

TRANSCRIPT

STANDING COMMITTEE ON THE ENVIRONMENT AND PLANNING

Inquiry into fire season preparedness

Melbourne — 6 September 2016

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Witnesses

Mr James Higgins (sworn), Chief Executive Officer, and

Mr Paul Stacchino (sworn), Acting Chief Officer, Metropolitan Fire Brigade.

The CHAIR — I welcome Mr Higgins and Mr Stacchino from the Metropolitan Fire Brigade. I understand that we had asked for the chief officer to attend but he is ill and off sick, and hence Mr Stacchino is here in his stead. I ask you to give us a short presentation relevant to our terms of reference and then we will come back with some questions.

Mr HIGGINS — Indeed. Thank you, Chair. We are appearing here today, having received a summons, and I understand my role, as a senior public sector executive in giving my evidence to this committee. I have read the inquiry terms of reference and would like to start by advising the committee that my personal expertise and knowledge does not cover the practical items in the committee's terms of reference, and that any matters related to firefighting and fire season preparedness I would ask that the committee refer to my colleague, the acting chief officer, Paul Stacchino.

In commencing, may I say that I would be pleased for this committee to know that the MFB is made up of professional and amazingly committed people that seek to execute their duties in pursuit of achieving the public safety outcomes of the state at all times. I would like to take the committee to a brief presentation outlining the context of the role of the Metropolitan Fire Brigade, and just to provide some background for the community in relation to our role.

Visual presentation.

Mr HIGGINS — The MFB has around 2300 employees serving across 47 stations in 26 local government areas across the metropolitan fire district in urban Melbourne. Serving approximately 4 million Melburnians, the MFB has a local, state, national and sometimes international role to support community safety. We provide around 38 000 responses per annum, and at any given moment the Metropolitan Fire Brigade will have a minimum of 271 firefighters available to respond to emergencies and alarms of fire across Melbourne. We also have a pivotal role of course in supporting our colleagues in the emergency management sector.

The MFB is in effect a specialised urban fire and emergency service, for those who are not familiar with our specific role. We have significant responsibilities around alarms of fire, both structure and non-structure. It is often misunderstood that MFB is also very capable and able to respond in bushfire situations in support of our colleagues. We also provide high-angle rescue teams and urban search and rescue responses. We have a marine response capability. We have a significant role as a co-responder in delivering emergency medical responses alongside our colleagues in Ambulance Victoria. We provide hazmat and fire investigation and analysis. We are key responders in terms of road accident rescue, and we have a new capability around unmanned aerial vehicles which support our operations on a daily basis.

The MFB's response profile is made up like this. I have copies of the presentation for members if you would like to examine these in details, but in essence we attend alarms of fire, as I have mentioned, hazardous conditions that result in an MFB response, emergency medical responses, responses to other incidents and of course, in terms of our overall response capability, we attend a significant number of false alarms, which in the first instance are not understood to be false alarms.

Just by way of definition and in terms of the changing demand profile of the Metropolitan Fire Brigade, you can see from this time series that over 10 years the incidence of structure fire, both in terms of volume and severity, has been declining. Conversely our role in emergency medical response is increasing, consistent with a growing and ageing population. I am very pleased to advise the committee that over the course of the program, MFB is the first fire service in this nation to embrace a co-responder role in emergency medical response. Over 200 lives have been saved, where patients have been discharged from hospital as a consequence of the intervention of the Metropolitan Fire Brigade. Our staff do an extraordinary job on a daily basis in supporting our community and community safety outcomes.

The MFB plan is consistent with and supports the strategic action plan of the state in relation to an all-hazards, all-agencies approach to Emergency Management Victoria. Our vision is aligned to the state vision from Emergency Management Victoria around safer and more resilient communities. Our purpose, therefore, is to provide a world-class fire and emergency service for Melbourne and for Victorians. We participate and embrace the shared goal of the emergency management sector, which is a sustainable and efficient emergency management system that reduces the likelihood, consequence and effect of emergencies, and we embrace the concept of working as one to deliver the services to the state.

The MFB plan importantly contains some very key initiatives that are specific to the Metropolitan Fire Brigade and our contribution to the state's activities. Our first and most fundamental priority is 'Always safe'. For us our priority is ensuring that everyone, irrespective of their role in the Metropolitan Fire Brigade, returns home safe at the end of every day. Improving community safety and resilience is at the core of what the Metropolitan Fire Brigade does and is absolutely central to our work on a daily basis.

In terms of our strategic direction — and this is consistent with a three-year rolling MFB plan, and a copy of the instalment for 2016–17 is available to the committee if you would like a copy of our plan — valuing people is one of our central tenets, and I want to express again that we are extremely proud of our people and the work they do. We will continue to invest in their role in delivering services based on developing their skills and capabilities. We strive to deliver exceptional service on each and every occasion that we are providing services, irrespective of where that occurs across the MFB and in terms of both our firefighting and emergency responses, but we also manage and provide commercial services in fire support across the community and in terms of our corporate and other support staff, including our workshops.

We are also committed importantly to working with others. That is a central tenet of the requirement for interoperability and making sure that that is well understood across our organisation, and working with our partners to achieve the best outcomes for the community is fundamental to what we do. The fire services review, conducted in 2015, identified — and it is well-traversed ground over the recent past — that there is significant change required to create more harmonious fire services that work collaboratively with their key stakeholders to ensure that firefighters are as equipped and operationally ready as possible to meet the needs of the community. I think that is what this committee is investigating from the MFB perspective today, so we hope that we can help in that regard.

Significant challenges for the fire services were identified in the fire services review, essentially around interoperability, around morale and culture and around relationships, and we are happy to answer questions in relation to those issues. Importantly from the MFB board's perspective — and my role as chief executive is reporting to and delivering on the expectations and the direction of the Metropolitan Fire and Emergency Services Board — we must be able to deliver the changes that are required to achieve those objectives and we must have incorporated the findings and recommendations of the fire services review into our strategic planning and that is covered in the plan that is available.

The CHAIR — I am conscious of our time. If you can just wind up now, that would be good.

Mr HIGGINS — Just a couple more slides, Chair. Importantly I would just like to cover this issue, which is the MFB board made a submission to the fire services review. It made 12 recommendations which were fundamental to MFB's role in delivering on the expectations that government and the community have in relation to our role. It outlines our responsibilities in terms of meeting our statutory obligations, meeting government community expectations, keeping our people safe and making sure that the MFB, consistent with the shared goal, is sustainable and efficient.

The submission — and I have copies available for the committee — outlines a vision for a reformed MFB with improved health and safety outcomes, improved workplace culture, MFB being more responsive to the needs and expectations of the community and, importantly, being more agile and flexible in responding to major incidents, working interoperably with the sector. Finally, we are committed to providing a world-class fire and emergency service for Melbourne and Victorians. We are committed to effective consultation. We are committed to developing a highly engaged workforce, and workplace safety is fundamental from our perspective.

