over the 2010 EB, making sure that we got appropriate compensation and recompense for our members. We never, ever, ever made a move to implement any of those

more hardline, and I think that is very, very obvious from how we have conducted ourselves over this entire journey.

**Ms SHING** — So that is compelling evidence. However, what would you say to the observation made by somebody in your presence that when given a choice about whether the CFA would have to make concessions on this negotiation or destroy the union, you were overheard to say words to the effect of, ‘Well, then, we’ll just destroy the union’?

**Ms NOLAN** — That is absolute nonsense.

**Mr RAMSAY** — What advice are you getting on that, Ms Shing?

**Mr DALLA-RIVA** — This is typical Labor, typical Labor smear. Here we go. Typical Labor smear.

**Mr RAMSAY** — You have had a fair go.

**Mr DALLA-RIVA** — Here we go, we are going to bully another woman.

**Ms NOLAN** — Not only do I deny it —

**Mr MELHEM** — That is appalling.

**Ms BATH** — From fact to fiction here.

**Ms NOLAN** — but I think if you look at my actions I have acted with integrity and honesty. Everything that I have done in terms of this EB, I have made sure that the facts were put out. It has never become personal from my perspective. I have never — —

**Ms SHING** — So you never made that comment?

**Ms NOLAN** — I have already stated that I have not made that comment.

**The CHAIR** — Who said this?

**Ms SHING** — Thank you very much, Ms Nolan. No further questions.

**The CHAIR** — Can I just check one thing. So the EB that you were referring to, Ms Shing, in that process, that is the cabinet approved one?

**Ms SHING** — This is the one that went through the board resolution for — —

**The CHAIR** — So the cabinet approved one.

**Ms SHING** — I am talking about the one that was the subject of the board’s resolution.

**The CHAIR** — Right. Thank you.

**Mr RAMSAY** — Thank you, Ms Nolan. It is a pleasure to see you again. Last time we met, you were actually a witness in the Fiskville inquiry, when you were a new CEO brimming with enthusiasm, looking forward to working with the CFA to change the culture at the time. I know that you were appointed by the Premier himself in that position, so how quickly the wheels change, sadly for the worse for the CFA. I have a couple of questions initially. My first question to you is: did you meet with James Merlino in his role as Minister for Emergency Services during your role as the CEO?

**Ms NOLAN** — No.

**Mr RAMSAY** — Did you provide Mr Merlino with advice as to why the board and you as CEO refused to sign the EBA?

**Ms NOLAN** — I am sorry, could you repeat that?

**Mr RAMSAY** — So in relation to your role as CEO, did you have discussions with Mr Merlino in relation to your concerns around the EBA?

**Ms NOLAN** — No, I did not.

**Mr RAMSAY** — Mr Tudball, a board member of the CFA, indicated to us in a previous hearing — —

**The CHAIR** — Former board member.

**Mr RAMSAY** — Former board member, sorry. There will be a lot of former board members and current board members which I will refer to in their current status. But he indicated to us that he could not in all consciousness sign an EBA that would compromise his role as a director or board member and his responsibility or fiduciary responsibility. So did you express the same concerns to Mr Merlino at all at any time?

**Ms NOLAN** — I have never had a conversation with Mr Merlino.

**Mr RAMSAY** — In your capacity as CEO, did you meet with Mr Peter Marshall during the negotiations of the EBA?

**Ms NOLAN** — I have met Mr Marshall on occasion, but I have never met him in regards to the EBA.

**Mr RAMSAY** — At any stage did Mr Marshall or any member of the UFU attempt to bully or intimidate you into signing an agreement that could hand additional powers to the UFU?

**Ms NOLAN** — No.

**Mr RAMSAY** — Did anyone intimidate or bully you into supporting the EBA — the version of the EBA that was currently before you as CEO of the CFA?

**Ms NOLAN** — Look, as I said before, I think it was very clear that the alternatives in terms of my tenure as CEO were to sign and/or support the proposed EB or to resign.

**Mr DALLA-RIVA** — Who gave you those choices?

**Ms NOLAN** — They did not specifically give me those choices, but certainly the media commentary and the action taken against the board made it quite apparent that this EB was going through irrespective. Obviously — —

**The CHAIR** — It was endorsed by cabinet.

**Ms NOLAN** — That is right.

**Ms SHING** — Well, you have indicated that it was your decision, though, that you could not countenance — —

**Ms NOLAN** — That is right. That is what I am saying.

**Ms SHING** — signing off on the agreement.

**Ms NOLAN** — That is exactly right.

**Mr RAMSAY** — I have not quite finished yet.

**Ms SHING** — Everyone has had a go, though, Mr Ramsay. It is nothing unusual for this committee.

**Mr RAMSAY** — Ms Nolan, were you concerned when there were allegations that Mr Marshall would put an axe into the head of Ms Garrett?

**Ms NOLAN** — I heard that, sir, after I had finished my tenure with the CFA.

**Mr RAMSAY** — So, given what was allegedly said, even in a tweet, were you concerned for your own safety in relation to Mr Marshall's actions and intimidation of women generally but particularly to Ms Garrett and Ms Richardson?

**Ms NOLAN** — As I said, I had already left the CFA, so for me any of that sort of behaviour had finished.

**Mr RAMSAY** — I just go back to the 2010 EBA, where you have indicated that normally under an EBA — the 2010 was more concerned with terms and conditions of employment — salaries, where the additional 50 clauses required consultative committee agreement between the UFU and CFA. And they were your major concerns as CEO of the CFA. In the current MFB negotiations, have you had discussions with your counterpart when you were CEO in relation to their concerns currently with their own EBA with the MFB on those power-of-veto clauses in their EBA?

**Ms NOLAN** — Yes, certainly. So, as I said, most Fridays there was a regular scheduled meeting at the minister's office of both the CFA and the MFB and with representatives from IRV around the EB progressing, so obviously we discussed at length the issues not only confronting the CFA but also the MFB and what was occurring in practice for them in terms of similar clauses.

**Mr RAMSAY** — Do you think Ms Garrett has been treated harshly by the Premier and cabinet in relation to her resignation?

**Ms SHING** — Through the media.

**Mr MELHEM** — What does that have to do with the price of fish?

**Ms SHING** — Let us have a bit of bald speculation here.

**Mr RAMSAY** — She was the Minister for Emergency Services.

**Mr MELHEM** — What does that have to do with the terms of reference of this committee?

**Mr RAMSAY** — She can answer if she wants to.

**Mr MELHEM** — On a point of order, Chair, we need to stick to the terms of reference, which talk about the fire preparation for this coming season. It is not about — —

**Mr RAMSAY** — Ms Nolan was directly responsible to the Minister for Emergency Services.

**The CHAIR** — On the point of order, this is clearly a matter that has been discussed across a number of hearings, and it relates directly to the terms of reference. Terms of reference 1 and 2 both relate to these matters, so please proceed.

**Mr RAMSAY** — Do you want me to restate the question?

**Ms NOLAN** — Yes, thank you.

**Mr RAMSAY** — My question to you was: as CEO of the CFA at the time your Minister for Emergency Services was Jane Garrett, I ask you: do you believe that the minister then, Jane Garrett, was treated harshly by the Premier and the cabinet specifically in relation to the role that she played as Minister for Emergency Services and her sacking — basically a sacking — from that position?

**Ms NOLAN** — From a personal note I was very disappointed that the minister chose to resign. In terms of it, she was a wonderful advocate and supporter of the CFA and she understood some of the issues that we were confronting in terms of the proposed EB. So personally I was very, very disappointed that she did resign.

**Mr RAMSAY** — And just lastly, Chair, if I can. Currently as I understand it the latest version, which I think is 17.2 — —

**Ms NOLAN** — I think it has gone on from there, sir. I think it was 17.3 when I left.

**Mr RAMSAY** — Five, six, seven, eight — whatever, it is cabinet approved, apparently, yet not signed off, with significant changes through its life and caught in a Supreme Court injunction in relation to the Volunteer Fire Brigades Victoria, and a hearing is due I think somewhere around 3 October. Also we have legislation currently before the commonwealth in relation to protection of volunteerism in relation to another piece of legislation to protect our CFA workers. So given all of that, do you find it strange that this government is still supportive of an EBA that is facing a number of legal challenges in a number of jurisdictions?

**Ms NOLAN** — I think that the legal impediments remain, which are problematic for any board and any organisation. Obviously when our board was given the ultimatum about signing it was not because they did not wish to continue to negotiate or consult; it was because they had legal barriers that they could not sign it, and I am not quite sure how far those legal barriers have moved.

**Ms DUNN** — Thank you, Ms Nolan, for your submission so far and for holding up. Firstly I wanted to turn to the Seyfarth Shaw advice that you sought. I know when you were answering the question of Ms Shing she asked about who recommended that particular company for you to use, and I think you answered, ‘A CFA member’. I just wanted to seek clarity. Did you mean a CFA board member or a CFA member?

**Ms NOLAN** — I am not even sure if that is right. I do apologise. Because we were seeking so much legal advice I cannot remember the source. But they came very highly recommended as being experts in that type of industrial environment.

**Ms DUNN** — Thank you. You also talked about the series of options as part of that advice that you received in terms of that there was a decision made to not pursue those options. Can you advise whether it was yourself or the board who made the decision around pursuing or not pursuing those options?

**Ms NOLAN** — From memory it was me, Joe Buffone and the industrial relations team, and including advice, again. We received that overarching advice about what were our options, and again we did consult more widely than that group, but again there is already a toxic culture and relationship between managers and staff, and this would just exacerbate it. So for us it really was not an option at any stage.

**Ms DUNN** — Did the advice go to the board at all for their consideration?

**Ms NOLAN** — I do not believe so.

**Ms DUNN** — Thank you. Also in your evidence you talked about a number of key aspects of the EB that you are concerned about. One of those you talked about was overreach and negative impacts on volunteers in other areas such as BASOs, which I understand are brigade admin support officers. I am just wondering if you can elaborate in terms of if that enterprise agreement plays out, what in fact the impacts would be on BASOs throughout the CFA.

**Ms NOLAN** — Again this is from memory because I do not have the EB in front of me, but the clause read something like that when a particular BASO either resigned or moved on from a position, then that vacancy would be taken up by a career firefighter. So we have got these people in these particular areas that have been recruited on their skill set, which is around a lot of engagement, consultation — specific skill sets that may not only not fall within the remit of a career firefighter, but they also may not be interested in them. Again this was impacting on a work group that was not covered by this particular EB.

**Ms DUNN** — Is the BASO role generally undertaken by volunteers?

**Ms NOLAN** — No, I think they are under the PTA agreement from memory.

**Ms DUNN** — In terms of that particular element, and going to the fire preparedness, I am just wondering about the relationship between the negative impacts that you have highlighted in your evidence and the ability to undertake fire preparedness activities, particularly for this upcoming fire season. I guess I am interested in your views of how that plays out in terms of how well the state is prepared for the summer that is coming.

**Ms NOLAN** — Certainly. So I would believe that the CFA is continuing in its activities that it would normally take in terms of fire season preparedness. We still have the BASOs in place with the appropriate skill set. They are there to support particular and individual brigades. We have a highly skilled set of community engagement teams, again other people that have been recruited for their specific skill set, and I am very hopeful

that that and those activities would have been continuing and that Victoria is going to be well protected this season.

**Ms DUNN** — In terms of other areas, it is my understanding that also there is the potential to impact on volunteers who currently have Hazmat accreditation, and there are some impacts, in relation to what the EBA suggests, on them. Is that your understanding?

**Ms NOLAN** — It is, but again without the EB I would have to have a look again to refresh my memory on those specifics. There were other groups, not only the BASOs, that were impacted around some of the content of the EB, and these were work groups that were not covered by this particular EB, but some of the clauses would impact on them either directly or indirectly.

**Ms DUNN** — And that is despite even that clause which Ms Shing mentioned earlier — 7A — around, I guess, enshrining the role of volunteers. It was your understanding that there were still impacts regardless of 7A?

**Ms NOLAN** — Again we sought significant legal advice around that and what remedy that inclusion in the EB would provide for the contentious clauses, and that legal advice from a number of sources came back and said it would not impact; it would not remedy the issues outlined or identified.

**Mr DALLA-RIVA** — Thanks, Ms Nolan, for your evidence thus far. As a former police officer, you were highly regarded in the Victoria Police —

**Ms NOLAN** — Thank you.

**Mr DALLA-RIVA** — you would say?

**Ms NOLAN** — You can say, Sir; I may not say it myself.

**Mr DALLA-RIVA** — I think it would be fair to say, and you reached the very high position of deputy commissioner of police —

**Ms NOLAN** — That is right, yes.

**Mr DALLA-RIVA** — and undertook acting roles as the Chief Commissioner of Police in Victoria.

**Ms NOLAN** — Yes.

**Mr DALLA-RIVA** — I was drawn by one of your comments in terms of the EBA, and I tried to write it down in notes taken at the time: ‘My integrity was called into question’. What do you mean by that?

**Ms NOLAN** — I am not quite sure what context I was using it in, but I think it was about the decision on whether to support the EB.

**Mr DALLA-RIVA** — To stay or go.

**Ms NOLAN** — Yes.

**Mr DALLA-RIVA** — And what do you mean by, ‘My integrity was called into question’? Is this about the integrity that you have as a former police officer, the integrity that you have in the job that you took — what did you mean?

**Ms NOLAN** — I think integrity as an individual. So that if I have put in to take a very prestigious and wonderful position of the CEO of the CFA — and the CFA is an incredible organisation that is revered around the state — then decisions I made in terms of my responsibilities to that organisation had to be in their best interests and had to be in the best interest of the community.

**Mr DALLA-RIVA** — So as we head into a fire season, and we have had evidence that Victoria is probably the second most at-risk fire-prone area in the world, if this EBA as you know it was to come into play, would we be prepared to deal with another significant fire season?

**Ms NOLAN** — I think that from the legal advice we have received, as I said from a variety of sources, their belief is that there would be impacts, particularly around, as I said, decision-making within an environment of emergency.

**Mr DALLA-RIVA** — And that is pretty significant. As an operational former police officer and obviously the CEO, you would be concerned about the operational aspects of the capacity of the CFA to do its job?

**Ms NOLAN** — Certainly.

**Ms SHING** — The legal advice raises operational issues. Is that what — —

**Mr DALLA-RIVA** — No, I am talking about the capacity operationally to deal with decisions on the ground that —

**Ms SHING** — That is all right. I am just wondering about the reliance on legal advice; that is all.

**Mr DALLA-RIVA** — probably none of you people here would probably understand except — —

**Ms SHING** — Lawyers.

**Mr DALLA-RIVA** — Yes. We need more lawyers, Ms Shing.

**Ms SHING** — Apparently there was no shortage of them, Mr Dalla-Riva.

**Ms NOLAN** — In addition to that, we did also seek the operational impacts from a variety of sources, so not just the MFB but from our more experienced CFA members, to ensure that we did have a very clear understanding of what those operational impacts were. Obviously that is not something we would seek legal advice around.

**Mr DALLA-RIVA** — And how was that sought? Like, what was that? Was that just being out and visiting?

**Ms NOLAN** — No, we actually had a dedicated team. We brought in a group of our most experienced members, gave them the clauses and also, given that many of the clauses interrelate or interact with each other, to give us some scenarios about how they would actually play out in reality.

**Mr DALLA-RIVA** — So the operational decisions would be, for example, the chief fire officer, Mr Buffone?

**Ms NOLAN** — Yes.

**Mr DALLA-RIVA** — You would also take advice from the minister and the advice that she would give on the operational impact?

**Ms NOLAN** — Not so much, no.

**Mr DALLA-RIVA** — Not so much, but mainly the chief fire officer.

**Ms NOLAN** — Certainly, and his staff, yes.

**Mr DALLA-RIVA** — And his staff. He resigned.

**Ms NOLAN** — Yes.

**Ms SHING** — So the advice was all post 3 June, though, because the agreement is different. This is the thing.

**Mr RAMSAY** — He does not need help, Ms Shing.

**Ms SHING** — We need to be very clear about the evidence, Mr Dalla-Riva.

**Mr DALLA-RIVA** — The great thing is about this is they cannot sack me from the committee. So you have had the advice from the chief fire officer, the CFA board themselves, and Mr Peberdy also had concerns about

the operational aspects of the proposed EBA as it was. The minister, Minister Garrett then, had concerns about the operation of the CFA and the EBA. So clearly you are wrong and the government was right. What do you say about that?

**Ms NOLAN** — I stand by the decisions that I made, based on the best evidence that I could gather. Again, my fiduciary responsibilities require me to seek as much evidence, opinion, advice to make the best decisions I can on behalf of the organisation, and that is what I did.

**Mr DALLA-RIVA** — And Mr Peberdy said of the decision to sign the EBA it felt like he had a gun to his head. Did you have the same feeling?

**Ms NOLAN** — I think my perception was that I was given a decision of two alternatives: to support it and/or sign it, or to resign.

**Mr DALLA-RIVA** — How did you feel? I mean, we have taken evidence from other members of the CFA board, and they were gutted. What would be the words that you would use upon you making that decision that you wanted to make the right decision for the CFA, you wanted to make the right decision for Victoria, but you ended up walking away? How did you feel?

**Ms NOLAN** — I think the prelude to that was that it was more about the timing. So when those alternatives were put on the table for the board and for me we were legally unable to accede to that request. Obviously the Supreme Court injunction was number one. There was also the issue with the employer needing to sign a statutory declaration around an EB when they forward it to the Fair Work Commission stating that it does not contain discriminatory or objectionable clauses. Obviously I could not do that, because we had a number of opinions stating quite clearly that there were or there could be, and obviously if you sign a false statutory declaration, as you would well and truly know, that is an offence looking at, I think, four years imprisonment, from memory. There was also the volunteers charter, so the legal, statutory requirements for us to support volunteers and their contribution was a blocker. I think obviously our fiduciary responsibilities as directors/CEO also provided a legal barrier for us to actually sign it. So was I gutted because I could not legally sign an EB? Yes, I was.

**Mr DALLA-RIVA** — Final question: you said you were given an ultimatum, or along those lines — you were given a decision. Who gave you that ultimatum?

**Ms NOLAN** — As I said, no-one actually spoke to me and said, ‘Here are your choices’, but from the conduct and discussions with the board and other commentary in the media I think it was very apparent.

**The CHAIR** — Can I just ask a follow-up. You mentioned that you took advice from a number of senior fire officers below the chief fire officer. How did that happen? Was there a panel or was there a —

**Ms NOLAN** — We called them together as a working group.

**The CHAIR** — And was that documented?

**Ms NOLAN** — Yes. Certainly their scenario development and looking at individual clauses, that was certainly documented and provided.

**The CHAIR** — So we could obtain those documents; the CFA would have those?

**Ms NOLAN** — Certainly.

**Mr MELHEM** — Ms Nolan, thank you very much for today. I just have a few questions. You talked about a toxic culture when you came into the organisation that already existed between the paid firefighters, career firefighters and management. If that was the case, I am trying to work out then why you — the CFA board and management — took the approach to get legal advice on how to pour more oil on the fire, the way I look at it, from the legal advice you got about union busting and so forth. Should you not have done the opposite and tried to rebuild the bridges and work cooperatively with the unions and workers instead of saying how you are going to take them on?

**Ms NOLAN** — Certainly.



**Mr MELHEM** — I am trying to work out why you took that approach.

**Ms NOLAN** — I understand your question, but what I would do is suggest you look at the terms of reference in regards to what we requested. It was never a request or requirement for how to bust the union. The request was, 'Here is our predicament. Here is the proposed EB. What are the options that we have from here to resolve this appropriately?'. That was the request. What came back is obviously different, and as I said, it was never counted or considered by us as an appropriate way forward given that toxic relationship.

**Mr MELHEM** — Was that discussed with the minister or the minister's office, that legal advice?

**Ms NOLAN** — No.

**Mr MELHEM** — Now, go back — —

**Ms NOLAN** — Sorry, as I said, it did not go further. That was brought back to us as a group, so it was myself, Joe Buffone and our industrial relations team, and it was immediately — —

**The CHAIR** — Scotched.

**Ms NOLAN** — Scotched.

**Mr MELHEM** — So what action had you taken since you became the CEO to actually fix the toxic culture at the CFA? I think it is very important.

**Ms NOLAN** — Certainly.

**Mr MELHEM** — What we hear — and you can correct me if I am wrong — is that career firefighters and volunteer firefighters on the ground work perfectly well together. There is no issue when they are fighting fires.

**Ms SHING** — That is the evidence we have had.

**Mr MELHEM** — That is the evidence and that is what I am hearing. But then what action had you taken as management to repair that?

**Ms NOLAN** — Obviously I have arrived and it has been a fairly tumultuous time for the CFA. So I arrived, we had the Fiskville parliamentary inquiry, the fire services review and obviously the ongoing EB — and other EBs, not just this EB under discussion. So for us it was around, first off, leadership. So it is the leadership of the organisation, being open, transparent and authentic and making sure that we communicate as much as possible, as often as possible, to our membership, to understand and to explain where we are at and what we were doing.

Some of the first changes we made were to the representation of our organisational leadership team. So previously, prior to me arriving, there probably was not the frontline, operational focus and representation at the table, so we changed our organisational leadership team to include not only the chief officer but the four deputy chief officers, and we had the representation of assistant chief officers on a rotating basis for three months. So making sure that the information, the evidence and the input was very balanced and that we understood exactly where the organisation was and what were some of the impacts.

Prior to me arriving, and again in an effort to address it, they developed values for the CFA, so looking at really putting up, 'Here is what the organisation stands for. Here are the values that we will all abide by', so looking at clear direction, clear leadership, clear values of the organisation, then also looking at a clear direction. So what we developed under my time with the development of the red paper, which was a strategic think piece around what were the emerging issues and trends that were going to impact on the CFA over the next 10 years and making sure that we had very clear conclusions and recommendations leading into a capability plan, were leadership and clear direction for the future.

Then we started working on having supportive organisational structure, organisational capacity and capability, supportive policies, systems, and by that I mean making sure that we were looking at rewarding recognition, sanctions, promotions, selections — all of that sort of HR type — to make sure that we were actually supporting the culture that we wanted and where we should be heading, so they are the things that we kicked off.

We also looked at the fact the CFA does not have a professional standards department, so we were in the process of actually establishing one of those. So having a very clear understanding of the values and the behaviour and the standards required of the organisation, and making sure that we could then start strategically building to probably start moving.

In terms of building and mending other relationships, obviously it was a little easy with my membership than it was with the UFU, and the issues obviously were — —

**Mr MELHEM** — UFU members?

**Ms NOLAN** — No, sorry, the UFU as an industrial body. We needed to mend the bridges with the UFU, with no doubt about it. The problem obviously was having the EB ongoing made that very problematic, so we were hopeful that we could resolve the EB sooner rather than later and then really contribute time to mending that relationship. Part of that relationship mending was we set up a consultation unit so that the UFU could be confident and reassured that we would consult, consult fully in a standardised way, so that they would have the ability to input as much as possible.

**Mr MELHEM** — On that point, I read the 2010 agreement and the proposed agreement, and really in relation to the consultation I do not see a huge difference between the two EBAs. It talks about you consult, you want to make change to affect individual employees — it uses the term ‘employees’, career firefighters — and if there is no agreement, there is a dispute-settling procedure, and there is an end point, so it is not open-ended. That to me is not much different from most EBAs around the country. Would that be your view where an employer consults with employees?

**Ms NOLAN** — It is not my view that the wording of the proposed EB is common across any emergency service other than the MFB. I just revert to my previous — —

**Mr MELHEM** — But in other industries and generally in EBAs — —

**Ms NOLAN** — No. Coming from Victoria Police, there is a requirement to consult, but there is not a requirement to consult and agree. There is a requirement to consult on significant change; there is not a requirement to consult and agree on any change. They are the significant differences in terms of that consultation aspect.

Again, in my discussions with the MFB, the MFB relay how that actually works in practice, and so it is they say they will consult with the UFU, they will get to a specific stage, they will lodge a dispute, the UFU will lodge a dispute that they have not consulted appropriately, they will be taken to the Fair Work Commission, the Fair Work Commission will say, ‘You need to go back and consult’. So it seems to be a never-ending circle, and status quo — —

**Mr DALLA-RIVA** — And meanwhile the fires continue.

**Ms NOLAN** — And the status quo remains in the interim.

**Mr MELHEM** — Can I just explore that further?

**Ms NOLAN** — Certainly.

**Mr MELHEM** — That talks about changing something. It does not talk about day-to-day operations. So it is the EB and job descriptions. There would be standard operating procedures in place for firefighters, describing their jobs and the hierarchy et cetera. So that is 99 per cent that they are doing the day-to-day work. The consultative process is only in relation to new matters or to changes to these things that I have just described. The general public thinks, ‘If there is a fire out there and I have to ask the firefighter to go and fight it and I have not consulted properly, that person might say no’. That is not the case, is it? It is about 99.99 per cent life goes on and the consultative process does not come into it?

**Ms NOLAN** — I do not have the list of the 50 clauses around consult and agree, or consult. I think without those I am not able to answer that question.

**Mr MELHEM** — We are only talking about the agreement that applies to the integrated station where there are full-time firefighters does not apply to the other 1200-odd fire stations which are staffed by volunteers — it is the co-location.

**Ms NOLAN** — That is not correct. When you look at the impact and the reach of the clauses in terms of consult and/or consult and agree, they are wideranging — for example, policies. Any policies impacting the organisation obviously impact on the volunteers and they impact on paid firefighters, but again they fall within the remit of this EB.

**Mr MELHEM** — But the agreement specifically said this would not apply to volunteers. The agreement is between the paid firefighters and the CFA. The volunteers, which I have a lot of respect for, are not party to the agreement.

**Ms NOLAN** — Unfortunately the legal advice quite clearly states that the inclusion of that clause in the proposed EB does not mitigate or remedy the impacts on the volunteers.

**Mr MELHEM** — On that legal advice, it seem to me you have gone around getting various legal advice —

**Ms NOLAN** — Yes, about specific topics.

**Mr MELHEM** — to basically support the narrative which you wanted achieve, which I understand.

**Ms NOLAN** — No, that is incorrect. I have no narrative.

**Mr MELHEM** — Who notified the dispute to the Fair Work Commission in order to settle the EBA? Was it the CFA or the UFU?

**Ms NOLAN** — Sorry, could you repeat that?

**Mr MELHEM** — Who made the notification to the Fair Work Commission to seek assistance in resolving the impasse between the UFU and the CFA?

**Ms NOLAN** — The more recent one?

**Mr MELHEM** — Well, how many where there?

**Ms NOLAN** — It certainly was not me.

**Mr MELHEM** — Sorry; I am talking about whilst you were in office as the CEO —

**Ms NOLAN** — Yes, so was I. That is what I am talking about.

**Mr MELHEM** — going back six months. So it was the CFA management who notified the Fair Work Commission seeking their assistance to resolve — —

**Ms NOLAN** — Again, which one? There have been two. Are you talking about the most recent one?

**Mr MELHEM** — No, I am talking about pre-Christmas — —

**Ms NOLAN** — Most recent, when I was still the CEO, when there had been an impasse and then Commissioner Roe started re-hearing, is that the — —

**Mr MELHEM** — Yes, we will use that as an example.

**Ms NOLAN** — It was not made by CFA management.

**Mr MELHEM** — Who made the notification?

**Ms NOLAN** — My understanding is it was a representative from the Department of Premier and Cabinet.

**Mr MELHEM** — Okay. Prior to that was the Fair Work Commission involved in mediation for this dispute?

**Ms NOLAN** — My understanding is that that was pre my arriving time. I could not answer who actually make that request.

**Mr MELHEM** — My understanding from reading various reports is that the CFA notified the Fair Work Commission and, as you say, mediation has taken place between the parties. My understanding is that CFA management agreed to various changes to the proposed EBA, but then later in mid-December there was a backflip in relation to some of the previously agreed changes in conferences. Is that — —

**Ms NOLAN** — I think — and again, this is pre my time, so I apologise for that — there have been so many players involved in this EBA. Sometimes some of those negotiations have occurred when a CFA member has not been party to them. There has been no master copy or one source-of-truth document kept by an independent to say what had or had not been agreed to, so the issue is that you have competing sides saying, ‘You’ve agreed to this’ and other people saying, ‘No, we haven’t’. I do not think anybody can actually say with hand on heart what has or has not been agreed to.

**Mr MELHEM** — I am having difficulty accepting that because I have been doing industrial relations for over 20 years, and when you go to conciliation and the Fair Work Commission people take notes. The commissioner takes notes, and the mediator actually takes the parties through what has been agreed to and what has not been agreed to. So records will be there. They may not be available to the general public, but surely there will be some record. I take it as well that there will be some confusion about whether a particular position was agreed or not.

**Ms NOLAN** — Certainly.

**Mr MELHEM** — That has happened as well. So the Fair Work Commission issued a recommendation basically saying, ‘That is what I think should settle the dispute’. My understanding is that you have refused to sign it or the board to endorse it because you had concerns about — —

**Ms NOLAN** — No, we had legal impediments.

**Mr MELHEM** — Yes, I get that. I am coming to that. At the end of the day, with a high-profile dispute like this, you would think the Fair Work Commission would determine whether or not there are any clauses that might impact or relate to discrimination against or offend any sections of the act. In fact my understanding is that the proposed EBA has a specific provision which is basically saying, ‘Nothing there can contravene the various sections of the Fair Work Act and various other acts’. So the safeguards were already there, weren’t they?

**Ms NOLAN** — No. As I said, we sought legal advice from Mr Frank Parry, who is an expert in Australia around it. He stated that the inclusions of Commissioner Roe plus any side agreements that had been suggested by President Ross would not remedy the issues of those specific clauses within the EB.

**Mr MELHEM** — That was post-15 December legal advice? Because there were a number of pieces of advice from Mr Perry in relation to the proposed EBA. Which one was it?

**Ms NOLAN** — Sorry?

**Mr MELHEM** — There was other advice, from my understanding, that Mr Perry has given the CFA — —

**The CHAIR** — Mr Parry.

**Mr MELHEM** — Mr Parry gave a number of pieces of advice — —

**Ms NOLAN** — I am unaware of that. It would have been before my time, I am presuming. It certainly was not under my stewardship.

**Mr RAMSAY** — What timing are we talking about?

**Mr MELHEM** — The one that basically got a lot of coverage was dated 15 December 2015.

**Ms NOLAN** — No, I have not seen that.

**The CHAIR** — So there was later advice is what you are saying.

**Ms NOLAN** — This was June. I beg your pardon, it was actually on the day the board was sacked, so 10 June.

**The CHAIR** — The tenth of June.

**Mr MELHEM** — Did the legal advice, to your recollection, consider section 27(2)(k) of the Fair Work Act, which makes it clear that the Fair Work Act does not exclude the operation of state and territory laws that deal with ‘the following matters relating to provision of essential services or to situations of emergency’ — —

**Mr RAMSAY** — Is this the AWU’s legal counsel notice?

**Mr MELHEM** — Mr Ramsay — —

**Ms SHING** — It is the actual legal framework, Mr Ramsay. It is unfortunate you cannot pay a little more attention to it.

**Mr RAMSAY** — It is all over the shop.

**Mr MELHEM** —

- (i) directions to perform (including to perform work at a particular time or place, or in a particular way);
- (ii) directions not to perform work (including not to perform work at a particular time or place, or in a particular way) ...

That is very specific. You can have whatever you want in the EBA, but that will actually trump it any day. Can you shed some light on that?

**The CHAIR** — I am going to rename Mr Melhem Mr Parry, I think.

**Ms NOLAN** — It is an area that is not an area of my expertise. I sought the appropriate expertise externally from the CFA, and that is not my understanding.

**The CHAIR** — Just before I come to Ms Bath, there were the red papers.

**Ms NOLAN** — The red paper.

**The CHAIR** — Just very quickly, what is that? I am just trying to understand what that was.

**Ms NOLAN** — That was a strategic think piece for the CFA, so it was about looking at what was coming on the horizon in terms of emerging issues and risks over the next 10 years both externally and internally.

**The CHAIR** — And the board or the current organisation would have copies of that?

**Ms NOLAN** — They would.

**The CHAIR** — Thank you.

**Ms BATH** — Thank you, Ms Nolan, we are nearly at the end. Ms Nolan, did you ever meet with the Premier to discuss the proposed EBA?

**Ms NOLAN** — No, I did not.

**Ms BATH** — Okay. In your contract or the CFA act is there any legal requirement that you should choose a particular legal entity for advice, or are you free to choose whoever you think would best suit your purposes?

**Ms NOLAN** — That is a very good point. My understanding is, and I am not quite sure, but certainly in terms of our legal advisers that we had for the EB — that was Corrs Chambers Westgarth — I think that was either the minister’s or the government’s recommendation that we use them. I am not quite sure. They certainly were not ones we selected; they were certainly there for use. When we looked at legal advice — —

**The CHAIR** — They were on the government panel, in effect — —

**Ms NOLAN** — I am not quite sure.

**Ms SHING** — I believe Corrs are, but not Seyfarth Shaw.

**Ms NOLAN** — No, that is right. So all of the other advice that we sought normally was recommended by Corrs Chambers Westgarth, so they obviously knew who the best legal minds were about specific topics. They did the legal advice across the entire EB, clause by clause. When we had obviously significant, contentious ones that were still being debated, we thought it prudent to get further legal advice either one way or the other to show that that interpretation was correct, and when we selected the legal advice we were very, very careful to ensure that it was not shopping for advice and that it was legal advisers that either were — —

Melinda Richards is a perfect example. She is Crown Counsel. Frank Parry I know had done work for both sides of government. So trying to be even-handed to show that we were not shopping for advice, and what is the best advice so that we can make the best decisions.

**Ms SHING** — But Melinda did not say it was unlawful.

**Ms BATH** — Above reproach, in effect?

**Ms NOLAN** — Yes.

**Ms SHING** — She just said it may be discriminatory.

**Ms BATH** — Thank you, Ms Shing, it is my turn.

Now, in your opinion the CFA act in 1958, this proposed EBA, does it conflict with that act, and can you give me a couple of examples?

**Ms NOLAN** — I would probably refer you to some of the documentation that we have had, but in terms of the volunteers I think Ms Shing has got a copy of the fact mythbuster document — —

**Ms SHING** — That is online, yes.

**Ms NOLAN** — Within that we actually listed not all of the clauses but some of the clauses that were quite specific that would impact negatively on volunteers — —

**Ms SHING** — At that time, because you said that that was no longer current.

**Ms NOLAN** — No, I did not say it was no longer current. I said that was based on the EB before me; I have not seen the latest EB and whether those clauses still remain or not.

**Ms SHING** — It is pre the Roe recommendation though.

**Ms NOLAN** — Pardon?

### **Members interjecting.**

**Ms BATH** — I am relating to the documentation that was provided to us by Mr Peter Marshall, and in relation to the consultation clauses — so I have got clause 21 sitting in front of me here. Going back one step, the 2010 clauses — the approximately 20 that you had issue with or that were currently in at that time — for clarity, they did not have consultation clauses that required veto or agreement from the UFU, is that correct?

**Ms NOLAN** — I am not sure. I would have to look at it to refresh my memory. I think if there were any ‘and agreed’, they would be minimal.

**Ms BATH** — Okay, thank you. So of the 50 you identified, if I look at clause 21 that looks at — —

When we talk to people in our electorates — rural people in small towns, whether it be Leongatha, Jeparit or Numurkah — there is still confusion about whether this veto clause will have an effect on a number of issues or operations. I will list the ones that are in this clause 21: RADAP, vehicle and equipment, uniform, rostering, health and safety, operational employees OHS, marine response, projects and training. There are some there. Do you feel that these will still be a major influence on those country CFAs if this proposed EBA goes through?

**Ms NOLAN** — I think because of the wideranging ambit of the need to consult and agree, which crosses the boundaries of most management functions or accountabilities, then even though the EB is supposedly specific to the integrated stations and the paid firefighters, because of the broad-ranging ambit it is going to impact on the entire organisation.

