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VFBV Submission: Impediments to Volunteer Brigades obtaining access to Sessional Instructors

2009 Bushfires Royal Commission Submission

Volunteer Fire Brigades Victoria makes the following to the 2009 Victorian Bushfires Royal Commission dated 17 May 2010, in relation to impediments to Volunteer Brigades obtaining access to Sessional Instructors.

2009 VICTORIAN BUSHFIRES ROYAL COMMISSION**Letters Patent issued 16 February 2009**

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SUBMISSION REGARDING THE IMPEDIMENTS TO VOLUNTEER BRIGADES
OBTAINING ACCESS TO SESSIONAL INSTRUCTORS

1. There are three types of instructors:
 - Full-time, ie the instructor is paid as a fulltime employee
 - Sessional, ie the instructor is paid for each session of training conducted, when needed by the CFA
 - Voluntary, ie the instructor is unpaid

2. From a volunteer perspective this discussion is about the impact on the training provided to volunteers.

3. This matter was the subject of evidence from Mr Allan Monti¹. It was also discussed by Mr Ackland in evidence². It was canvassed by Mr Andrew Ford, the CEO of the VFBV³. It was included in the submission filed by

¹ WIT.530.001.0001, paragraphs 37-46; T12175

² WIT.7550.001.0001_R, paragraph 21; T19262

³ T19235-19236

VFBV in respect of Firefighter Safety⁴ and VFBV's submission relating to Organisational Structure⁵.

4. Furthermore in our response submission on Organisational Structure⁶ VFBV expressed concern that any alterations to the current organisational arrangements needed to acknowledge and address the ongoing industrial relations tensions that have affected the volunteers in the past.
5. The UFU's written response to Counsel Assisting's submissions on Organisational Structure⁷ criticised Mr Ford regarding his evidence on the topic of sessional training, without the UFU ever having ventilated the matter in cross-examination of Mr Ford, Mr Monti, Mr Ackland or other volunteer firefighters called before the Royal Commission.
6. The UFU submission cited Ms Doyle SC as having corrected the record with regard to the training provisions of the EBA to the extent that it was said that the EBA does not prevent volunteers engaging in or providing training to CFA volunteers. With respect, the two issues have become intermingled. Firstly, the VFBV do accept that there is nothing in the EBA and associated agreements preventing volunteers from providing sessional training or other training without payment. To the extent that Mr Smith's evidence⁸ may have suggested otherwise the VFBV accept that Mr Smith may not have expressed the key issue in relation to the clarity of the matter.
7. However the criticisms put by the UFU in their written submission and in their counsel's oral submission fail to grapple with the gravamen of the concerns raised by VFBV witnesses. This is that the EBA and related

⁴ VFBV.001.001.0001; paragraphs 40 and 41

⁵ VFBV.002.001.0009; paragraphs 39.4 and 57

⁶ RESP.7507.004.0001; paragraphs 19 and 19.1

⁷ RESP.7511.002.0001; paragraph 15

⁸ T2885:22

industrial agreements as a matter of practical reality do hamper the ability for volunteers to receive training from sessional instructors through the CFA. Evidence of this is that notwithstanding the EBA being signed in November 2007, to date there are no Sessional instructors engaged within CFA.

8. In order for the impact of the EBA and associated agreements on sessional training to be understood, the Commission needs to receive in evidence the Deed of Agreement, dated 14 May 2008, which must be read alongside the Operational Staff Agreement 2008⁹ (commonly referred to within the Royal Commission as the relevant EBA).
9. The Deed of Agreement¹⁰ operates in parallel with the Operational Staff Agreement 2008 and binds the parties in respect of its contents, including clauses 4.8, which deals with referral to a Board of Reference/Disputes Panel by the CFA or UFU and clause 4.9, which deals with Training Instructors/Training.
10. The Volunteers now seek to tender in evidence the Deed of Agreement as a result of the emphasis that has been given to the EBA and related industrial agreements and arrangements¹¹.
11. VFBV asserts that it ought be entitled to tender these documents at this late stage due to the fact that they could have been tendered through Mr Ford or other VFBV witnesses had they been cross examined by UFU on this issue¹².