Before I conclude, Chair, I just wanted to briefly mention that I understand that the committee received evidence recently in relation to a furniture factory fire that occurred in Yarraville in October 2007. The information that was provided as part of that evidence is not consistent with MFB's understanding of the facts.

The CHAIR — This was evidence from the UFU?

Mr HIGGINS — Correct. We have information that we would like to make available to the committee, including a copy of the report conducted by Judge Gordon Lewis, who I understand was referred to earlier today. We would like to make that material available to the committee for your further consideration.

Ms SHING — Do you wish to table that with your evidence?

The CHAIR — I think they have done it.

Ms SHING — That was part of what you tabled?

The CHAIR — Yes, they have put it to us, and we will accept that and put it on our website. That is actually very helpful.

Mr HIGGINS — Thank you, Chair.

The CHAIR — Can I just begin with the acting chief officer? What is the status of the bargaining for the MFB's EBA? What is the current status?

Mr STACCHINO — Chair, UFU and MFB are currently bargaining in front of Commissioner Roe. Commissioner Roe is currently absent due to illness and a medical operation, I understand. The bargaining process started in April 2013. The process has continued from that time to the present date. There have been a number of logs served on MFB by the UFU.

The CHAIR — Can you make those available to the committee?

Mr STACCHINO — The actual logs we can. There have been 10 in total, and we are currently on log — it has been retitled as version 1.1. That is the proposed agreement from the UFU in front of MFB, and that is what we are bargaining on at this point in time.

Ms SHING — Have you served a log on the UFU at all, Mr Stacchino?

Mr STACCHINO — Yes, we did. We did so in April 2013.

Ms SHING — Just the one?

Mr STACCHINO — It was actually two logs. The actual scope of the EA that was put on the table was firefighters to senior station officers, and the second log was for commanders and assistant chief fire officers.

The CHAIR — So the point here is: do you think that the UFU's proposed agreement for the MFB hampers your operational powers in any way?

Mr STACCHINO — In version 1.1 that is currently in front of us, which I have a copy of, there is — —

The CHAIR — The MFB.

Mr STACCHINO — Yes. The actual log before us, which is version 1.1 that I make mention of, is titled the *Metropolitan Fire and Emergency Services Board and United Firefighters Union Operational Staff Agreement 2016*. This is a significant document in size.

Mr RAMSAY — How many pages?

Mr STACCHINO — It is 319, to be exact.

Mr RAMSAY — A tad smaller than the CFA one.

Ms SHING — When you say that is a log, that is an agreement which incorporates desired changes. Is that — —

Mr STACCHINO — That is the proposal that is currently being bargained.

The CHAIR — It is currently discussed, is it?

Mr STACCHINO — That is right. That is the bargaining process. It is a proposal. It is in front of us at this point in time. There is numerous clausings within the document. Just for an understanding for the committee, I will tell you the number. There are 163 clauses. In each of those clauses are multiple subclauses. There are also 20 schedules attached to this proposal on top of the 163 clauses.

The CHAIR — So do you have an assessment of that done with respect to your operational capacity?

Mr STACCHINO — I have looked at it in the context of the statute responsibilities of the chief officer. The chief officer is appointed by the MFB board under section 31. The powers of the chief officer are obligations statutorily provided and conferred on the chief officer to deliver in the context of fire safety, fire prevention and fire suppression and also emergency response. Those powers are under the MFB act; the chief officer also has powers to deliver on that conferred under the Emergency Management Act and also under the Public Administration Act. The actual main elements of the responsibility of the chief officer are to ensure that prevention is undertaken in the metropolitan district, readiness for response is undertaken and the emergency responded to — —

The CHAIR — Really what I am seeking is: have you received any advice about that report?

Mr STACCHINO — The actual proposal?

The CHAIR — About the proposal, yes.

Mr STACCHINO — I have not received any advice. What I have done is looked at the clauses, and actually there are a number of clauses that I would like to speak about that actually directly bring about a hindrance or a concern to the chief officer's powers, so if you will allow me to go through that — —

The CHAIR — Yes, that would be good.

Mr STACCHINO — Thank you very much. The actual proposal I would put on the table with a characterisation that it is a belt and braces proposal. It has got just about everything in it in the context of it being a human resource manual; it is an operation manual for how a fire brigade is to be run in the view of the proposal. The significant clauses that bring about a direction that needs to be complied with under industrial law can bring about hindrance to the role of the chief officer. I would like to just go to a couple to start the conversation, if you will allow me.

Ms SHING — Do you mean new ones or existing ones, Mr Stacchino?

Mr STACCHINO — These are proposed, and a number of these clauses that are proposed exist currently in the 2010 operational staff EA.

The CHAIR — So maybe if you make that distinction as you go through.

Mr STACCHINO — That is right. I will just take you through a couple. On the notion of consultation through this document, there are actually 150 references that go to the issue of consent and/or agreement. Within the 2010 EA there were 82 references, so there is actually more referencing to the process of consultation — —

The CHAIR — It has almost doubled.

Mr STACCHINO — In number. In the context of consultation, if I go to the 2010 EA, the clauses are clause 13, which actually talks about consultation as a mechanism where you need to get consensus to agreement through the consultative committee and its numerous subcommittees; clause 15, which talks about change, and any change at all needs to be brought through clause 13 in the context of the mechanism; clause 17 goes to technology change — —

The CHAIR — So that is in the current agreement?

Mr STACCHINO — That is in the 2010. I will take you through to the 2016 version 1.1 proposal and align it for you. Clause 85, which puts a whole range of restrictions for resources to be responded in times of emergency outside the metropolitan district, is one that gives me much concern. Clause 88 is a clause that goes to the word 'must' agree. So in the context of MFB we need to get agreement by the UFU, and that goes to such things as uniform, equipment, stations, appliances, protective equipment, protective clothing — any element of those examples I give you. If there is any change or any introduction or any refurbishment or otherwise, there needs to be a requirement to bring consultation.

The CHAIR — And agreement.

Mr STACCHINO — And agreement.

Ms SHING — What does the metropolitan district mean? You just referred to any areas outside the metropolitan district; could you just clarify what that is?

Mr STACCHINO — The metropolitan district is 1000 square kilometres in size. The CEO has put the general mapping on there. Did you want to understand which localities are in the CFA area and in the metropolitan district? If I give you an example: Werribee is in the country area of Victoria as described under the Country Fire Authority Act. Werribee is outside, but Laverton is in the metropolitan district. If we go to Caroline Springs, that is in the country area of Victoria. If you go to Deer Park, it is in the metropolitan district. If you go to the north, if you go to Craigieburn, it is in the country area of Victoria, and if you go to Somerton, it is in the metropolitan district. It just keeps coming around. Did you want any more examples?

Ms SHING — No, that is okay.

The CHAIR — No, we understand. Thank you.

Mr STACCHINO — Okay. So just going back to the issue of consultation, the actual key point in here is that all matters pertaining to the employment relationship are matters, with respect to the express matters within the EA, that need to be consulted on. So there are areas around training, there are areas around infrastructure and there are areas around the deployment of resources, with crewing charts, which determine the number of staffing to the station with the types of appliances. There is a whole range of information in here around rostering and how the actual deployment of staff is to be rostered and how it is to be managed. There are a range of obligations that sit here — —

Ms SHING — These are still from the current 2010 agreement?

Mr STACCHINO — Yes, and these elements I talk about carry forward to the current version 1.1.

Ms SHING — But they exist already in the agreement that continues to operate?

Mr STACCHINO — They do. On the issues around OHS policy and procedures, as acting chief officer in the role of chief officer I need to comply with the health and safety act, obviously provisions in sections 21 and 23 in particular. We take very seriously safety at the MFB, and as the CEO indicated, safety is actually theming through our MFB plan. The issue of the requirements of many elements of the OHS act are actually embedded within the EA itself. There are a whole range of issues around station design guides, appliance schedules, position descriptions, secondment programs and how we undertake the escalation of resources, which is known as the greater alarm response system. Within the 2016 version there are also more schedules associated with how we use our breathing apparatus — this is just equipment. These sorts of elements sit within our doctrinal elements of the brigade, which we train for from recruit all the way through our rank structure.

Going back to the consultation elements, I would just like to go to a clause within the 2016 EA, which actually brings about further concern to me in the context of — —

The CHAIR — What number is that in the draft?

Mr STACCHINO — This is in the version 1.1, and this is known as clause 36, sorry, rather than 16 — 16 is the consultation provision, equivalent to clause 13 in 2010. Apologies for the many numbers here, but it just helps you get an understanding for the complexity we are dealing with bargaining as well. In the 2016 version, as I say, clause 16 is around consultation, and 16.5.1 actually requires extra unanimous agreement on an outcome supported by all members of the committee. The effect of this clause is that the UFU would have an effective veto on all matters the MFB is obliged to consult on. So that is 16.

Ms SHING — What is the exact wording of that?

Mr STACCHINO — The actual clausing itself, I have just read an extract from it. I can give you the document.

The CHAIR — Re-read it.

Ms SHING — You just said the effect of this is that the UFU would have an effective veto on this — —

The CHAIR — We will just — —

Ms SHING — No, I am not sure if you are quoting from that or whether that is your opinion.

Mr STACCHINO — No, that is my advice on that.

Ms SHING — Yes.

The CHAIR — And he will leave us the document, so we will be able to read the clause.

Ms SHING — No, that is fine. I just want to know where the quotation marks end. That is all.

Mr STACCHINO — Thank you. It is to do with consensus and agreement; that is the element. The effect is my vernacular around veto, because that is what the effect is in its practicality.

Ms SHING — That is a new provision. Is that what you are saying?

Mr STACCHINO — Sixteen? Yes, and where I have actually stated ‘unanimously in agreement’ — —

The CHAIR — And 36 is new too in the new agreement. It is a new clause.

Mr STACCHINO — Yes, 36. I am going to go to that now, if I may.

The CHAIR — Okay.

Mr STACCHINO — So, 36 I will read directly from the clausings, because actually you will have an understanding of what it actually means to the chief officer’s powers. Bear with me because it just has three subclauses, so if you allow me to read, it just gives you the whole context. So this is around MFESB policy. That is the title of clause 36. Clause 36.1 says:

The MFB currently has a range of policies that affect employees covered by this agreement. Any policy that affects the application or operation of this agreement or the work of employees covered by the agreement may only be made or varied by the agreement.

So to actually bring about any of that variance, the MFB will need to undertake consultation.

The CHAIR — And achieve agreement.

Mr STACCHINO — And achieve agreement as per clause 16 and the mechanism through its consultative structure.

Should the MFB seek to modify, delete or add to any new or existing policy that so affects employees, then any change or addition will be the subject of consultation and agreement pursuant to clause 16 of this agreement.

Should any policy be inconsistent with the terms of this agreement, then it will be invalid to the extent of any inconsistency.

36.2:

Such policies that have not been dealt with through the consultative process will not be applied, be enforceable or used to reduce the conditions of employment of employees covered by this agreement, nor will they be used as a means of taking conduct resolution against employees covered by this agreement.

I want to just focus you now on 36.3. So we talked about just the generic at 36.1 around policy. subclause 36.3 goes into the specific:

For the purposes of this agreement, policies include any document that contains provisions that affect the application or operation of this agreement or the work of employees covered by this agreement or their representatives, inclusive of procedures, business rules, directions, standing orders, SOPs, operational work instructions or any document kept or promulgated by the MFB to their employees.

This is clause 36.4:

On the commencement of this agreement, all MFB policies that affect the application or operation of this agreement or the work of the employees covered by this agreement or their representatives will be reviewed by the parties under clause 16.

So I just want to now put that in the context of the chief officer trying to deliver on statutory responsibilities to ensure that all units and the operational personnel who are under the direction and responsibility of the chief officer to deploy in the context of fire safety, fire prevention and the issue of fire suppression — —

Ms SHING — Is that for bushfire preparedness in particular?

Mr STACCHINO — These are the responsibilities of the MFB. Obviously the MFB supports CFA in the context of their operations. This is in context of — —

Ms SHING — That is not your main business.

Mr STACCHINO — Can I just work through this issue? So for the chief officer who has to undertake running the brigade through a whole range of directions, policies, procedures and standing orders, this notion is clear that every single element of the doctrinal running of the brigade, if there is going to be an alteration, deletion, an addition or a change, needs to actually undertake the notion of consultation as subscribed.

The CHAIR — Through clause 16.

Mr STACCHINO — Through 16. And the point is — and this is why I bring it to your notice — when I read the word ‘directions’, that word. Every morning that I get up and come to the MFB at work, I am providing directions continually all the way through that day, and the notion here — this word — is that if there is a direction I need to be giving, I need to bring about taking it to clause 16 for the purposes — —

Mr MELHEM — I am sorry to interrupt. I mean, are you fair dinkum about that?

Mr STACCHINO — Well, I am reading. This is an express term within a proposed EA that is in front of the MFB.

The CHAIR — But let us be clear — —

Mr STACCHINO — That is what I interpret in that.

Mr MELHEM — I do not think this committee is about negotiating the EBA. I mean, you had from April 2013 to negotiate that. Are you serious?

The CHAIR — No, that was my question actually.

Mr STACCHINO — Through the Chair, the Chair asked me a question of where the issues were in the context — —

The CHAIR — This is highly material to the ability of the MFB to support bushfire response and — —

Ms SHING — It is not the main game — —

Mr MELHEM — Well, it is not. It is your agenda, Mr Davis. That is what it is. It is the Liberal Party agenda — that is what it is.

The CHAIR — Well, I have got a say, and from what I have heard here today, the MFB chief officer is wholly controlled in this respect. If those clauses 16 and 36 are implemented, that will see a total control of the MFB — very difficult for any chief officer to respond.

Ms SHING — Is this a question or an editorial or a narrow political party’s ‘hands off the CFA’ psyche.

The CHAIR — You might want to step away from this, but then you are —

Ms SHING — No, I am just looking for some — —

The CHAIR — in the pay of the UFU.

Ms SHING — I beg your pardon?

The CHAIR — So let us be quite clear — —

Ms SHING — No, no. On a point of order, Chair, have you just said that I am in the pay of the UFU, Chair?

The CHAIR — The Labor Party is in the pay of the UFU.

Ms SHING — No, no, no. You have just said ‘you’. I would seek that you retract that. You said, ‘You’re in the pay’. That is absolutely extraordinary.

The CHAIR — Let us be quite clear here. What we are hearing here is that clauses 16 and 36 are an extraordinary impact on the ability of the chief officer, or the acting chief officer, to run the fire service. Is that a fair description?

Mr MELHEM — God help us. A log of claims is going to prevent you from doing your job. God help us when there are real fires. You have got your right to manage under the act — exercise it. I do not care what the UFU have said or not said, but I get really worried when a chief fire officer believes he cannot go and do his day job because of a log of claims from a union. It is a real problem, which I do not believe is the case.

Members interjecting.

The CHAIR — Mr Stacchino, I want to be quite clear here. If these clauses are implemented, this will directly affect your ability as acting chief officer to implement best practice fire outcomes.

Mr HIGGINS — Chair, if I may, our determination — —

The CHAIR — No, no. Please, I am just asking the acting chief officer this question.

Mr STACCHINO — Chair, this document, as proposed, known as version 1.1, has a whole range of restrictive practices and hindrance within an industrial instrument that make it difficult for the chief officer to deliver the service in the most effective and efficient manner to actually meet the goals of the MFB, where our purpose is we want to be a world-class service. There are a number of things within this proposal that bring about a need for a more contemporary view of the workplace to bring a more effective and efficient fire service. We have talked about two clauses. It is a proposal, as noted, but I have been asked a direct question, so I would like to go there and answer it. I was asked a direct question. I will answer it as fully as I can, and I will go to some examples.

Ms SHING — Are you still negotiating? Please say yes for the record, please.

Mr STACCHINO — It is a proposal before the MFB and the UFU, through negotiating.

The CHAIR — We would appreciate a copy of that tabled and also any assessment that you have made of that document, if that is possible.

Mr STACCHINO — Yes.

The CHAIR — Thank you. And finally I want to go to your chief officer’s correspondence, which appeared in the *Herald Sun*. This was correspondence from Chief Officer Rau to the minister, Mr Merlino, recently on 30 June, I think, is the date. This is an extensive letter that lays out many of the concerns that are there:

The current enterprise agreement and its power of veto over my statutory responsibilities is unworkable and undermines community safety.

That is a direct quote from the letter. Do you agree with Mr Rau’s position?

Mr STACCHINO — I can see how Mr Rau formed the conclusion he has and the letter that he sent to the minister. Mr Rau had visibility of the CFA log at that point in time, and he viewed a number of clauses, and he was concerned. So he wrote to the minister within his role, and he spells out clearly within the letter his concerns. At that point in time we did not have log version 1.1. We have log version 1.1, so I can stand and support this letter, as given to the minister. It is predicated on the experience that we have had of working the

enterprise bargaining arrangements of 2010, which are outside of their nominal expiry date now since September 2013 whilst we bargain to — —

The CHAIR — To move to this version.

Mr STACCHINO — After 10 versions, it is now retitled version 1.1, which we are working through in front of Commissioner Roe. Mr Rau goes to some examples, and they were some examples that he experienced as chief officer with respect to the concerns that he has struck with the current enterprise agreement in 2010. He is concerned because he was aware that clause 36 in the MFB log was replicated in the CFA log. I do not know the clause number. He read it. He understands that ‘direction’ for us is a very strong word in a fire service. When we provide direction we have an expectation that it is getting carried out and that we are not actually consulting and bargaining to an outcome.

Under our statute responsibilities, in particular the chief officer’s, 32 is the alarm of fire. We take it very seriously, because the accountability for delivery of a fire service that is effective in efficiency in the context of public safety and public value is in fact the office-holders of the fire service. So we take this accountability seriously.

This letter, Mr Rau took some time to work through. He wrote it in the manner that he did at the time that he did because he had a clear view that he needed to tell the minister of his concerns. And that is what the letter stands on. And he makes mention, because I have heard it in the media, about statements around recklessness or otherwise. The chief officer, who actually sat down and wrote this, has given much reflection beforehand to in fact write it. On the notion around this security overlay, if you have 36 enacted, it becomes a proposal and it becomes something that is actually certified through Fair Work and an issue of a direction in that overlay and in that context. If I read the expressed term in the manner it is, it would have to go through a consultative committee.

Ms SHING — At the outset I would just like to note that I am not, nor have I ever been, in the pay of the UFU —

The CHAIR — The Labor Party.

Ms SHING — and I resent the throwaway aside that has been made by the Chair, and note as a gratuity that the tone in which this parliamentary inquiry is being conducted has sunk measurably in the consequence of your personal remarks.

Gentlemen, thank you for your presentation today and for the opening remarks that you have made. Mr Stacchino, I would like to take you to a number of comments that you have made around direction. You have said ‘direction’ is a very strong word in a fire service. The MFB is an essential service, isn’t it?

Mr STACCHINO — It is an emergency service.

Ms SHING — Is it an essential service?

Mr HIGGINS — Strictly under the definitions of the act it is not named as an essential service.

Ms SHING — But it does deal with situations of emergency.

Mr HIGGINS — An alarm of fire would be regarded as an emergency, but — —

Mr RAMSAY — It is an emergency service.

Ms SHING — Bear with me here, Mr Ramsay, I am laying a trail of breadcrumbs. It may be difficult for you to follow on, but walk with me.

Mr RAMSAY — It is going to be a long afternoon.

Ms SHING — So, Mr Stacchino, you have formed a number of pretty ardent views about the operation of a proposed agreement and of clauses which are still the subject of negotiation. Do you agree, as a consequence of the negotiation and a process that Commissioner Roe is assisting with, that things may still change because people are bargaining in good faith?

Mr STACCHINO — Absolutely.

Ms SHING — So you agree that this is not necessarily the end of the line as far as the way in which an agreement may come to be negotiated between the parties.

Mr STACCHINO — The MFB has a proposal in front of it, and the MFB is giving due consideration as required under the Fair Work Act. We have given it due consideration and we have had a look at it and we have some concerns.

Ms SHING — Okay. So when you have concerns, am I correct in assuming that you will then go back with a response that might include an alternate position?

Mr STACCHINO — Absolutely. That is the bargaining process.

