

TRANSCRIPT

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

Inquiry into fire season preparedness

Melbourne — 6 September 2016

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Mr Joe Buffone (sworn), Former Chief Officer, Country Fire Authority.

The CHAIR — I welcome Mr Buffone to the table. Mr Buffone, you were until recently the chief fire officer at the CFA, and I will ask you in that context with your knowledge to give us a short introduction. We will follow up with some questions.

Mr BUFFONE — Thanks very much, Chair. First of all, as you are aware, I am appearing here today under summons.

The CHAIR — Yes.

Mr BUFFONE — I am here to answer your questions, and I understand my role here today.

The CHAIR — I should indicate that what you say here is protected by parliamentary privilege. What you say outside of here is not protected by parliamentary privilege, and what you say here is protected from judicial review of any type.

Mr BUFFONE — Thank you. I also just want to acknowledge the work of CFA personnel, both volunteers and career, and in particular what they do on the front line day to day. I think it is a very important thing to acknowledge that sort of work.

Ms SHING — Point well made.

Mr BUFFONE — As you are well aware, I was the chief officer of the CFA, and on 28 June I tendered my resignation to the new chairperson of the CFA board, Mr Greg Smith. I have that letter, which I am happy to provide, should that be requested.

The CHAIR — We would welcome that.

Mr BUFFONE — I think that that is important — that I actually highlight that — because it probably outlines some key issues. So if you wish to have a copy of my letter — —

The CHAIR — The secretariat will take it.

Mr BUFFONE — Now, in that letter it was quite clear that the reason that I resigned was as a result of the proposed EBA and that it put me in a position such that my ability to perform my statutory obligations as the chief officer under the CFA act had been fundamentally inhibited. The Victorian government's decision to implement the proposed agreement had put undue pressure on me and made my position untenable. For the point of transparency I want to make it clear that also I made claim in that letter, pursuant to my contract, that I believe I have a right to the entitlement of pay of six months salary, which was not paid. I stand by my reasons to resign, and I stand by my principals to resign, and they have come at a significant personal, professional and financial cost.

Prior to my resignation and after a range of discussions with the new CFA chair, the new CEO, the new minister and the emergency management commissioner, I wrote a letter to the minister and to the new chair, highlighting my concerns with the EBA. The highlight of my concerns was based on legal advice, which I provided. I am also happy to provide it if requested by this committee.

The CHAIR — Thank you. We would appreciate a copy of those letters. Provide that to the secretariat.

Mr BUFFONE — So again, because I think that that will be the point of discussion through this inquiry, in essence I outlined my concerns related to the proposed EBA that the government had endorsed, in particular the ability to carry out the chief officer's role and the statutory obligations, including making policy, making timely decisions in relation to service delivery and allocation of resources without being vetoed. I know there has been a lot of discussion around the veto elements, and I am not talking about the constitutional veto; I am talking about the plain English definition of 'veto', which is about requiring approval and agreement.

Also, and I think this is an important element of what we are discussing here, there was my ability to meet obligations under 6F to 6I of the CFA act, which are in relation to the role of volunteers and their role. The Parliament of Victoria acknowledges that CFA is fundamentally a volunteer organisation. I think that is an important context to put when we are talking about the relationship of an industrial agreement and the impact of an organisation that is fundamentally a volunteer organisation. CFA is not two separate organisations. It is not

the same as the MFB. It is not a paid workforce or a career workforce and a volunteer workforce that sit separately. It is actually an integrated model that delivers critical services all the way from the fringes of Melbourne right out to the single shed in remote Victoria. So I think that that becomes a critical element in setting the context when we have some discussions around what that means.

The other key aspect of that is that that position was supported through legal advice by the appointed government lawyers, which were Corrs Chambers Westgarth at the time and working for CFA; by Frank Parry, QC; and also previously, as has been discussed here today as being a point of conjecture, through a number of reviews and through a number of findings, including Judge Lewis's, that made some very specific findings around consultation.

I will just draw a line there because there is just one final thing that I would like to speak about, which is actually specifically in relation to fire season preparedness and preventive burns and fuel management. I suggest, and it has been touched on briefly today, that a critical success factor in the future of fuel management in Victoria is a shared and common risk methodology and a single system that provides data analysis and information on bushfire that government departments, government itself, agencies and the community can refer to for decision-making. That requires a fair bit of effort and a fair bit of investment to make that happen.

The other thing I would also suggest is some significant investment in predictive services, where Victoria has led the way in predictive services. I would suggest that needs further investment because that is the evidence base, the science and the risk information that will help with some of the decisions around whether it is appropriate to burn, where the high-risk factors are and where the mosaic elements are that can actually be dealt with. The other key thing there is that it needs to cut across land tenures, so it needs to be tenure blind. The other critical factor is that once it steps into private land it becomes highly complex. It is not the same as dealing with it solely on public land, so the cross-tenure element becomes important. Therefore I reinforce that matter around a shared, common risk methodology and the single system that provides that data analysis and information.

Chair, I will cease there and hand over to you to ask any relevant questions.

The CHAIR — All right. So I have two questions that I want to ask. The first is about the actual impact of the proposed EBA. I just wonder whether you might very briefly step us through what you think that will do in a practical way on the ground, day to day, to your former role.

Mr BUFFONE — Okay. I think that it is important to note the role of the chief officer, in particular around section 27, section 29 and section 30, and also the general powers around prevention and suppression of fires across country Victoria.

The other key aspect is the complexity of the arrangements where it is not just integrated stations. There is a statement that that is clearly a key element in terms of the pure firefighting element of the EBA, but the EBA touches on trainers, it touches on our operational command and control staff, it touches on what I would describe as our managers in the field, who are our operations officers and our ops managers who basically do the day-to-day planning and preparedness, day-to-day management, workforce management — and when I talk workforce management, that is workforce management across volunteers and career staff. It is not just one pocket or the other.

Again I need to contextualise that, because it is a complex environment; it is not straightforward of just this pure employee-employer relationship without any other arrangements. Therefore the basis of that does have an impact on the ability to make — and I am talking about should the agreement be finally endorsed in its current form, and bear in mind this was also at a point in time, and I understand that.

Also I had further legal advice from Corrs on the EBA that was, from my understanding, presented because we did not have a final copy of that up until around about, I think, 22 June — —

The CHAIR — Did you have a copy of the final, most updated version?

Mr BUFFONE — Of the final? Greg Smith actually — —

The CHAIR — So let me understand these versions. Was that the version that had been endorsed by cabinet?

Mr BUFFONE — So the first version that I was dealing with was the version that we were negotiating with Commissioner Roe and with the other processes that had gone through and that we had worked to a particular point. I understand that there was a particular version that was — I do not know whether the right word is ‘endorsed’ — accepted by government, and that also included Commissioner Roe’s final recommendations and also the inferences from President Ross that actually wrapped that up. We then asked for legal advice of, again, cause Corrs to actually provide some advice whether any of those matters that had been previously raised had been remedied, and in summary, and this is from memory, that cause said, ‘In summary, it does not remedy the issues that were raised by CFA’.

Going back to your question, Chair, and back to my letter, because I think that that is where I raised a number of the issues, it is around the ability to make timely decisions, it is around the inflexibility of the EBA, because a lot of it would lock in for the period of the EBA staffing levels, appliance levels, policies et cetera — a whole range of aspects — and therefore under the new arrangements I would not be able to make those changes as the chief officer or make decisions without having agreement from the UFU.

I also want to make a really clear statement, and I make that statement very, very clear in my letter as well, that I support consultation with the workforce 100 per cent. It is critical to decision-making, and I think that the rigour around that becomes absolutely critical, but it has to be in the context of what the organisation is about and it has to be in a context of providing the best outcome for the Victorian community.

If I could just touch on consultation, because I know that it is a significant point that keeps being raised. The reason I am raising this is that in my role while I was still there as the chief officer — in particular with the changes to the board, to the CEO, to the chair — what I did do was continue to support the onboarding of the new entity. I had discussions around the consultation and my concerns, hence the letter. But even Greg Smith when he was commissioner had put a position forward around consultation, and he actually said:

Consultation is not perfunctory advice on what is about to happen. This is a common misconception. Consultation is providing the individual, or other relevant persons, with a bona fide opportunity to influence the decision-maker.

Then he make some points around the act, but the key thing is:

Consultation is not joint decision-making or even a negative or frustrating barrier to the prerogative of management to make decisions.

That to me is a fundamental thing around consultation and around how important it is. The issue that makes it very, very difficult is the thing around agreement — agreement in 52 clauses. Even the consultation clause itself when it is read on its own becomes reasonable, but if you actually then go into ‘must agree’ 52 times and some very specific clauses, that is where it starts to have an impact. That becomes the key issue. There are some other factors that actually impact on rostering, and I can actually give a specific example — —

The CHAIR — One example.

Mr BUFFONE — One example?

The CHAIR — I am just conscious of time.

Mr BUFFONE — One example is, and this is where I was saying that it was not just about integrated stations, there is a change in rostering that means that the CFA could only roster their ops officers and their ops managers in a certain frequency and over a period of time. Some analysis on that is now showing that that would have an impact on our ability to meet some of the obligations of rostering for the fire season because we do not have enough people to fill those positions. You cannot just pull them off the shelf — they have specific skills, they need to be trained and they need to basically fit certain criteria, so the market is not open to just bringing those people in. That will create a significant challenge, and then the only remedy for that means that people need to do significant amounts of overtime and then potentially have significant amounts of time off so that they meet their OHS requirements. So that is probably a snapshot of some of the concerns.

The CHAIR — My second question is essentially around the comments that were made when you resigned by Minister Merlino. He accused you directly of doing this in some way for financial benefit or because you had not received a financial benefit. I hasten to add, my summation of you is rather different, but I am interested in your response to that charge.

Mr BUFFONE — Yes. Thank you, Chair. It is a fair question, and I am very, very happy to answer that question. When I submitted my resignation, there were a number of discussions, and in actual fact they were a number of incentives that were offered to me to stay on.

The CHAIR — What incentives?

Mr BUFFONE — It was made clear that the CFA chair and the CEO, and I had discussions with the minister, they did not want me to leave. I made it clear and my continued position was, as is detailed in my letter, that I could not stay if the EBA landed in the way that it was and did not remedy those matters of veto. Those incentives were along the lines of offers for study, going overseas et cetera. Basically I rejected all, obviously, because I resigned.

The CHAIR — Are you seriously telling me that the minister said to you — —

Mr BUFFONE — No, no.

The CHAIR — No, the chair of the board?

Mr BUFFONE — The minister did not. The minister made it clear that he did not want me to resign, that he had confidence in me and he wanted me to stay. I raised the issues, as I have made clear, and I have continued, around my concerns with the EBA and the impact on — —

The CHAIR — So who made these offers?

Mr BUFFONE — The chair and — —

The CHAIR — Mr Smith.

Mr BUFFONE — Mr Smith, yes.

The CHAIR — Inducements. Would you call them inducements?

Mr BUFFONE — No, I would call them incentives to stay.

The CHAIR — Incentives, not inducements but incentives.

Mr BUFFONE — No, that is the word that I had here. So, basically, I ended up resigning. Now, my key point, which was raised in the royal commission and which was raised in the fire services review, was around equal standing with the CEO. If that was to continue, it was not about accepting the EBA as it stands. At no stage did I agree that I would accept the EBA for those reasons. If I was to stay, it would be around continuing to work through the issues to provide some continued stability and in particular with the oncoming fire season.

The CHAIR — But you were not moved by a trip to France or somewhere?