**Ms BATH** — Thank you. And a final line of questioning: Mr Marshall also provided some documentation. It was on a PowerPoint that we have been able to access, and it was CFA's service delivery standards — SDS. Are you familiar with those?

**Ms NOLAN** — Yes.

**Ms BATH** — The one that he was talking about was 8 minutes, and it is called a 'medium urban'. Are you familiar with those?

**Ms NOLAN** — Yes.

**Ms BATH** — It is just that the definition for this response time is a single sentence in the one that we were looking at, that he put up on the PowerPoint. Who would make those judgements on the ground about whether it be a medium-urban or a low-urban example?

**Ms NOLAN** — I am presuming the responding brigade. But in terms of the response times, they are arbitrary per se. Obviously the faster that brigades attend, hopefully the better outcomes there will be. But one of the projects that I had initiated prior to leaving was looking at and reviewing them. So those standards are actually set by the board and they have not been revisited for a long time. They are different standards to other fire services, including the MFB, so it is not as if there is one standard response time that is common across the emergency services across Australia, for instance.

What the response times do not take into account is the individual specifics of the fire, so how long has it actually been going, where is it, what type of material and what other things are there? So they are indicative and they are great as a KPI to assist management in working out: does this seem to be a response issue? But then that should lead to a full investigation as to why. It might be that your brigade is on the wrong side of town, so you have got a conglomerate of fires that are occurring and it is actually the position of the thing, not because there was something concerned with the response time. Similarly you could be having a lot of fires in peak hour, so you have got traffic congestion that is slowing it, or you could have prisons within your response time, such as Lara, so their times — —

**Ms BATH** — Ms Nolan, can I just interrupt? Is it correct that the Lara prison is 9 minutes drive under flashing lights from the CFA station, so it would be hard to meet that 8 minutes unless you were a genie and wiggled your nose?

**Ms NOLAN** — I think probably the bigger issue is that they do not get immediate access, obviously, to a prison. So you are never going to meet those time lines even if you were 1 minute away, because you have to go through the security checks et cetera to establish where the fire is and to organise it from that perspective. When you look at Lara and you look at their response times, for example, they are always going to be blown out. It looks like they are not performing, but if you take out the prison, then you see a significant improvement in their response times. It is really understanding the individual nature of every brigade.

**Ms BATH** — So at this point it is more subjective at the moment because there is some, I guess, loose interpretations about those. You were seeking to tighten that up and improve that. For example, there may be a definition of a medium urban in, say, Lara compared to a medium urban in Wonthaggi, so there are some differentials there. When people are comparing, there needs to be a more rigorous form of science around that rather than flinging numbers out and making fairly substantial comments.

**Ms NOLAN** — We never, ever make comments on the data alone. The data was always followed by fairly intensive examination as to why those measures were as they were and what it actually meant. As I said, that differs from brigade to brigade. It is not necessarily, as I said, an indication of poor performance.

**Ms BATH** — Thank you, Ms Nolan.

**The CHAIR** — Mr Melhem has one very quick question, and I have a clarification.

**Mr MELHEM** — A very quick one. Ms Nolan, thank you very much for putting up with us this morning. If the proposed EBA meets all the legal requirements, does not offend any federal or state law — and I note it is before the Supreme Court — and it has been given the tick, would you sign the agreement or have signed the agreement if that was the case?

**Ms NOLAN** — What I would have sought to do if those legal impediments that I mentioned before were no longer valid, then I certainly would have looked at some further negotiation on some of the more contentious clauses that impact on the chief officer and his ability to deploy, but I certainly would not have left. I certainly would not have left the CFA.

**Mr MELHEM** — So was the answer yes or no? Would you have signed the agreement if it met all the legal requirements?

**Ms NOLAN** — If my legal advisers had stated that all of our concerns had been remedied, I would have signed it, certainly.

**The CHAIR** — I just wanted to come back to Ms Dunn's question about BASOs.

**Ms NOLAN** — Brigade administrative support officers.

**The CHAIR** — I understand they are not UFU members. They are not volunteers. They are paid staff.

**Ms NOLAN** — Correct.

**The CHAIR** — Their job is to organise in a systematic way, and you took it and had advice to the effect that requiring BASOs to be replaced by a UFU member could compromise the performance in a number of those country locations?

**Ms NOLAN** — Certainly. It would certainly limit the pool and the expertise that you could put into those positions.

**The CHAIR** — Right. The other question I had, very quickly, was about the 10 June memo, and I wanted to clarify who signed that because we had a significant discussion about that at an earlier hearing. That was put out pointing to 14 flaws or problems with the — —

**Ms SHING** — Threshold issues.

**Ms NOLAN** — Threshold issues, certainly.

**The CHAIR** — Threshold issues is how they were described. Now all of the people who were listed on the bottom of that memo supported that; is that correct?

**Ms NOLAN** — With the 14 threshold issues we briefed our organisational leadership team around that. What I would normally do when we were putting out communications is send a copy of the communications to all of the organisational leadership team, and they would send it back to say yes, they were happy with it or they would suggest some modifications.

**The CHAIR** — Improvements?

**Ms NOLAN** — Yes.

**The CHAIR** — Right. Thank you. I am going to indicate that we have run over time, but I want to thank you for your evidence today. It has been very informative, and I put on record my thanks to you for your role at Victoria Police over many years.

**Ms NOLAN** — Thank you.

**Witness withdrew.**