Ms SHING — That is the nature of bargaining, isn't it?

Mr STACCHINO — Absolutely.

Ms SHING — That is the way in which public sector agencies and employers have in fact worked for a very, very long time. How did you end up with the clauses in the 2010 agreement, which set out the issues that you have referred to in your opening responses to the Chair around areas that you say present difficulties and challenges? Did you negotiate that agreement?

Mr STACCHINO — At the time the MFB and the UFU negotiated an outcome, and that was certified on 23 September 2013 as an enterprise agreement.

Ms SHING — So everyone agreed to it at that time?

Mr STACCHINO — That is correct.

Ms SHING — So why was it then that you sought to terminate the agreement and to actually initiate a process that sought to bring it to an end?

Mr HIGGINS — If I may, the agreement is like any agreement — parties have various experiences with agreements — and the purpose of having a negotiation is to deal with those issues that from time to time people would like to change. The MFB has a view about the way that the current agreement operates, that we have some concerns about that, and our intention is to negotiate in good faith those matters that the MFB board has been very clear that do not work from the perspective of the MFB. That is part of a negotiation.

Ms SHING — But when you tried to terminate the agreement, you were not happy with what had been agreed.

Mr HIGGINS — No, that is right. It was — —

Ms SHING — And why weren't you happy with what you had agreed to earlier?

Mr HIGGINS — Personally I was not part of the organisation at that point in time — just to make that clear. But my understanding of that circumstance was that having experienced the 2010 agreement and reached the nominal expiry date in 2013, there had not been a lot of progress made in terms of renegotiating a new agreement. At a point in time the board came to the conclusion that it should seek under the Fair Work legislation the opportunity to terminate the agreement. Now, that is a matter of public record. What the MFB today would seek to do is negotiate in good faith an outcome in an enterprise agreement that would seek to resolve the significant issues that the MFB has experienced with that agreement, and that is what we are seeking to undertake with the assistance of Fair Work. But MFB is very clear about those things that it would seek to change, around things like consultation and dispute resolution, in order to — —

Ms SHING — Just to round that off a little then, in the termination case — to boil it down to industrial relations 101 — you reach an agreement and the agreement gets to its nominal expiry date.

Mr HIGGINS — That is correct.

Ms SHING — One of the parties decides it no longer wants that agreement to operate and seeks to have it terminated. That termination application is unsuccessful.

Mr HIGGINS — That is correct.

Ms SHING — Why was that termination case application unsuccessful?

Mr HIGGINS — The decision around why the termination case was unsuccessful is published and is a matter of public record.

Ms SHING — But tell me why, in terms of why it was that the MFB failed in its bid to actually terminate that agreement.

The CHAIR — Go look at the judgement.

Mr HIGGINS — That transcript is clearly — —

Ms SHING — Just in a nutshell.

Mr HIGGINS — In essence the commissioner who heard that case found, whilst terminating the agreement was not necessarily inconsistent with the public interest, that the end result of that decision was that the agreement, were it to be terminated, would place too much power in the balance of the employer. That was the commissioner's assessment. But he found a range of issues, which is consistent with the views formed by the fire services review that there are a range of challenges that are experienced by fire services in this state, and we need to resolve those in a constructive way. Our determination is to do that.

Ms SHING — And that is a perfect segue into the nature of the inherent tension. We heard this morning from Justice Teague in relation to the inherent tension between volunteers on the one hand and paid staff on the other — staff who work on the fireground, people who have been involved in generations of firefighting and emergency response. And he says that, to paraphrase him, it may be that these problems are insoluble. They are not able to be remedied in any satisfactory way that will, again back to my understanding of the issues, in fact deal with what have been generations and decades of people having different views and different interests and seeing different things through a different prism, or a different lens, as I think Justice Teague referred to.

Mr HIGGINS — I think this is an important consideration for the committee. So the commissioner in the MFB termination case made the following observation, and he said:

Ultimately, what works for a given workplace is a matter for the workplace guided by the minimum requirements set out in legislation or instruments such as a modern award. There is a recognition in those things, as well is in the authorities of this commission and the courts that not only are employees entitled to know about and discuss possible change, but employers are entitled to implement change. While it is possible there are workplaces where an 'agreement-to-change' model could be successfully implemented for the mutual benefit of the corporation as much as its employees, and for its external customers or stakeholders as much as its internal ones, the MFB is not one of them. The evidence is that agreement often cannot be reached and that impasses are frequent for opaque reasons. There is no evidence that the constructive and supportive culture that would be required to allow success with an 'agreement-to-change' model is in place, or has any prospect of being in place.

Ms SHING — Thank you. In relation to that impasse, the fire services review also indicated that:

... it is undeniable that the industrial disputes ... of the previous government, particularly the CFA recruits case and the MFB termination case, have had a profoundly damaging effect on morale ...

That is there in black and white. I would like to go back to the presentation and the comments that you made at the outset, which make a very big priority of morale and of workforce engagement and of the way in which you would like to actually be able to improve things, because there have been scathing remarks across a range of inquiries and commentaries about the way in which people cannot seem to get along. In relation to improving things to a more acceptable framework and, Mr Stacchino, your comments around how you see the terms in clause 16 as it now is and clause 36.1, you have expressed a range of views about how you think you would be hamstrung around making decisions. In seeking that advice and in going by the previous operation of the 2010 agreement, I would assume that you understand the way in which the Fair Work Act covers the framework within which this agreement operates.

Mr STACCHINO — I have an understanding.

Ms SHING — Yes; good. Section 27(2)(k) of the Fair Work Act makes it clear that the Fair Work Act, and thus the way in which agreements are reached underneath it, does not exclude the operation of state and territory laws that deal with the following matters relating to the provision of essential services or to situations of emergency — and I am going to go to those situations now.

Relevantly to the priority that you put on ‘direction’ as a strong word in a fire service, the act at 27(2)(k)(i) says, ‘directions to perform work (including to perform work at a particular time or place, or in a particular way)’, and section 27(2)(k)(ii) says, ‘directions not to perform work (including not to perform work at a particular time or place, or in a particular way)’, which would include directions, policies, procedures and standing orders. That construction of 27(2)(k) would tend to support a conclusion that the CFA act and the way in which the state-based legislation operates to give you primacy would in fact mean that that is not capable of actually being interfered with by a federal industrial agreement.

Mr DALLA-RIVA — Hang on, I have got a fire going. Once we have negotiated this, can you come and help with my fire?

Ms SHING — Nice. I can hear the crickets.

Mr DALLA-RIVA — I mean, this is the problem. This is the problem.

Ms SHING — No, this is where — —

Mr DALLA-RIVA — This is the problem. You have just given the example of the process of consultation — —

Ms SHING — No, sorry. Gentlemen, I am being very particular here, because where you are quoting a federal instrument — and this is something which has formed page after page of commentary in the media — and we are talking about a federal framework which does not seek to interfere with the state scheme, how does that actually not give you comfort around the capacity to issue directions?