Mr BUFFONE — Absolutely not. So therefore I resigned. Now, as I have said, that has come at a significant personal cost, professional cost and financial cost to me personally, and I have had to work walk away not just from the role of the chief officer and CFA but from a 25-year career in Victoria serving emergency management, serving emergency services. So, Chair, that is my answer.

Ms SHING — Thanks, Mr Buffone, for attending to answer the questions of the committee and for your evidence to the Chair today. I note that your letter of resignation to Mr Smith dated 28 June 2016 is at odds by about two days with an electronic version of your resignation that I think you sent out via Tweet. Is there any reason for the discrepancy in the dates between those two?

Mr BUFFONE — No, for exactly what I have just spoken about — is that I put in my letter of resignation, and then there were discussions around me continuing to stay. They were lengthy discussions, as I said, with the emergency management commissioner, with the chair and with the CEO around whether I would stay on.

Ms SHING — You have indicated on radio, and I would quote you at yourself, if I may, that you were in fact ‘gutted’. That stands to reason given your length of tenure with the CFA and the obvious skills and

experience that you brought to the role, as well as your capacity to work with people. You have indicated that you submitted your resignation — I am going to say it in your words:

... I submitted my resignation because I got to the position where it was untenable for me to continue in my role where I had a difference of where I would be going and discharging my role.

In relation to that, why was it then that you offered to stay for an additional \$85 000?

Mr BUFFONE — Well, as I said, that is actually incorrect. I did not offer to stay. I did not even know what the difference between the salaries would be. My key reason for staying on, if I was to stay, was around equal standing with the CEO. At no stage did I give any indication in any of my conversations that I would stay and accept the EBA as it was — at no stage.

Ms SHING — So why did your lawyers say, in fact, that a bit of extra cash coming to you would in fact do the job?

Mr BUFFONE — No, that is incorrect. There was a media statement, and there was only parts of what was shared that was released that was obviously meant to be in confidence, which was ongoing and which was around equal standing with the CEO. That was the primary reason. Then there were discussions around what that meant in relation to salary, and I did not even know what the variations in salary were. So the first time that I knew of an \$83 000 difference was when it was announced in the media.

In actual fact when I had resigned there was an attempt to put me on garden leave, and there were some specifics around being silenced and not being able to speak to the media. And then there was a media release. Therefore I had to resign immediately, and I forfeited my four weeks notice, which I provided, and forfeited a whole range of other things. In actual fact it has cost me more than the alleged \$83 000 to date, so the maths do not add up if that is my motivation or my driver. The key message that I make, though, is that at no stage did I agree that I would stay on and agree to the EBA as it stands — at no stage.

Ms SHING — So there was no way that you were ever going to stick around to see the EBA in the form that was the subject of the resolution from the board, along with the joint statement of mutual intent, along with the statements made around the priority of community safety? You were never prepared to stick around for that?

Mr BUFFONE — I have had a look at the statement of intent, and I have had a look at the letter that goes from the chair to the chief officer. My understanding of that is that it will not have any legal standing and that the written word of the EBA is what counts. My experience in Fair Work is when you actually stand up in front of commissioners and provide evidence the written word of the EBA is what counts, not statements of intent or letters from a board. The thing is, Ms Shing, as we worked up towards the final position, they were not just a decision that was made that — I did not just read the EBA and form an opinion. There was legal advice, there was QC advice, there was industrial relations advice and there was operational advice — not just my own. So I had reached out, because my position was that I needed to be the chief officer for everybody in CFA — volunteers and career staff.

Ms SHING — Did you have any role in the commissioning of a report from US union-busting lawyers Seyfarth and Shaw?

Mr BUFFONE — Not directly.

Ms SHING — Did you ever see that report?

Mr BUFFONE — I did see the report.

Ms SHING — Did you discuss that report with the former CEO, Lucinda Nolan?

Mr BUFFONE — Absolutely.

Ms SHING — And what did you discuss in relation to that report?

Mr BUFFONE — Well, the key thing was, the whole thing about that report was again trying to look at a whole range of options around trying to find some sort of circuit-breaker to move beyond. Now, the report that

came back was considered and dismissed, absolutely. The other key thing was there was something that I understood — and this is going off memory — as talking about individual contracts or something.

Ms SHING — Individual workplace agreements.

Mr BUFFONE — I am not convinced that that is actually correct. I think that from memory the report talks about collective agreements. But, look, it was some time ago, and the reality was, until it appeared in the newspapers it was something that was — there was a request for some advice, it was considered at the time and it was discounted because it was clear that it was not appropriate to be applied in this context.

Ms SHING — Did you ever seek or see any legal advice that referred to a conciliatory mechanism by which to build relationships and a more positive culture?

Mr BUFFONE — As in legal advice?

Ms SHING — Legal or operational advice to assist with a remedial approach, as opposed to an oppositional one. The reason I ask this, Mr Buffone, is because I have heard evidence from former CEO Lucinda Nolan that a number of legal opinions were sought. Those legal opinions all seem to be based around the worst-case scenario. Now, Chief Officer Warrington has indicated that in fact those worst-case scenarios do not come to bear when you are looking at an operational environment in which people need to work together. So to what end did you seek and/or receive and/or discuss any advice about bringing the parties together, given the long history of cultural opposition, as opposed to looking at everyone retreating to their corners?

Mr BUFFONE — There was a lot of discussion. I cannot recall any specific advice. We went out broad and wide for different advice around finding the middle ground. The option of actually rolling over the 2010 agreement was part of that thinking as well. It was part of that thinking to say, 'Here is some middle ground so that we can actually close off this dispute and actually focus on rebuilding the CFA in a positive and in a constructive way'.

Ms SHING — Do you not think that the Roe recommendations and the agreement that came out of that, plus the role that President Iain Ross of the Fair Work Commission also played in relation to an agreement that in their view struck an appropriate middle ground was the middle ground?

Mr BUFFONE — If you are asking my opinion on that now — —

Ms SHING — Yes.

Mr BUFFONE — I think that there is a lot of damage that has been done to the CFA.

Ms SHING — Well, in fact, just to pick you up on the fire services review, the damage referred to by the CFA recruits case and the MFB termination case is referred to as having had an inestimably damaging effect on the morale of people who work within the organisation. Former CEO Lucinda Nolan has also referred to a toxic culture. Now, the extent to which people sheet home blame for this in an industrial agreement, as opposed to saying that it is a symptom of a whole lot of change that needs to happen to bring people together, is something that I find rather confounding. So can you shed some light on why the EBA is the problem, as opposed to the need to bring people together and move on in a constructive way?

Mr BUFFONE — I would actually say that we were focused on bringing people together in a constructive way outside of the EBA. There was a lot of work that was being done, and there was the red paper that was being done. We were looking at a new operating model that actually put a focus on urban environments, on rural environments and on community risk, safety and resilience and actually bringing that where you actually bring that together. The key thing is that that was based on a unified workforce. In actual fact, if you read some of my information that has been put out publicly, my vision for CFA was a modern, contemporary and unified workforce. When I talk about workforce, I talk about volunteers and career staff.

Ms SHING — So can you understand then that when you have a situation whereby potable water has been an issue because of Fiskville, whereby uniforms have been an issue because of the inherently unsafe nature of the work that people do and whereby standard operating procedures and the way in which people can communicate can often mean the difference between life and/or death and being injured and not being injured, there is a built-up aggregate of concern over time that these things go into one document.

Mr BUFFONE — Ms Shing, I am acutely aware of all of those things that you raised. As a chief officer, I take that matter very, very seriously. Every day, for me, the safety of the workforce, which is volunteers and career staff, is number one — absolutely number one.

Ms SHING — So how do we unpick that?

Mr BUFFONE — The second part is about the safety of the community, because ultimately that is who we serve. So we serve the community.

Ms SHING — And no-one has disagreed with that statement.

Mr BUFFONE — So that is number one. As I have said many times, I have never been to an incident where somebody that needs help has asked me what badge I have got on my shoulder or whether I am even from a particular service; they just want support.

Ms SHING — So on the ground things work and they come together?

Mr BUFFONE — Well, I think that they do because there is a focus on it. But when you have a look at the different cultures, this particular dispute has put pressure and challenged some of those core values of that frontline service. That is a concern. Now, back to your —

Ms SHING — So do you think we are not ready for the fire season then if that is challenging those core values?

Mr BUFFONE — I have some concerns, being that there are some fractures that have occurred within the system, and I hope that it does not impact on the response to the fire season.

Ms SHING — Because of the EBA or because of broader issues, because I would imagine that 22 front pages of a newspaper talking about how things are chaotic and that the sky is falling in is going to have a significant impact on the way that people talk on the ground.

Mr BUFFONE — But I think that you touched on a point that the industrial instrument is one of the symptoms, and it is one of the symptoms because it is quite prescriptive. It has the staffing levels, the rostering, the appliances, the policies, the role of instructors, the impact on BASOs, the uniforms. You spoke about uniforms. There is a view — well, the EBA will actually have that volunteers will not look like career firefighters. It is nothing to do with safety. It is simply a line between volunteers and career staff. Now, that is not the ethos of a unified workforce that has been born from volunteers, and that career staff play a critical role in every aspect of the business: in management, in training, in coaching, in leadership. There are some other factors that are impacting as well.

The CHAIR — And is that treating volunteers as second-class citizens, that uniform issue?

Mr BUFFONE — Well, I think that it is definitely divisive.

Ms SHING — It is interesting you should say that, and I will pick you up there, because Justice Bernard Teague gave evidence today — I am not sure whether you were in the gallery listening — around the long history of tension between volunteers and paid staff. This goes to the history of the way in which landowners got together to defend their land and livestock and to save the lives of people around them, and that there is an inherent tension which may not ever in fact be able to be resolved. On that basis, how is it that despite having had numerous rounds of enterprise negotiations, despite having had a fire services review and a Lewis report and a series of bushfire royal commission recommendations that talk about the need for reform in morale and culture, that it always comes back to the sky falling in on this enterprise agreement, to the point where you yourself have said that you could not do it anymore?

Mr BUFFONE — Well, could you point me to the enterprise agreement, anywhere where it actually, apart from 7A, says it will not impact on volunteers and that it actually says career staff will build, raise, train, sustain and maintain a volunteer capability?

Ms SHING — You just said that everyone on the ground works together. This is what everybody says when they come and give evidence before these hearings, that everyone gets along.

Mr BUFFONE — But the reason for that is because it is a values proposition around community as opposed — —

Ms SHING — So it is not about the enterprise agreement.

Mr BUFFONE — No, it is, because the enterprise agreement is an instrument that actually helps to run the organisation.

Ms SHING — So it is an aid to the organisation.

Mr BUFFONE — Now, if you ask me around is it about pay and conditions, the pay and conditions was signed off; absolutely agreed. And you test it against the BOOT test, so better off overall test — absolutely, tick. So no issue. So were we actually challenging the pay and terms and conditions of our firefighters? Absolutely not.

Ms SHING — Well, conditions relates to matters pertaining to the employment relationship, Mr Buffone, and given that everybody is apparently an industrial expert, how is it that clothing and appliances and equipment and water — to quote Mr Warrington, he said, ‘After Fiskville you can understand why they want potable water in the EBA’.

Mr BUFFONE — Can I answer? The whole point around water and all those things absolutely becomes critical, and in actual fact through the discussions the point of contention around water was in fact around what the standard actually was, because again nobody disagrees around the quality of water for training. But it is actually about what the final standard was and then how you practically actually apply that. If I could go back to the original position around what the EBA actually has an impact on, it actually has an impact on management prerogative with this point: that you cannot make decisions without agreement. There is a whole range of things that have already been touched on: around policies, around deployment, around changing of appliances, around having a look at the risk and actually being able to apply resources in the appropriate way. It also goes back to the key issue of managing the volunteers through training. Training is a huge issue in CFA. It has been identified in every review that you can possibly do, and then the trainers are actually covered by the EBA.

The CHAIR — Mr Melhem, I think wants to say something.

Ms SHING — Sorry, one final question: are you still in negotiations in relation to a settlement package with the government, whether yourself or through your lawyers?

Mr BUFFONE — There are discussions, but I am reserving my legal right in that matter.

Ms SHING — But are you still hoping for a payout, Mr Buffone?

Mr BUFFONE — Am I still hoping for a payout? I am under negotiations at this stage, and I am reserving my legal right.

Ms SHING — Well, this is a parliamentary committee. There is no legal right in relation to the request to answer the question.

Mr BUFFONE — No, I said I am reserving my legal right in relation to — —

Ms SHING — You have indicated the answer is yes. You are still in negotiations for a payout. Thanks.

Mr MELHEM — Mr Buffone, thanks for coming today. Now, tell me: are you saying to us that the whole situation we are in today, it is totally the fault of the career firefighters and the UFU, or the management and the executive of CFA bear some responsibility at all, even a tiny bit?

Mr BUFFONE — Well, one thing I did not say that it is the fault of the career firefighters at all. I have never said that. What I have said is that the EBA — —

The CHAIR — I think you were one, were you not?

Mr BUFFONE — Sorry?

The CHAIR — A career firefighter.

Mr BUFFONE — No, I was not. The EBA has an impact on the way that the organisation runs in the context of it being at the forefront, fundamentally, a volunteer-based organisation. I think that that is the key issue. Absolutely, management has responsibility around being able to create the right culture — being able to set the vision, but when you have to agree on a whole range of things which are embedded within an EBA, it has an impact on management prerogative.

Mr MELHEM — Just on that point, I think that is the whole problem. The executive of the CFA appointed themselves as the guardian of volunteers — and there is nothing wrong with that. We all love volunteers, I think they do a tremendous job, and we cannot be grateful enough for what they do. But you have to understand that the agreement is negotiated between the CFA management and the career firefighters, with the UFU, which represents, whatever, close to 1000. You talked about various legal advice and you are concerned about fulfilling your commitment or your role under the act, section 29, section 27, et cetera. Now, looking at the act just briefly while I was listening to you, the Fair Work Act is actually enshrined or included in the CFA act; there is a mention of that, there is a recognition of it. Have you tabled the legal advice to the Fair Work Commission about your concern about what the EBA is trying to achieve, or the log of claims, or the outcome, versus conflict with your responsibility under the act?

Mr BUFFONE — I do not have that legal advice.

Mr MELHEM — No, no, what I am saying is you were party to the negotiations in the Fair Work Commission, were you not?

Mr BUFFONE — Sorry, say that again.

Mr MELHEM — Did you go to the commission and participate in the negotiation?

Mr BUFFONE — Not in all of them; in the latter part of it; so not in the negotiations. I participated with the CEO when we were dealing with the final Commissioner Roe aspects.

Mr MELHEM — Correct. That is what I am referring to.

Mr BUFFONE — Not the day-to-day negotiations that were occurring with Commissioner Roe.

Mr MELHEM — Have you, or the CEO or anyone at the CFA shared any information with Commissioner Roe, for example, that your legal advice that his recommendation might put you at odds with your legal responsibility under section 27 and section 29 of the act? Have you furnished that advice to the commission or raised concern?

Mr BUFFONE — My recollection on that is there were a number of assessments that were done by Corrs that were handed up to Commissioner Roe. I cannot recall the absolute specifics, but it was a bundle which was focused on the 14 threshold issues, and one of those was around the role of the chief officer.

Mr MELHEM — The reason I am asking that — and I am nearly finished — is I do respect your role and your obligation under the act that you needed to fulfil when you were in the position. I accept that, I respect that and I hear from the Fair Work Commission, from the minister, from everyone, saying there is no conflict in relation to two matters. One is the EBA does not, or should not, impact on volunteers; two, that should not compromise or undermine your responsibility under the act. What are you saying to me: you had legal advice saying otherwise, but yet you have not relied on it in any argument in the commission?

Mr BUFFONE — I have — —

Mr MELHEM — So who do I believe? Maybe Mr Ford will tell us who is right and who is wrong, whether your executive team is right or the minister, or the new minister is right, or the new board is right.

Mr BUFFONE — Have you asked me a question, or is it just a statement?

Mr MELHEM — No, a question.

Mr BUFFONE — Okay. In relation to the question, obviously legal advice, assessment, trying to apply it in a practical sense is the basis of that decision. It is the basis of trying to work through what is the best outcome for the Victorian community, what is the best outcome for CFA and what is the best outcome for an industrial instrument. I mean, an industrial instrument that is more than 400 pages — now, I have heard that it was 390-odd pages, but anyway, significant pages.

Ms SHING — Not uncommon.

Mr BUFFONE — I think that there is an interesting thing about this EBA as well — that quite often it is referred to in single clauses alone. It cannot be considered in single clauses; it has to be considered as the entire EBA and its cumulative impact and the interrelationship between each one of those clauses. It is extremely complex, and it does have an impact on how the CFA runs its business, which includes volunteers. You cannot separate the two. It is not a pure instrument of saying, ‘This is what you’ll get paid. Here are your allowances. Here are your terms and conditions’. It starts impacting on operational doctrine.

Mr MELHEM — Okay. I will finish off by saying this — and it is a question — are you aware that there are thousands of EBAs around the country that have similar clauses on consultation, dispute procedure and status quo, and businesses are running really well and there is no problem because managers do their job and manage their people? You can actually do Peter Marshall out of a job if you actually get close to your employees. You will not need the union and consultation if you work things out with your employees.

Mr BUFFONE — So what is the question?

