



The Chairman
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10 June 2016

The Hon. James Merlino M.P.
Minister for Emergency Services
1 Treasury Place
MELBOURNE VIC 3002

Dear Minister,

On behalf of the Board of the Country Fire Authority (CFA), I write in reply to your letter to me dated 10 June 2016 regarding the CFA enterprise agreement proposal (Proposed EA).

The Board is not able to comply with the Fair Work Commission's Final Recommendation (incorporating the proposals of President Ross on 9 June 2016) for the following key reasons:

1. The Board is not comfortable that the Proposed EA maintains the custom and practice of using volunteers within the existing operational framework. The Proposed EA includes a number of clauses that adversely impact on volunteers. The reservation to the Emergency Management Commissioner of an oversight role in effect prevents the Board from raising issues on its own behalf. This is not acceptable
2. The Board has received advice from Frank Parry QC that the Proposed EA continues to afford the UFU a veto over critical decisions of the CFA, for example the procurement process – a matter which is in direct contradiction of the Recommendation of the Judge Lewis Report. The advice is that the process proposed by President Ross does not permit a single dispute over procurement (which may involve critical equipment) to be effectively resolved by the Commission. A range of curious and unnecessary barriers are placed before the CFA preventing the speedy resolution of a dispute after veto. No explanation or consideration of industrial merit has ever been given as to why such vetoes should be agreed.
3. The clear advice of Melina Richards SC, Crown Counsel of the State of Victoria with Rebecca Preston, Counsel is that the Proposed EA includes discriminatory, unlawful terms. In particular, the advice is that there are a number of clauses that would place the CFA in breach of its obligations to provide reasonable accommodation of an employee's responsibilities as a parent or carer and to make reasonable adjustments for an employee with a disability. This advice has been shared with you.
4. As the Proposed EA contains discriminatory terms, no member of the Board or employee of the Board could make a statutory declaration in support of the Proposed EA. This is part of the mandatory approval process under the *Fair Work Act*. Providing false information in a declaration is a criminal offence.



5. The Board has not received any advice contradicting the advice of Crown Counsel and the earlier assessment of the Victorian Human Rights and Opportunity Commission. The Board notes that President Ross did not advise the Government, nor did he include in his written proposal any contrary view.
6. It is no comfort to the Board to suggest the Commission is the entity that “must be satisfied” of the relevant requirements on approval. It is the view of the Board that it must be comfortable that the agreement is lawful and capable of being approved. In fact, the Board would have to disclose any contrary view it held. In this context, the Board is aware that diversity is a matter the Fair Work Commission must take into account in exercising its functions (s.578(c)), as well as being an objective of the Fair Work Act (s. 3(c)).
7. The Proposed EA is inconsistent with the Recommendations of the Fire Services Review of David O’Byrne dated October 2015, in particular Recommendation 7 that diversity be increased.
8. The Board is concerned that the Proposed EA undermines its ability to ensure the health, safety and welfare of its employees, for example not being able to monitor its own email system
9. The Supreme Court of Victoria has this afternoon made an order preventing the Board from complying with the Proposal.

In maintaining this position the CFA Board is acting conscientiously and in good faith, endeavouring to fulfil its statutory responsibilities. We see no reasonable basis for you to terminate the appointment of Board members in these circumstances. We would also be concerned that to comply with your directions would place us in contempt of the orders of the Supreme Court issued today.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Peberdy', is written below the text 'Yours sincerely'.

John Peberdy
Acting Chairperson