Mr HIGGINS — It is not actually clear that MFB as an emergency service is covered under the essential services arrangements; that is not specific. My contention to the committee would be that it is entirely unsatisfactory for the MFB chief officer to have to make a guess about what does and does not require consultation in an environment where we are responding to alarms of fire and emergencies — —

Ms SHING — But a direction to perform work or not to perform work?

Mr HIGGINS — If you bear with me, our contention is that we want and we value consultation with our employees — no question. That has to be a fundamental part of the way that an emergency service like ours operates. However, we have to remove some of the prescriptive arrangements that make the MFB very clumsy in terms of its capacity to manage. It is not clear that the chief officer’s statutory powers under the MFB act are enforceable in the manner that you have described in that context.

Ms SHING — Sorry, Mr Higgins. I will just ask Mr Stacchino, because you are the one, Mr Stacchino, who has taken us to the various provisions of the proposed agreement, which are not settled, which are still the subject of negotiation, which may yet change, and I have said to you in relation to that proposed federal agreement, if we say hypothetically that that is the agreement that is voted on and approved and that is the agreement that goes through the various channels and comes into operation, that section 27(2)(k) of the Fair Work Act still carves out the capacity to direct the performance or otherwise of work and the way in which that occurs in emergency situations. What is your view in relation to that particular provision of the federal framework, because there are significant interferences here with the line that you have brought to the committee today? I am not looking for an agenda, but the narrative that you have run around you being hamstrung is at odds with what section 27(2)(k) of the Fair Work Act says around the fact that the federal framework does not operate in that way.

The CHAIR — I am not sure it is a narrative; it seems a fact.

Mr STACCHINO — I would answer the question firstly by acknowledging that I need to deliver on the MFB act and its provisions — —

Ms SHING — The state act, yes.

Mr STACCHINO — So I just put that proposition in front of you. I also put in front of you that the 2010 agreement has not dissimilar, if not similar, clausings as that peppered throughout the 2016 proposed agreement. I would say to you that — and I mentioned this at the outset — there were 82 references around the issue of ‘consult and agree’, and 16 is talking about 152. I would argue through experience — MFB’s experience from the enterprise agreement 2010 — on a whole range of concerns about the chief’s powers and delivery of his statutory responsibility, that 27 gave no relief whatsoever, because our experience has been that the chief officer’s powers were in fact hindered. The actual termination submission from MFB —

Mr MELHEM — Sorry, did you say it was not?

The CHAIR — It was.

Mr STACCHINO — and its application give numerous examples of where the issue of ‘consult and agree’ and the provisions of the chief officer were concerns. I have a number of examples I can take you through where 27 gave us no relief whatsoever.

Ms SHING — How much responsibility, if any, do you take for the cultural, operational, administrative and systemic failings that have led to people being in such ardent corners around the way in which the service operates?

The CHAIR — He is the acting chief officer.

Ms SHING — Because this is something which goes beyond an industrial instrument. As the fire services review indicated, as the bushfire royal commission indicated, as the Lewis report indicated there are a slew of examples that indicate that culturally people are at odds with each other in a way that is interfering with the operations of the organisation and that that is not an industrial thing. It may manifest as such, but people are so far apart that there are other things required in order to make it work. What are you doing about changing that?

Mr HIGGINS — If I can respond to that —

Ms SHING — And Mr Stacchino I would like to hear from too.

Mr HIGGINS — the reality is that the MFB board and the leadership team of the MFB take responsibility for delivering on those requirements. As I mentioned in my opening remarks, our intention is to fully reflect on the observations made in the fire services review and all of the previous history that exists in this environment. Our MFB plan, which we are happy to make available to you, makes very clear our commitment to working in a constructive way in full consultation with our employees to ensure that the safety of our operations is paramount and that we are able to deliver a world-class service to the people of Melbourne and Victoria.

We need some relief from the current arrangements that are prescribed within a very prescriptive document, which is the 2010 arrangements. The MFB board’s position has been absolutely clear in terms of the negotiations for a new agreement, and we are in that space, as we have discussed. We are determined to resolve an outcome that delivers, an outcome that is appropriate for every party.

Ms SHING — Are you looking forward to getting agreement then? Is that what I can take from what you have just said?

Mr HIGGINS — Absolutely. We look forward to getting agreement.

Ms SHING — Okay. Mr Stacchino, could you just comment on the cultural change that is needed to create better relationships and morale and to build a better workforce capability because people are working together, because community safety is not at issue here. Everybody seems to agree that community safety is the priority. People, however, are anguished and the morale is terrible. We read page after page in the newspapers about the MFB or the CFA, and I would like to know how it is that you are going to contribute to the solution of bringing people together.

Mr STACCHINO — Firstly I would like to make a comment around our people. We have fantastic people — very professional, highly trained and capable. What we have got, though, is an industrial instrument

that is restrictive in nature to deliver on a contemporary workplace in a manner that allows for a good, harmonious relationship. We have a dispute resolution clause that brings about conflict in the workplace continuously.

Ms SHING — So you think it is because of the industrial agreement that that is in place?

Mr STACCHINO — Can I finish my comments, please? Since May 2011 there have been 156 disputes that either have been resolved through the dispute resolution process or in front of the Fair Work Commission. That is a recipe for conflict by design through an industrial instrument. In the context of consultation provisions and disputation provisions, what we actually have is our people — good people that are trying to do the right thing continuously in the public safety space and offer the services that we have — challenged by a non-contemporary workplace in many facets, including the issue of consultation and disputation.

Ms SHING — So do you agree then, though, that it is not in fact the industrial instrument?

Mr STACCHINO — No, I just said it was.

Ms SHING — You think it is only the industrial instrument?

Mr STACCHINO — No. What I said was we have good people that are challenged by an industrial instrument that brings about the conflict within the workplace between management and its workforce.

Ms SHING — I would suggest that you might look more broadly at the culture referred to in the fire services review, Mr Stacchino. Thank you.

Ms BATH — Chair, do we have a 20-question limit today?

The CHAIR — We are going to move to Mr Melhem quickly.

Mr MELHEM — Can I just go back to the comment I made earlier? I do support your right to direct your workforce to perform their job under the act and for employees to take lawful directions, considering their safety. No-one argues against that, and I am sure the UFU would not argue against that, and they should not. I just want to make that quite clear. You have got that right to lawfully direct your employees. Similarly the employees should have rights as well and, if there is a grievance, be able to have a process to address it.

Mr HIGGINS — Unquestionably.

Mr MELHEM — That is why I get worried about if someone puts in a log of claims which says, 'The world's going to collapse, the sky's going to fall, I can't do my job'. I do not accept that. The real problem — and I want your responses on this — is if there is no trust between you and your workforce, you do not fix that by terminating an enterprise agreement. You do not fix that by saying, 'I'm not going to consult with you. I want you to work as directed, because we go back to the minimum conditions'. I do not think that is the answer. You need to build trust between you and your workforce, and the consultation then does not really matter.