Mr MELHEM — The question is: are you aware of that fact, that there are thousands of EBAs; you are not the only organisation who have that clause in your EBA?

Mr BUFFONE — Okay. I am absolutely aware of consultation. I am aware that it is actually a mandatory requirement under the Fair Work Act. I am aware of what it says. However, if you have a look at many of those agreements, and you would be well aware of many of those agreements, it is the point that you have 52 clauses that you must agree — must agree. Now, ‘must agree’ is different to ‘consultation’, and even in the 2010 agreement there was a debate around whether you must agree or must not agree, and Commissioner Wilson had a ruling on it that we did not have to agree. Consultation is absolutely critical. You will not get an argument from me around consulting with the workforce, consulting with employees; that is where the knowledge sits, the frontline role.

Mr MELHEM — If you do not agree, the commission will sort that dispute for you. There is an end point, is there not?

Mr BUFFONE — Well, my experience and my understanding, and also the legal advice that we have had around the dispute resolution, is it takes us on this loop and does not actually deal with the specifics, because if you still do not agree, you do not agree.

Mr MELHEM — So you have got to do what you are told, and that is it. So you make a decision —

Mr BUFFONE — No, not at all.

Mr MELHEM — my way or the highway; management prerogative, full stop?

Mr BUFFONE — No. That is — —

Mr MELHEM — That is the other extreme, is it not, which I do not agree with?

Mr BUFFONE — No, you can check in terms of my management style, my leadership style, and that is far from what I agree and what I subscribe to.

Mr RAMSAY — I welcome Mr Buffone. Thank you for your time this afternoon. The last time I saw you, I think, was in Colac at the training championships. I must say you are very well respected and liked within the organisation. Thank you for the work that you have done in the past. I have said that, because I cannot imagine how you must feel when Minister James Merlino sank to the gutter, like he does on many occasions, in an attempt to discredit you and your reputation as a person —

Ms SHING — We might just make headlines of the news, Mr Ramsay, if you say that again.

Mr RAMSAY — who has proudly served in the field of emergency services for more than two decades, in indicating that you were really seeking an increase in salary and assurances in relation to your continued employment. That was a disgusting act by a guttersnipe, if I might say so.

The CHAIR — Mr Ramsay.

Mr RAMSAY — The question I have in relation to the conditions of the EBA is: do you believe the conditions of the CFA EBA will force CFA management to the Fair Work Commission due to the consultation clauses the UFU are pushing for? I raise that in respect of questions I raised with the MFB CEO and acting chief officer also in relation to the consultative agreed position in many, many of those clauses which will stop an operational response by CFA. That is part A. When will the CFA have to appear at the FWC, and how much strain does that have on management? Did you receive any advice that the EBA would affect volunteers and the day-to-day operations and responses of volunteer CFAs to incidents? Lastly, did you receive any advice that the EBA could put at risk the surge capacity the CFA relies on for major fire events across the state?

Ms SHING — Just a short question.

Mr BUFFONE — I was going to say there are probably about five questions in that, but if I could, first of all in relation to Fair Work, with the 2010 agreement — and by recollection there are probably about 160 cases where we were in the commission in some sort of dispute or grievance that we had to deal with. I do believe that there will be a lot more in the commission around how that will work, and also the fact that we were actually looking at trying to put a consultation unit in place that would actually need to deal with that. I would say that with the complexity of the EBA there will need to be some very specific resources put together to be able to deal with it in a day-to-day management context and provide advice out to the field to be able to deal with that.

Ms SHING — Like the Lapsley process?

Mr BUFFONE — I am not sure that that is actually a day-to-day management thing. In actual fact it will be spending more time in the Fair Work Commission. That is based on history, so looking forward will be very, very interesting. So that is the first one. The second question, sorry, was?

Mr RAMSAY — Did you receive any advice that the EBA would affect volunteers in the day-to-day operations and responses to incidents, which you have referred to?

Mr BUFFONE — There is a whole range — as I have said, you have to take the cumulative effect: the fact that it touches on training, the fact that it touches on policy and the fact that it touches on uniforms. There is a whole range of different things that it actually touches on. I go back to 6I, that CFA is fundamentally a volunteer-based organisation. So I do not understand how you can have a management of an organisation that does not have a volunteer ethos embedded in it regardless of an industrial agreement.

Your key question is: did we have advice around it being impacted? Yes, we did. We had advice, both legal advice and also from the VFBV themselves around their views of impact on volunteers.

Mr RAMSAY — And surge capacity?

Mr BUFFONE — Surge capacity. As you know, the surge capacity is very much around the urban fringe areas, and we have demonstrated that both through deployments to Tasmania and deployments to South Australia where 200 trucks can be raised very, very quickly without impacting on frontline response to cover service delivery requirements. The thing there is back around what happens in relation to the relationship with those volunteers both at integrated stations and surrounding stations within that area.

Mr RAMSAY — Did you have advice on that, what the impact would be with the EBA?

Mr BUFFONE — Yes. It is all linked to that advice around what the impact is, so yes.

Mr YOUNG — Thank you, Mr Buffone, for coming in. I would not mind just for a change touching on some of your knowledge about bushfire preparation. You mentioned before that we are moving to a cross-tenure approach with addressing bushfire preparation. It becomes highly complex when you are crossing

onto private land. Could you please explain some of the problems with that and any procedures that we might be able to put in place to rectify that?

Mr BUFFONE — Absolutely. If you think about the approach, as soon as you cross over into private land you do not have the same tools or instruments to actually determine how you will manage that land. In actual fact Wye River is a classic example, where the bush that butts up to Wye River itself is in fact private land, but that is probably not a complex issue because it is all native bush. It is when you have patches of private land, when you have different fuel loads, when you have a different mosaic.

Ms SHING — Mornington Peninsula.

Mr BUFFONE — Mornington Peninsula, but it is not just the Mornington Peninsula.

Ms SHING — As an example, though.

