

LAW REFORM COMMITTEE

Inquiry into Coroners Act 1985

Melbourne — 5 December 2005

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Witnesses

Mr P. Davis, executive officer; and

Mr B. MacDonald, executive officer, Volunteer Fire Brigades Victoria.

The CHAIR — I welcome to the inquiry Peter Davis and Bob MacDonald, the executive officers of Volunteer Fire Brigades Victoria. We look forward to your presentation to us, at the end of which we would like to ask some questions. You could take perhaps 15 or 20 minutes.

Mr DAVIS — It will not take that long; we will save you some time. I am Peter Davis; Bob is on the left looking at our questions. I thank the committee for giving us the chance to speak to our presentation. You will note in our presentation that we have addressed virtually only two questions — 25(a) and (b) and 26(a) naturally, because our particular interest is in fires.

Just to give you a bit of background on where Bob and I are coming from, there are 58 000 or 60 000 CFA volunteers. Traditionally there have been rural volunteers and urban volunteers. The rural volunteers have been represented by the Victorian Rural Fire Brigades Association, and Bob is the executive officer of the rural association. There is also the Victorian Urban Fire Brigades Association, and I am the same with the urban association. In an attempt to draw the two associations together — and these two associations have been around for 50 or 100 years, so there are a lot of traditions among the two associations — we have created Volunteer Fire Brigades Victoria. Bob and I also wear the hats of the joint executive officers of Volunteer Fire Brigades Victoria, so that is where we are coming from. The two areas that we really want to address include non-fatal fires. They are our main concern.

As I said, in the CFA there are 58 000 volunteers, and there are 500 paid career firefighters and 1213 volunteer brigades. It is a huge organisation. Right now in Victoria there are five agencies that can investigate fires. There is the CFA, which has its own fire investigators; the MFB and the MFESB, which have their own fire investigators; the DSE, which has its own investigators; and the arson squad; and the coroner — and that is not to mention any inquiry, like the Bruce Esplin inquiry into the north-east fires, or any royal commissions that may come around to investigate fires.

We believe this is a great opportunity for the state to centralise these five separate investigative areas. We believe if the state does go this way there would be a set of expertise and excellence that could investigate fires and look at trends. The CFA is very strong on fire prevention, as country members would appreciate, and this would be another step in our approach to fire prevention.

Years ago the Mistral fan was found to cause a lot of house fires, but it took ages to find it, because there was no centralised collection agency that looked at the cause of fires. The CFA was looking at it and the MFB was looking at it, and it was not until someone — I do not know who it was — decided that there was a common thread in these house fires that it was found. We see that if we brought together this set of expertise, or excellence, involving knowledgeable people to be a knowledgeable body, that could investigate the cause of all fires. Without any disrespect to the coroner, he comes in and investigates fires — I could say at his whim — but he does not have the expertise that fire investigators have. After the Linton inquest he might say that he does, because that went for something like 90 hearing days, but he relies on other experts at the hearing and he sifts the evidence. We are saying that we do not see a need for that and that one body could take that role. In our submission we say that we think it is an accident of history that he has these powers, they come from the Great Fire of London, and why should that be continued in this current time?

We do not want to see the creation of another large bureaucracy, though. If you go this way, we do not want to see you create another large bureaucracy and take all the investigators from the MFB, the arson squad and the CFA. We would see this body as using the resources of these other agencies. The CFA volunteers are trained and competent fire investigators right around Victoria; they are qualified fire investigators. We do not see them as working for this separate, independent body. We would see them having access to all these reports to look for any trends that were evident and to help prevent the causes of other fires through analysing any trends they can find.

The other point we made, and I should have touched on this at the start, is that the CFA system of firefighting has been conservatively estimated to save the state of Victoria \$500 million a year, and it is documented; the CFA has that evidence. Naturally, we do not want to see any reduction or demise in this huge volunteer commitment and organisation that currently exists. Bob and I sat through every day of the Linton inquest following the five deaths, and it was quite rightly within the jurisdiction of the coroner to investigate the Linton fires, but it was traumatic for our volunteers. Nine parties were legally represented, and our volunteers had to run the gamut of giving evidence and being questioned by nine separate Queen's Counsel. Some of them had huge egos, and to me they did not seem

to take account of the impact it was having on the volunteers. Many of our volunteers had counselling prior to and after the inquest, and we lost some volunteers because they thought, 'Why should we put up with this?'.

The CHAIR — Just on that point, would that not happen no matter whether it was a royal commission or a specially mandated investigations unit? When five people are killed in a fire, inevitably there is going to be a fairly rigorous investigation process, and lawyers will be involved whenever anyone's legal rights might be impinged upon as a result of such an investigation.

Mr MacDONALD — We accept that in the case of death there will be a coronial inquest and that sort of thing. What we are arguing is that in other cases, where the coroner investigates fires but there is not a death, then those people suffer the same sort of trauma.

Mr DAVIS — The Bruce Esplin inquiry was far less traumatic, and they sat down around a table and got the same answers. In fact I believe the Linton inquest did not get the answers, but that is a personal view.

The CHAIR — So you are saying it is the form of the inquiry?

Mr MacDONALD — In many ways, yes.

The CHAIR — Can you elaborate on the differences between the way in which they were both conducted?

Mr MacDONALD — The Linton inquest was a very legal process where in our view a lot of the information that was conveyed through that court was very much done through legal argument, whereas if you take the north-east fires, then it was investigated with virtually no legal representation at all, so it was easier for people to communicate what they felt, and you got a much wider range of feelings and views.

Mr DAVIS — And people were probably not worried that what they said may be held against them later on. It was not subject to rigorous testing in a public forum as such.

The CHAIR — So would you support the protection that has been suggested by a number of witnesses that, if you abrogate the privilege against self-incrimination, there would be an additional statutory protection that says that that evidence cannot be used in any subsequent proceedings? Would that be helpful to your officers?

Mr MacDONALD — It would be certainly be much easier on volunteer witnesses. Many of them are not so much worried about the court process, but things go on in their head about what might happen to them if they say something that is self-incriminating.

Mr MAUGHAN — From your perspective, the Esplin inquiry elicited the facts and information so that so we can benefit and gain and move on, more so than in your view the coroners inquiry on the Linton fires.

Mr MacDONALD — Exactly, that would be my view anyway, and a number of the recommendations that came out of that Esplin report, I think, have been pretty widely accepted by the general population.

Just to add to that, we have a coroners inquiry into a series of fires around Gisborne and Woodend. There is no doubt that, even though it is a non-fatal fire that it is investigating, we have volunteers who do not want to go because of the hangover. One has rung me and said, 'I do not want to go to this inquest. Do I have to?'. I said, 'If you are subpoenaed, you have to go'. But he does not want to go. You could say that once again it is an insignificant series of fires, but there are five legal parties across the table and he does not want to face up to being questioned by five QCs or five barristers.

The CHAIR — I think you raise an important point — it has been raised by other witnesses and by families — about what can be the intimidating arena of the Coroners Court, and is one of the things we have to grapple with as part of our inquiry.

I will pose a devil's advocate question to you. You are saying, in a sense, that the Linton situation will remain unchanged. You are saying that you still recognise that the coroner has to look at fatal fires, but you are saying we should have another unit for non-fatal fires. You argue that the coroner does not necessarily have the expertise to look at fires. Is it not the case that the coroner in any investigation, whether he is looking at drownings, at police shootings, at fires or at deaths in hospitals, has to draw on the expertise of others to assist in any inquiry? Why not

draw on the relevant experts that you have suggested exist in the MFB, the arson squad, the CFA and other bodies to conduct an inquiry into a non-fatal fire? Why set up another body that is just going to sit there until the day we have a non-fatal fire that it is deemed we need to investigate? I pose that as a counterpoint to what you have said.

Mr MacDONALD — We would say, as you have rightly said, that the coronial process can be fairly daunting for a lot of people, and we believe there is a better system. We believe the coroner has probably got enough to do anyway, without having to worry about those things. Whether or not it is only fires we have investigated by that same group, as opposed to any natural disaster that might occur in the state, I am not sure. But whilst we have talked about fire, as I understand it the coroner does not investigate these other the sorts of things — for example, storms that create difficulties for the SES or the police and that sort of stuff. