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VFBV Response to Counsel Assisting's Submissions on Amalgamation of Victoria's fire services

2009 Bushfires Royal Commission Submission

Volunteer Fire Brigades Victoria makes the following submission in response to the submission of Counsel assisting the 2009 Victorian Bushfires Royal Commission dated 17 May 2010, in relation to the amalgamation of Victoria's fire services.

2009 VICTORIAN BUSHFIRES ROYAL COMMISSION

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SUBMISSION OF VOLUNTEER FIRE BRIGADES VICTORIA

Introduction

1. Volunteer Fire Brigades Victoria ("VFBV") make these submissions in response to the submissions of Counsel assisting the 2009 Victorian Bushfires Royal Commission ("the Commission") dated 17 May 2010 ("the Submission"), in relation to the amalgamation of Victoria's fire services.
2. VFBV agrees entirely with Counsel Assisting's introductory comments;

Change may be required and necessary to ensure the response to CFA fire responsibilities is properly managed, is efficient and that that response is as far as possible the best available fire agency response. Those who advocate change in the structure of Victoria's fire fighting agencies must be able to demonstrate that such change will advance these goals. Alternatively, if the change can be demonstrated as likely to achieve such goals it should not, reasonably, be resisted.
3. At the outset, VFBV wishes to make it clear that it does not oppose change. However, to reiterate the above comments of Counsel Assisting, VFBV does oppose change for the sake of it in circumstances where need for change is not supported by the evidence before the Commission. VFBV maintains the position set out in its submission to the Commission on the question of whether the fire services should amalgamate. VFBV encourages the Commission to ensure that any structural change;

- 3.1 Places the future focus on increasing interoperability between the agencies in a practical and sustainable manner, rather than directing resources towards an unworkable merger or integration of the agencies, at whatever level that may ultimately occur;
 - 3.2 Does not detrimentally impact on volunteer fire-fighters - their relationship and commitment to the CFA - and consequently their numbers;
 - 3.3 Maintains and develops the positive attributes of the current system, including encouraging volunteerism through offering appropriate training, removing volunteer disincentives and fully utilising volunteers;
 - 3.4 Retains the character of the CFA as a volunteer based organisation supplemented by paid fire fighters as and when needed.
4. Likewise, VFBV is not opposed to integrated fire brigades. However, VFBV believes that volunteers will leave the CFA if the volunteer culture of the CFA (or individual fire brigades) is detrimentally affected by integration or if volunteers are proposed to be replaced by paid fire fighters, particularly in the outer urban fringe areas of metropolitan Melbourne and regional cities.
5. The evidence presented by the VFBV in relation to the likely decrease in volunteer numbers should the culture of the CFA change is supported by VFBV's surveys and consultation with volunteers across Victoria. Unlike a paid workforce, volunteers are not directed or controlled by the CFA as the host organisation. A considerable level of concern should be afforded to the real prospect that, if the dominant culture of the organisation shifts to a paid workforce supported by volunteers instead of the current arrangements described by Penny Armytage during her evidence, where paid fire fighters are supposed to supplement volunteers,¹ volunteers will leave the organisation in the event that the CFA culture moves beyond *the tipping point*. It is trite to conclude that if the dominant culture of the CFA or individual fire brigades shifts to that of a paid workforce supplemented by volunteers, volunteer fire fighters will leave the CFA.

¹ T19406, 6

6. Further to this, VFBV is in agreement with Counsel Assisting that the unilateral expansion of the MFD and replacement of CFA fire brigades with MFB would be costly and would erode the surge capacity of the CFA.² VFBV believes that in growth in outer urban areas and regional cities can be appropriately dealt with by the Continuum of Support arrangements for supplementing volunteer with paid fire fighters as and when required.
7. VFBV supports integrated fire brigades in accordance with the Continuum of Support as previously set out by VFBV. VFBV is of the view that;
 - 7.1 The evidence does not support an assertion that volunteers should be replaced with paid fire fighters, either in the outer urban fringe or regional cities;
 - 7.2 On the contrary the evidence demonstrates that the CFA is an organisation that has the experience and expertise to deal with structural fires to the same level competency and service delivery standards as the MFB;
 - 7.3 VFBV supports the supplementation of volunteer fire brigades on the outer urban fringe with paid fire fighters as and when required, provided that integration is properly managed to preserve the CFA's volunteer culture.
 - 7.4 If there is a shift away from the volunteer culture within CFA brigades, volunteers will leave the organisation. Surge capacity in the outer urban fringe will be lost.
 - 7.5 The supplementation of volunteers with paid fire fighters is one of a suite of treatments that should be applied to a CFA brigade in the outer urban fringe. The needs of brigades need to be assessed in a consistent, transparent and objective manner. The process of determining the needs of brigades in outer urban fringes should not be tainted by industrial bargaining.
 - 7.6 Any move to replace volunteers in outer urban areas is premature and lacks justification.

Training and competency of volunteers

² Paragraph 2.29 of Counsel Assisting's submission.

8. At paragraphs 4.76 to 4.81 of the submission filed by Counsel Assisting there is an inference that untrained volunteers are sent to structure fires¹. When reading Counsel Assisting's submission as a whole, Counsel Assisting appears to imply that volunteers are unable to provide the same level of service to urban communities as a fully paid service. VFBV disputes this implication.
9. The evidence demonstrates that volunteers provide the same level of service as career firefighters. The evidence of Mr. Thomas about the skill requirements of volunteers did not make it clear that while career firefighters are assessed as individuals, brigades are assessed as units.
10. The skills profile of a brigade is primarily designed to match the risk profile within the brigade's primary service delivery area. This is achieved through a combination and aggregation of the skills of all the volunteers in the brigade. This has not been explored adequately within the Commission, certainly not to the extent where comparisons can be made in relation to service delivery.
11. It is clear from the evidence before the Commission that CFA firefighters, be they career or volunteer, train and attain competencies and endorsements to national standards. Career staff progress more quickly to structural endorsements due to their employment arrangements.
12. CFA volunteers entering the service must complete the Minimum Skills – Wildfire training program, and be assessed and endorsed for operational duties. Volunteers who operate in a primarily structural environment undertake more advanced training towards structural and specialist qualifications. The progressive acquisition of underpinning knowledge is linked strongly to their practical experience, providing robust and well-proven reinforcement of practical to theory. They must also undertake a suite of specific training following which they are assessed against national competency standards. In the adult learning environment, this stepped progression is married with 'on the fireground' experiences delivering a strong product.
13. It is evident that the explanation provided by Mr deMan in relation to the competencies of volunteers associated with structural fire suppression was either not entirely clear or was misunderstood by Counsel Assisting. As part of their

Annual Inspection Process³, brigades must demonstrate minimum personnel requirements and competencies. The brigade must also demonstrate that they have sufficient numbers of trained personnel with the appropriate skills mix for the risk profile of the brigade to efficiently and safely deal with the risks within the brigade's area.

14. The foundation for this process involves each risk category being assigned a benchmark personnel inventory for each skill requirement. This inventory is based on an assessment of the brigade risk profile, membership and annual response figures.
15. At paragraph 4.77, VFBV notes that Counsel Assisting has alluded to the premise that *It does not appear likely that upon attending a fire a CFA volunteer would 'hold back' outside by reason of the fact that they had not completed a certain training unit.*
16. VFBV disagrees strongly given the 'safety first' culture imbedded into all fireground operations and reinforced in training, drills and the doctrine drawn upon by all Incident Controllers in maintaining safe fire and incident ground operations. The command and control principles activated at any fire or incident require the Incident Controller to appraise (size up) the job and task crews based on the situational capacity (own situation) and the individual skills, competencies and endorsements the crew possesses.
17. VFBV maintains that although volunteers are committed to their job, they are professionals and therefore are acutely aware of safety issues and their own limitations. Volunteers would not act in such a way as to jeopardise their own safety and particularly the safety of others. The suggestion misunderstands the role, as well as the professionalism of CFA volunteers.

The Victorian Fire Services Board

18. VFBV adopts the comments in the submission of Counsel Assisting at paragraphs 5.27, 5.28 and 5.31.
19. VFBV is of the view that for the proposal set out by Counsel Assisting to work, the following would need be acknowledged and addressed;

³ Pursuant to section 29 of the *Country Fire Authority Act 1958*

- 19.1 The industrial relations tensions and potential conflict arising from the different cultures and interests of the organisations. VFBV adopts the comments at paragraphs 6.1 and 6.3 of Counsel Assisting's submission;
- 19.2 The CFA volunteer culture must be retained. This would require a careful balancing of competing interests of the members of the boards. There is a difficulty associated with representative boards. VFBV cautions that their experience, with the Board of Reference process for example, and other representative committees leads them to conclude that representative boards in emergency management structures tend to be dominated by different interest groups competing for prominence. For this reason VFBV is of the view that if an overarching body such as the VFSB is proposed, it would be preferable if the board were a wholly skills based board which is independent from pressures from interest groups or unions.
- 19.3 VFBV envisages that the board would include;
- 19.3.1 The Chief Officers of the three fire agencies;
- 19.3.2 Several experts, comprising individuals with an understanding of and direct experience in volunteer issues;
- 19.4 The boards of the respective agencies must remain intact. The role of the VFSB must be supervisory in nature and must not displace the direct reporting of the agencies to the Minister;
- 19.5 Be established as a statutory authority, rather than as an ad hoc committee;
- 19.6 Be chaired by the Chief Officer of the CFA;
- 19.7 All auditing responsibilities should remain with OESC.
- 19.8 The board should replace all industrial boards of reference as it should be the VFSB board that is responsible for determining service standards (and therefore staffing standards).
- 19.9 The board should have a supervisory rather than governance role;

- 19.10 The Volunteer Charter should be given legislative status in connection with the operation of the VFSB and should formally form part of the decision making framework.
20. VFBV agrees with the comments in the submission of Counsel Assisting at paragraph 15.21 in relation to the need to ensure that legislative amendment precludes the VFSB from entering into the operational domain of the agencies. VFBV also supports the proposition that the responsibility for auditing the implementation of recommendations made by the VFSB in relation to standards and training and similar should be vested in the OESC, as an external and objective third party.
21. VFBV adopts the comments made in the submission filed by the State of Victoria, at paragraphs 32 to 39, in relation to the difficulties associated with the proposed adoption of the SAFECOM model as template for the VFSB.
22. Counsel Assisting places a great deal of weight on the South Australian SAFECOM model in their submission. VFBV also notes that the State of Victoria, in its submission adverts to the difficulties of integrating the proposed VFSB with existing committees and bodies under the Victorian emergency services framework. The evidence before the Commission in relation to the SAFECOM model was confined to the explanation of the structure and did not involve a critical analysis of the operational success of the model. Importantly, the SAFECOM model does not have any supervisory function in relation to land management agencies. VFBV cautions against the wholesale adoption of a similar model in circumstances where no inquiry has been made as to the effectiveness or success of the SAFECOM model and its ability to translate to the Victorian emergency services framework.
23. VFBV agrees with the matters set out in the submission of Counsel Assisting at paragraphs 15.19(q), however VFBV does not agree with the propositions set out at (s) and (t). VFBV also adopts the comments in the submission of Counsel Assisting at paragraphs 15.6(a),(b) and (e) and note that whilst there might be debate about the type of overarching structure, we agree in principle to the comments in paragraph 15.7.

The Board of Reference/Disputes Board Decision

24. In Mr Thomas' evidence he made a correlation between the number of the fire stations found by the Board of Reference to require additional staffing or different roster arrangements, and the 52 'hot spots' towns recognized by the State as requiring priority in the development of Township Protection Plans.
25. VFBV maintains that any link between the fire stations identified in the Board of Reference decision and the 52 Hot Spot towns is coincidental. The Board of Reference indicated that they did not consider these matters, which were outside the scope of their mandate.
26. The future provision of career staff to support and supplement volunteers in fire stations is primarily to respond to structural risks and would have no impact on the brigades or States capacity to combat bushfires.
27. VFBV also notes that both Mr. Rees in during his final appearance before the Commission and Mr. Bibby gave evidence that had additional paid firefighters arising from the Board of Reference decision had been in place on the 7th February, it would have made no difference to the outcome.⁴
28. Counsel Assisting set out in their submission to a significant extent the evidence presented, primarily through Barry Thomas, in relation to the Board of Reference. This evidence has adverted to issues regarding the ability of the CFA to manage change, the steps needed to address future challenges and assumptions about the professional skills of volunteers.
29. During the course of the hearing VFBV submitted that the ad hoc admission of the evidence from Mr. Thomas on the matters of the Board of Reference led to a circumstance where VFBV were not represented by counsel on the day he attended, so his evidence was unable to be tested under cross examination by counsel for VFBV.⁵
30. VFBV is concerned that the information about the Board of Reference presented to the Commission is incomplete and distorted and its provenance has not been properly explained to the Commission.

⁴ T19568, 3.

⁵ T19842

31. Were VFBV in a position to lead evidence on the issue and cross-examine Mr Thomas, VFBV would have produced evidence in relation to the nature of the board, its history and its current role in CFA management.
32. It is clear from the evidence that the Board of Reference was at no stage an expert body convened for the purpose of reviewing or determining staffing of brigades or similar issues. Rather it was established as a mechanism for resolving disputes between the CFA and UFU. Where the CFA and UFU had previously been unable to reach an agreed position matters were determined by majority vote of the Board. Decisions were then submitted to the CFA Board and Government for final determination.
33. The Board of Reference was confined to an examination of brigades that were submitted to it by parties to the relevant industrial agreements. To date, only the UFU have submitted brigades for consideration. As demonstrated by the evidence of Mr Thomas⁶ the work of the Board was limited to a consideration of the CFA's response to structural fires.
34. VFBV makes the following observations in relation to the Board of Reference and the decision;
 - 34.1 The proposal to introduce career staff into all 25 brigades was opposed by the CFA. The determination of the board has been represented during the course of the hearing as an immediate need. VFBV disputes this assertion. VFBV understands that the introduction of paid fire fighters into volunteer brigades was to occur at a time as and when the need arose, over several years.
 - 34.2 The volunteers were not directly represented on the board of and were not provided the opportunity to respond to or comment on the issue for determination. VFBV has previously expressed concern about this issue, as acknowledged by Counsel Assisting at paragraph 4.51, wherein reference is made to a circular distributed by Andrew Ford, CEO of VFBV in which Mr

⁶ See INDX.959.002.0001 through to INDX.959.029.001; Attachments to WIT.7557.001.0001

Ford expressed the view that the CFA had surrendered operational control to an external industrial relations panel.⁷

35. It is submitted that the Commission should not make any conclusions in relation to the Board of Reference issue and little weight should be given to the evidence of Mr Thomas. VFBV notes also that the Commission (and VFBV for that matter) has never been provided with the documentation that was before the Board of Reference in making its determination in relation to the proposal to engage 684 fire-fighters into the future.
36. Having regard to these matters and the fact that the Board:
- 36.1 Was a forum for the resolution of industrial disputes and not an appropriate body for the consideration or determination of staffing issues;
 - 36.2 Was limited in composition and task;
 - 36.3 Made the determination to engage 684 fire fighters into the *long term* future, contrary to the impression sought to be cast on the decision by the UFU of an *immediate need* for additional fire-fighters;
 - 36.4 Did not hear or consider representations by volunteers as there is no capacity for volunteer representation on the Board.

VFBV is of the view that the evidence in relation to the Board of Reference and the Board of Reference decision itself should be afforded little weight by the Commission.⁸

Standard of Fire Cover

37. The evidence demonstrates that the CFA complies with a standard of fire cover that is commensurate with that of the MFB, notwithstanding the assertions of the UFU and in particular, Mr Hayward.
38. VFBV takes no issue with the proposition that standards in relation to the standard of fire cover should be transparent, measurable and consistent.

⁷ Noted at paragraph 4.51 of Counsel Assisting's submission.

⁸ VFBV adopts the comments in paragraph 7 of the Schedule of the submissions filed by the State of Victoria.

Command and Control

39. VFBV agrees that a command and control structure for bushfires in Victoria where there is a single State Controller should be implemented in the state of Victoria. VFBV also agrees that the State Controller should be the Chief Fire Officer of the CFA.
40. This proposal is similar to that proposed by VFBV in our submission, *Proposal for a Single Control Agency and Line of Control for Bushfire Management in Victoria*⁹ and is also similar to the current interim arrangements in place in Victoria. VFBV argued in that submission that the structure proposed in that document would *deliver certainty to bushfire management in this State and give effect to an imperative of having one organisation and one person responsible and accountable to the community and government*¹⁰.
41. The VFBV proposal indicates that certainty about who is responsible is needed in relation to;
- 41.1 Planning;
 - 41.2 Response;
 - 41.3 Emergency Management; and
 - 41.4 Reflection and learning.¹¹
42. VFBV considers that an approach where the State Controller is empowered take control of all bushfire fighting operations and bushfire prevention activities when certain conditions exist to be a much more satisfactory approach than that which exists in NSW¹² where a legislated declaration is required in each instance.
43. VFBV agrees with the conditions listed in proposed recommendation 11 as being appropriate pre-conditions that must be present in order for the State Controller to exercise this power.

⁹ SUBM.002.051.0275

¹⁰ Paragraph 37, SUBM.002.051.0281

¹¹ Paragraph 10, SUBM.002.051.0277

¹² Paragraph 18, SUBM.002.051.0279

44. VFBV adopts the comments made in the submission by Counsel Assisting at paragraphs 15.23 and 15.25 in relation to the command and control structure. VFBV acknowledges that matters set out at paragraph 15.28.
45. The conditions under which the State Controller are able to exercise this power contained in proposed recommendation 11 are similar to the conditions upon which the Commissioner of the NSW Rural Fire Service is able to exercise his or her power of control, ie s.44 of the *Rural Fire Act 1997* (NSW).
46. However, VFBV notes that under the *Rural Fires Act* the Commissioner also has the power to delegate his or her functions in relation to that power (s. 44(2)). This power to delegate has been noted by Counsel Assisting in their submissions¹³. The evidence from Mr Rogers indicates that this power of delegation is very important:
- Effectively what the section says is that the commissioner may take charge of that incident. Now, in doing so the commissioner obviously doesn't really take charge personally but will then appoint someone to discharge his obligations under that section. So an individual will be appointed by a formal instrument and therefore, until either they are changed or the incident has finished and revoked, that person will retain the ability to have - over the area of appointment they have full control of every fire fighting resource that's in that area, irrespective of service.¹⁴*
47. The evidence from Mr Rogers recognises that the role of the NSW Commissioner is strategic in nature¹⁵ and includes the power to maintain a state wide overview¹⁶.
48. This power to delegate allows the commissioner to directly appoint the incident controller, usually done upon the recommendation of the local Bushfire Management Committee¹⁷. Mr Rogers' witness statement outlines the significant responsibilities given to any person delegated this power¹⁸.
49. VFBV believes that the power to delegate to an incident controller and the direct involvement of the State Controller in such appointments is essential for the effective operation of this recommendation. However, as is the case in NSW, VFBV

¹³ Paragraph 7.29

¹⁴ R. Rogers, T10555-6, Day 75

¹⁵ R. Rogers, T10566, 17

¹⁶ R. Rogers, T10566, 20

¹⁷ R. Rogers, T10560, 10; although the Commissioner is not subject to the direction of this committee (s. 44(3))

¹⁸ WIT.7525.001.0030

considers that whilst the State Controller may delegate the responsibility to manage a particular fire or complex of fires to another individual, the State Controller's overall accountability in respect to the effective and efficient management of the fire should not be abrogated.

50. As Mr Roger's informed the Commission¹⁹:

I think the more important point is that the appointment of an Incident Controller for a major fire, which is what we are talking about under Section 44, that remains the ultimate purview of the Commissioner, it is not a delegated function and the Commissioner takes an interest in every single one of those appointment, and it is my job to keep him up to date with the information and provide him with recommendations from I guess more of the detailed level that I'm aware of that he may not be aware of. But there is certainly no devolution of accountability from the Commissioner in regards to co-ordinated fire fighting because at the end of the day it is our prime focus.

51. Whilst the terminology of co-ordination as distinct from control is alluded to in Mr. Roger's evidence, the essence is that the Commissioner, or in the case of Victoria, the State Controller remains ultimately accountable for the management of the incident.

Boundary Alignment

52. VFBV adopts the matters set out at paragraphs 42 to 44 of the submission filed by the State of Victoria in relation to the issue of the expansion of the MFD and related matters.

53. Moreover, VFBV has significant concerns in relation to a potential expansion of the MFD into isolated pockets of Victoria, such as Bendigo, Ballarat, Sale and Geelong that would have the effect of fragmenting our current integrated service delivery model and would create a multitude of mini boundary issues across the State.

Andrew Ford, CEO

Volunteer Fire Brigades Victoria

¹⁹ R. Rogers T 10578-9, 24