⁹ WIT.3004.023.0070; Operational Staff Agreement 2008, 190 pages total; signed by Peter Marshall Branch secretary of the UFU on 15 May 2008 signed by Chairman of the CFA Kerry Murphy on 14 May 2008

¹⁰ WIT.3004.023.0070: this document has become known as "the deed".

¹¹ "the deed" takes the form of 2 documents; the second document dated 14 May 2008 and titled "Amending Deed of Agreement" is a caveat to the first document dated 22 November 2007 titled "Deed of Agreement"

¹² Mr Thomas could also have been cross examined on this issue then had it not been received in an ad hoc fashion after VFBV had finished their presentation.

12. The UFU's counsel was permitted late tender of documents, one of which was permitted against objection on the final day of the Royal Commission.

13. The Deed of Agreement is necessary for completeness if the Commission wishes to seek to interpret the industrial arrangements between the CFA and the UFU.

14. The relevant training clauses of the EBA (Operational Staff Agreement 2008¹³) include:

- Clauses 47.1 through to 47.4, in particular note 47.3.2, and 47.3.5
- Appendix B.

15. The relevant clause of the Amending Deed of Agreement is:

4.9 – “By deleting clause 14 of the original deed and replacing it with the following:

14. Training Instructors/Training

14.1. CFA agrees in principle that all paid operational training and assessment shall be undertaken by full time personnel. However, there may be areas that require instructors to be other than full time. Employment of other than full time instructors shall be determined on an agreed needs basis between the parties. Such agreement will only be reached if it is established that such work cannot be undertaken by full time employees including the use of appropriately qualified firefighters and fire officers. In determining this matter the parties will take into account:

- *the nature of the operational training required*
- *the training skills and operational competencies possessed by fulltime employees available*
- *the location at which the training is required*
- *the number of instructors required to meet the need, and*
- *the availability of volunteers.*

The UFU's agreement to the use of other than full time instructors will not be unreasonably withheld”.

¹³ WIT.3004.023.0070

16. VFBV understand through interaction with the CFA that the practical effect of these industrial instruments causes difficulty in sourcing or appointing sessional instructors to meet the demonstrated demand across the state. CFA has yet to obtain agreement from the UFU to develop a pool of sessional instructor's despite agreements to do so under the EBA¹⁴ executed in November 2007. As a result, to date no sessional instructors have been engaged by CFA.
17. The Deed of Agreement, in tandem with the EBA, requires that paid training is delivered to firefighters by full time operational staff, unless certain preconditions are met for a variation to this standing arrangement. However, VFBV acknowledges that the EBA does have a provision at Clause 47.3.5 that provides for the engagement of sessional instructors. In over three years since the EBA was executed, no agreement has been able to be reached and no sessional instructors engaged.
18. Any variation requires approval/agreement by the UFU because it must be agreed by the UFU that there is a need for a non-full time instructor to deliver training on an as needs basis in certain areas.
19. Such agreement is predicated upon there being no fulltime paid instructor available to deliver that training. Following attempts to source a fulltime paid instructor being unsuccessful it is required that CFA canvass paid firefighters as to their availability and preparedness to deliver the training. The consequence is that even if the full time paid firefighter is situated remotely from where the training will be delivered and is not the most qualified to deliver the training the CFA will be required to use that option..

¹⁴ 2008 Operational Staff Agreement Clause 47.3.5

20. This is so even though there may be a more competent and experienced person who may be more conveniently located to deliver the training where and when the training is required.
21. The CFA cannot sustain this level of inefficiency and cost consequences in delivering training especially where they may be expected to pay for accommodation, travel, overtime and other allowances for paid firefighters being sent from a vastly different geographical area.
22. Hence the evidence of Mr Bourke that the CFA¹⁵ are currently trying to negotiate a new industrial agreement and the annexure to Mr deMan's witness statement¹⁶ being the minutes of the Joint CFA and VFBV Board Meeting demonstrates the unsatisfactory nature of the current arrangements.
23. Therefore as discussed in the evidence of Mr Ford, Mr Monti and Mr Ackland there is currently a substantial and growing unmet need for sessional instructors to deliver training to volunteers all over the state. This exacerbates the already unmet need for fulltime paid instructors discussed by Mr de Mann in his statement and evidence.

Allan Monti,
Acting CEO
VFBV

¹⁵ T19345

¹⁶ WIT.3004.047.0094, point 5