Mr BUFFONE — It is as you push out into some of the growth areas, and then you have got even where Judge Teague lives up in Daylesford, those sorts of areas where you have got townships that are set within those areas, and then you require a whole range of different authorities and bodies, including private citizens, to invest in fuel management.

If you think about just the issue, many years ago there was a fire in Gippsland at Tostaree. The issue was around how it ran along the roadside. Within that roadside there were four or five different organisations that had accountability to the easements there, so there were powerlines, gaslines, road, et cetera. Then of course you have got building code, you have land use planning — all of those aspects all become critical issues that you have to be able to get a consensus on how to actually do it. That is why I go back to my key point.

Also, Chair, just picking up on your point, how do you make sure that the standard is maintained based on risk? It is based on the sophistication of the risk methodology, the risk system, and on everybody using the same information. That does not exist at the moment.

Mr YOUNG — You mentioned all these sets of rules and codes and various practices. From speaking to people there seems to be a belief that on private land you are sometimes inhibited from clearing vegetation, bush and fuel because of laws and regulations that may or may not exist. Do you know if any work has been done around what we can do to improve that, or are they just myths?

Mr BUFFONE — There was some work done straight after the royal commission around the 10/30 and 10/50 rules, and they are already in place. It also does come back down to local by-laws and local government as well around what they apply. Yes, there are some programs in Yarra Ranges around how that can be improved, but again I would still go back to — and I know you will probably get sick of me saying this — if you get the right risk methodology, the right evidence and the right science that actually backs that up, it actually helps to make some of those decisions. We know that there are tensions between the ecological aspects and the pure safety aspects. That is a fact. That tension, I would actually argue, is a healthy tension, because we need to find the middle ground there. But again, if you do not have the right evidence, if you do not burn in the right areas and if you do not manage fuel — I do not think it should be just about burning; I think there are a whole range of other fuel management strategies that should be included.

I think that the key thing there is also the community. What is the community prepared to accept in relation to risk as well? Because there are some communities that are not necessarily that comfortable with burning. Again, to use Wye River, I facilitated a community meeting down in Wye River, and there were differences within the community. Some would actually say, 'Clear as far as you can', and others would say, 'Well, hang on a moment, the reason we live here is because of the amenity and the environment and those values', so there are some tensions there, but they are healthy tensions. The thing is around the right systems, the right evidence and the right methodology that actually help you to make those decisions.

Mr YOUNG — You have actually just led into my next question as far as the use of other methods goes and that we do not always have to resort to burning. If the right risk management is applied, is there a place for the collection of firewood by the public in public lands as a way of reducing fuel loads?

Mr BUFFONE — I am not an expert in that, but there is a fundamental around fuel loads, management of fuel, heavy fuels, light fuels and all of those sorts of things. The approach to it is something that again has to be measured against the ecological values versus the safety factors and how they will actually come together.

Ms SHING — That is probably a good segue into what you might talk about.

Ms DUNN — I am pleased that we are talking ecology, but I am not going there, sorry to disappoint you. Thanks, Mr Buffone, for submitting today. I thought I heard you say as part of answering questions that volunteer trainers were affected by the EBA. Was that correct?

Mr BUFFONE — No, what I said is that trainers that are employed by CFA are covered by the EBA that we are discussing, and again there are a whole range of matters that have an impact on how we actually deliver training. Training is such a core issue for volunteers in sustainability, recruitment and competencies. If you think about, as I said, the broad range of volunteers and the broad range of services that we deal with, all the way from pretty much metropolitan out to the single shed, which is remote rural Victoria, which is a critical part of our capability to manage fires, training needs to be flexible and agile, and it needs to be delivered in a whole range of different ways.

Ms DUNN — In terms of the CFA trainers who are volunteer firefighters, does the EBA impact on their ability to continue in that role?

Mr BUFFONE — If you have a look — and this is an interesting aspect — the 2010 agreement started to see some changes around the impact of training and assessing of volunteers and that in fact for some reason, and we actually do not understand it, it is an interpretation that volunteer trainers cannot assess certain activities. That was myth, and there have been a whole range of policies et cetera. The way that this EBA is shaping up is that that has actually firmed some of that up around the role of trainers and that impact. One of our strategies was around getting volunteer trainers back. There are 3000 volunteer trainers and assessors out there, which is a huge capacity. Bear in mind these paid trainers are not there just to train career staff; they are actually there to train volunteers to build that overall capacity of the CFA.

Ms DUNN — The issue came up around volunteers wearing different uniforms to career firefighters. I am just wondering what your understanding is as to why there would be that differentiation.

Mr BUFFONE — I do not understand that. In actual fact one of the decisions that I made while I was the chief officer was to approve work wear. Work wear is pretty much the equivalent of what the career firefighters have as station wear. That was so that volunteers would look the same as career staff. Regarding the PPC that they wear on the fireground, there are two different types of PPC. They choose, but really there is no difference. I am not sure about what the driver of that is.

Ms DUNN — And that has not come up in negotiations as to what the driver for that might be?

Mr BUFFONE — There has been — and this is only second hand from my perspective, because I was not involved in some of those direct negotiations — but there were views that on the fireground there needed to be a differentiation of volunteers and career staff.

Ms DUNN — And was that just around — and if you do not know the answer, that is fine — managing the operations on that fireground, to be able to identify quickly whether they were volunteer or career —

Mr BUFFONE — In the way the CFA runs that should not be an issue, because the way the CFA runs is that at the moment it is based on the person who has the appropriate qualifications to actually deal with the job at hand continuing to run that job, so long as they have got the right qualifications and the right competencies. So at the moment there is no differentiation between that.

Ms DUNN — Thank you. And lastly you articulated concerns. You talked about the potential for fractures occurring in the system, and hoped that that does not impact on the CFA response in this upcoming fire season. I am just wondering what elements concern you in relation to that statement? What things are on your mind that will impact on response?

Mr BUFFONE — Based on where we are right now? Is that what you are talking about?

Ms DUNN — Yes.

Mr BUFFONE — So my concerns are that this EBA has hurt a lot of people.

Ms SHING — The EBA or the coverage?

The CHAIR — The process.

Mr BUFFONE — Well, the situation and the process have hurt a lot of people. Therefore it has impacted on the relationship, on the morale of both career staff and volunteers, and in particular for volunteers. If they do not feel valued, if they are demoralised and do not feel like they are considered as part of the organisation, then there is the potential that where we had surge capacity, where they would normally go, you know, far and wide, they may choose to just stay. I cannot speak on their behalf, but we have had examples where at certain times, based on certain aspects, there may be some issues associated with that.

The other thing is around the deployment of strike teams and trying to blend career staff with strike teams. I would hope that that is not the case because again, regardless of what occurs, it is about the community, and really, if you think about volunteers, they are the community anyway, so you would hope that that is not the case, but I would suggest that with the sort of pressure that is on the CFA system and the CFA organisation there is the potential to have impacts. The other thing that I had already spoken about is that if you have to meet certain requirements in relation to rosters for command staff, then there is a serious impact on that unless there is some agreement that that can be varied for this fire season.

Mr DALLA-RIVA — Thank you, Mr Buffone, for your evidence thus far. Can I just go to the letter you wrote to the new Minister for Emergency Services dated 19 June, which has been provided? Did you get a reply from the minister in relation to this letter?

Mr BUFFONE — No.

Mr DALLA-RIVA — Did the minister speak to you at all? I think you indicated — —

Mr BUFFONE — No, I spoke to the minister before I wrote the letter. So I had a meeting with the minister before I submitted the letter, and I also met with the new chair of the CFA as well, so I met with the minister I think it was either the Wednesday or the Thursday and then I met with the chair on the Sunday and then that evening I sent the letter because I felt that, through my discussions, my concerns were not being taken on board and I believed would not be remedied, so I felt that it was important, as a public official and as the chief officer, to actually put it forward to a minister and to a new chair to say, 'Here are my concerns'.

Mr DALLA-RIVA — I understand that the Legislative Assembly made the accusation, or indeed out in the media, about the request for you to have more money; is that correct?

Mr BUFFONE — That is correct.

Mr DALLA-RIVA — And you have refuted that here?

Mr BUFFONE — That is correct.

Mr DALLA-RIVA — So either you are lying or the minister is lying in respect of that arrangement that was proposed.

Mr BUFFONE — Well, I am here under oath, and all I can do is answer the questions that I have been asked. I have answered those questions — —

Ms SHING — You referred to incentives before, though.

Mr BUFFONE — I have answered those questions.

Mr DALLA-RIVA — Thank you. Just finally, you have been a CFA volunteer for 15 years?

Mr BUFFONE — Sixteen years now.

Mr DALLA-RIVA — Sixteen years? You previously held a position as deputy commissioner at — —

Mr BUFFONE — Deputy emergency management commissioner with Craig Lapsley and also deputy emergency services commissioner with Bruce Esplin.

Mr DALLA-RIVA — Okay. That is an extensive history and experience. We heard the evidence — and I am going to have to seek advice about this acronym — that Volunteer Fire Brigades Victoria spoke about you mentioning the morale within the CFA. That concerns me in terms of the fire preparedness heading into the next season. You touched on it briefly with Ms Dunn in relation to some of the aspects and the concerns that perhaps the volunteers may not extend themselves beyond their geographical region. Do you see that in any way as a threat to the capacity of Victoria to be prepared for the fire season if this EBA continues to drag out?

Mr BUFFONE — Look, I think you have to have a look at what our capacity is built on, and the capacity is predominantly built on the volunteer capacity to deal with bushfires. The career element of it is focused on some of those what I would describe as higher urban risks, and you sort of touched on some of that earlier on, so anything that has an impact on volunteers has an impact on the capacity for Victoria to respond to bushfires.

Ms BATH — Thank you, Mr Buffone. I would like just to briefly get your position or understanding around lateral recruitment within the CFA. Have you a working knowledge that you can give us a brief overview on that?

Mr BUFFONE — Yes, currently lateral entry is limited but achievable under the current agreement. There are a whole range of processes that we have to go through. Saying that, though, that has been more focused on what I would describe as the management command and control parts of the organisation — so ops officers, ops managers, that level there — not so much on career firefighters on station, because that has nearly been an area where it has been impossible to occur. There have been over a period of time situations where we have had lateral entry occur at what I would describe as the management levels, but there are some challenges. Just recently there has been some lateral entry agreement between the MFB and the CFA, where we have seen career firefighters moving from MFB into CFA and vice versa following a secondment program.

Ms BATH — Thank you.

Mr BUFFONE — It is in some ways a restrictive process at the moment.

Ms BATH — It has been put to me that with the proposed EBA — and I will just give you an example that was given to me — a CFA volunteer of, say, some 10 years experience, who may will be a CFA captain with 10 to 15 years experience as a volunteer in a reasonable country fire station, is looking to go via lateral entry into the paid service as a career firefighter. The comment that they said to me was that under the new proposed EBA that prior experience and learning, we will say, will not be acknowledged and that they will need to go back and complete a recruitment course from the start.

Mr BUFFONE — That is the current arrangement.

Ms BATH — That is the current arrangement as it is. Okay. Thank you, that is good to know for clarity. Also for movement from other states and into Victoria, what is the current arrangement?

Mr BUFFONE — Exactly the same. They come in, they do a recruit course and then they go to specific stations — at the station level. If we talk about an ops officer or ops manager, there are a whole range of different rules that apply to that, but it is still quite restrictive.

Ms BATH — Thank you.

The CHAIR — Can I thank you, Mr Buffone, for your evidence and for your commitment to fire services. I want to place on record my respect for you and for the service that you have given our state.

Committee adjourned.