Peter Marshall should not have a right of veto. I am saying to you he should not. When you are talking about consultation, it is the employees, not Peter Marshall. You do not have to have his agreement; it is the agreement of the employees, members of the UFU, which Peter Marshall represents. I am just sick and tired of the illogical comments — not addressed to you, gentlemen, so please do not take that — about saying it is politics between the UFU taking over the MFB and the MFB wants to rule as dictatorship. Can you please give me a bit of comfort that you are actually going to get an agreement and live up to the commitment you actually put here earlier?

Mr HIGGINS — Our position is very clear. We, along with the MFB board, are the ones accountable for delivering on the expectations that I outlined in our opening remarks. It is our full expectation that we should be able to manage the organisation and make the decisions that are required to deliver our statutory responsibilities on behalf of the government and to the community. We are fully prepared to be accountable for those things and, whilst doing so, to consult effectively with our employees. Consultation does not mean in every circumstance consensus. We do understand that this is an emergency service and that safety is a fundamental priority. Safety should be managed in accordance with the relevant legislation that exists in Victoria for the purpose of managing occupational health and safety. Making it an industrial issue is completely the wrong

approach. We would like to make that absolutely clear. We are committed to delivering on and being held accountable for delivering on the expectations that the government, the fire services review and the community have of us to deliver on those expectations.

Mr RAMSAY — Just a brief summary of that is that an EBA, in relation to wages and conditions, should not have to be 320 pages with 820 causes and 500 subclauses and whatever else, because we have acts, lots of other acts, to look after safety in the workplace. So, that I understand.

Mr Rau in another inquiry indicated some of the problems associated with the 2010 agreement with MFB and now with the 2016 version. They were, if I can put it into simple terms: there is a fire, the MFB is asked to respond and the chief officer directs certain resources — trucks, equipment and manpower. If there is not an agreement under the current act, far less the new act, in relation to the consultation process and agreement between the UFU and the chief officer in making those directions of the resources going to the fire, they actually then have to go to the Fair Work Commission to get consensus about how the response to that fire will be. This is in very simplistic terms. Then they come back from the Fair Work Commission and respond to the fire. Meanwhile there is a fire burning in a tower in Collins Street, and because of the proposed clauses, even the current clauses, there has to be consensus, agreement or communication with the Fair Work Commission for adjudication and then a decision to allocate resources to the fire, if that can be done. That is the absurdity of these contracts, as I understand it, that you are working under the moment. Could you comment on that?

Mr HIGGINS — The agreement that we have currently is highly prescriptive. I do not think there is any debate about that. We are seeking to negotiate something that is more contemporary. In particular there needs to be a carve-out of the statutory responsibilities of the chief officer in an operational context in a live operational environment. There should be no question about the direction provided by the chief officer in those circumstances. We accept in almost all other circumstances that consultation should be a feature of the way that our organisation operates, but consultation in its current form is highly prescriptive. When you have consultation with ‘must agree’ and ‘status quo’ as an outcome if agreement is not reached, then for all intents and purposes that is a veto.

We are seeking to move constructively away from those arrangements, acknowledging the observations earlier that this is about building trust. We are committed to doing that, but in circumstances where an agreement contains no capacity for the leadership of the organisation to demonstrate that it is trustworthy, then that is a recipe for disaster as well. So we need to get an outcome that very clearly makes the agreement less prescriptive so that people are able to do their jobs and so that we are held accountable for managing the organisation as we should be.

Mr RAMSAY — The proposed 2016 version is not compatible with trust within the service. That is a comment, sorry, not a question. Mr John Peberdy gave evidence that he considered the CFA was locked into a very 1970s-type model, and I think you have indicated that it needs to move into the modern world, and that includes addressing issues such as diversity and part-time work. What is the MFB doing in relation to those issues?

Mr HIGGINS — We have an absolute commitment to addressing those issues. They have also been raised in the fire services review. You will see in the MFB plan that is available to the committee that we are absolutely committed to achieving improved outcomes, certainly around increasing the diversity of our workforce. Regrettably we have encountered significant difficulty in negotiating arrangements to increase the diversity of our workforce, and those matters have been referred to the Fair Work Commission and to the federal court. We are much more hopeful that in the future we can find a way with the assistance of Fair Work. But to be absolutely clear, the MFB board is determined that there must be change in order for us to deliver on our statutory responsibilities and the expectations that the government and the community have of us.

Mr RAMSAY — So it is those challenges in the EBA, the proposed agreement.

Mr HIGGINS — We would hope to negotiate an enterprise agreement. My understanding of the narrative from the UFU is that they are committed to diversity. I would like to see that.

Ms DUNN — Thank you for your submissions today. Firstly, just to explore a little further in relation to clause 36, has that particular clause actually travelled through each of the versions to date up until 1.1 before you now?

Mr HIGGINS — Thirty-six, as it is currently constructed in the log, which is a proposal, is a new addition to the arrangements that are proposed. So 36, as is currently constructed in the log, is not part of the 2010 agreement.

Ms DUNN — No, that is not my question. You have had 10 iterations of the log up until this version, 1.1. Has it been in every iteration?

Mr HIGGINS — No.

Ms DUNN — When did it appear? Can you recall?

Mr HIGGINS — We would have to check and get back to you.

The CHAIR — Take it on notice.

Ms DUNN — So in terms of when the bargaining commenced, that was not part of the start of the journey.

Mr HIGGINS — No.

Ms DUNN — In terms of the term ‘direction’ — and you have acknowledged it is a strong word in the fire service — are there any instruments that in fact define what direction is? What instruments do define that?

Mr HIGGINS — There are a number of documents. Emergency services rely on doctrine, and the MFB has what are known as operational work instructions, which are specific responsibilities of the chief officer to determine, and they are, if you like, the legislation by which the MFB is managed internally. So operational work instructions are absolutely paramount in terms of safe systems of work and delivering fire services in a safe and expedient manner.

Ms DUNN — Has the MFB sought any legal advice in relation to this particular clause and your concerns that it will in fact hamper the duties of the chief officer?

Mr HIGGINS — The overall assessment of the log — this one or others that we have received — is that they remain very prescriptive, and our intention is to try and understand what is absolutely important to our workforce in terms of consultation, but to move away from the very prescriptive arrangements that lead to adversity. I agree with my colleague that the nature of the agreement actually creates a model of conflict which is inimical to the interests of the organisation and its people, and relationships within the organisation. We need a circuit-breaker, if you like, to improve the way that relationships are conducted, accepting that every party in this equation has a responsibility to do that, and we accept ours.

Ms DUNN — And it is legal advice that has assisted in coming to that being prescriptive?

Mr HIGGINS — Indeed. Of course you would expect that we would seek legal advice in relation to enterprise agreements and what they look like for our organisation. That is a responsibility that the board has and has discharged appropriately.

Ms DUNN — There has been a lot of talk around the particular term ‘direction’. Is it only that term within that particular clause, which I think was 36.3, from memory, and as it relates to the chief officer? So I guess if there was a carving out of that in relation to the chief officer or if the word ‘direction’ did not appear at all in that clause, would that alleviate concerns of the MFB?

Mr HIGGINS — No, it would not.

Ms DUNN — And just in relation to the negotiations that you are currently having in relation to the enterprise agreement, to your mind is there any impact in relation to the MFB responding to any fire preparedness issues? So is this impacting at all on your ability to respond to fire preparedness this season?

Mr STACCHINO — The quick answer is no.

Ms DUNN — That is good. I am glad to hear it.

Mr STACCHINO — Can I just follow it up with a longer answer than ‘No’? The issue is that the MFB has got no land tenure in the context of in the metropolitan district it being Parks Victoria and council and private land. MFB, though, ensures its readiness of its people and its equipment and undertakes a whole range of briefings and training for the fire season and works with CFA in a whole range of planning in support of the fire season itself. But the resources of MFB are available for the states to be deployed accordingly.

Ms DUNN — Yes, thank you.

Mr DALLA-RIVA — Thank you, gentlemen. Mr Stacchino, have you met the Premier at all in relation to the MFB EBA?

Mr STACCHINO — No.

Mr DALLA-RIVA — Mr Higgins, have you met the Premier to discuss the EBA?

Mr HIGGINS — No.

Mr DALLA-RIVA — In relation to the EBA, version 1.1, which is 11 really, how many pages did you say?

Mr STACCHINO — To ensure correctness, it is 319.

Mr DALLA-RIVA — I have got a copy of the CFA EBA, and that trumps it. That is at 397. The reason I bring this to the table is that it sounds very similar to the concerns that were raised about the consultation process, about direction and all the issues you have raised. Those issues were raised by the CFA chief fire officer, Don, the former CEO, Ms Nolan, who we heard from this morning, and the CFA board who did not agree with the proposed EBA agreement. They were sacked. So my question is perhaps to Mr Higgins first: is the board concerned that they too will be sacked if they do not agree with the current EBA with the MFB?

Mr HIGGINS — My experience of the MFB board is that they are very dedicated, committed people who are focused on achieving the right outcome for the Metropolitan Fire Brigade. They have a very strong view in relation to what needs to occur in respect of the agreement. They are focused on achieving that outcome, which is their specific direction to me and to the organisation.

Mr DALLA-RIVA — And would it be fair to say that the views of the MFB board were perhaps similar to what you understand to be the concerns by the then CFA board?

Mr HIGGINS — The views of the board are those that we have expressed to your inquiry today, so we have a range of reservations about the content of the log. We are very clear about our expectations and about what needs to be negotiated to take the organisation forward.

Mr DALLA-RIVA — So my first question of my final two questions is to you, Mr Higgins. We have seen examples of where certain individuals have been pushing through the CFA EBA. You either agree to it or you are gone. If the push comes to you and you have to comply with version 1.1 or a variation where there are major concerns, will you resign from the MFB?

Mr HIGGINS — That is a hypothetical, with respect. We are currently working with the assistance of Fair Work. Our full expectation is that we have a very clear position in relation to those negotiations, and my instructions from the MFB board are very clear and I intend to operate in accordance with those directions.

Mr DALLA-RIVA — And Mr Stacchino, the same question to you, Sir. You are a highly decorated firefighter, based on what I see in front of me. You are very passionate about what you have just provided in evidence. I am sure we are about to hear the same passion from the former chief fire officer from the CFA, who is up next. Would you also consider resigning if you had to work within the current EBA as it is proposed?

Mr STACCHINO — I provide the same answer as the MFB CEO, who is in fact my direct line manager and delivers my employment relationship in that context. I am actually in the MFB by virtue of the board — the CEO’s conflict or otherwise with me being in the MFB.

Mr DALLA-RIVA — Hypothetical?

Mr STACCHINO — That it is.

Mr DALLA-RIVA — A hypothetical. If, as we have seen, the government sack the board and then the CEO goes, as we have seen from the CFA — so this is not really hypothetical because it has happened — would that make your position untenable?

Mr STACCHINO — What I would say to you is there are elements of the 2010 EA that I find to be unworkable in the context of an operation of a fire service, and I would not want to see those elements and provisions, wherever we land in outcomes through bargaining, be replicated.

The CHAIR — Or new ones.

Ms SHING — Or the culture.

Mr STACCHINO — Or the culture, no.

Ms BATH — My question relates to safety. We heard a few weeks ago Mr Marshall from the UFU talking about the importance of clause 21 in his enterprise bargaining agreement, relating to the consultation. He went to some length to show us some photos in relation to an incident where a gentleman was badly injured, and we saw some fairly gruesome footage on that. I will relate what Mr Marshall said to the committee. He said, with respect to the photos, to look at those:

... because it may give an insight as to why consultation is so important in the fire industry.

He then went on to say that this:

... was an inferior uniform that actually got held up as a result of — the CFA wanted to buy a cheap replacement, whereas the union and the expertise advising the union wanted a better uniform, called PBI Gold.

You have told us that you have a different version of that situation, and you have given us a document that is probably six or seven pages long. I note it is quite a detailed document. I think it is important to go on public record with your point of view and your version, because he was saying that it is a very compelling argument for clause 21 in their enterprise bargaining agreement.

Mr HIGGINS — I will allow the chief officer to respond, but I make one observation about the consultation arrangements in the enterprise agreement or enshrined in an industrial instrument is absolutely the wrong approach to manage safety. Safety should be managed in accordance with the occupational health and safety legislation that exists in this state, and that is the right and proper place for safety issues to be addressed. Safety should not be made an industrial issue. The evidence led in those circumstances is not consistent with the MFB's view of the facts, and hence we provided the material that we have to assist in the committee's consideration of these matters.

Ms BATH — Thank you. I would appreciate a short detail of what is held in there.

Mr STACCHINO — What I would say is that I understand a submission has been put before this inquiry with respect to PBI Gold, and the submission to the inquiry was that if PBI Gold had been put in place, firefighter Dick Zapart would not have received one burn. The circumstances surrounding this incident in Yarraville in 2007 and a selection of PPC have been subject to an inquiry by Judge Gordon Lewis, a coronial inquest, a WorkSafe investigation and much-needed reporting. Out of respect to Dick Zapart and his family, we think it is appropriate we do not canvass those issues again but believe the inquiry would benefit from the folder of advice that I have provided today.

Ms BATH — I appreciate it. Thank you.

The CHAIR — Which we will put on our website. I thank both of you for the evidence given today. I know it has been a long session, and I am very much aware of that. Thank you for your copy of the document and your analysis of it. We will have the secretariat in contact. There may be other matters that we wish to follow up over the forthcoming period. Thank you both for your evidence.

Witnesses withdrew.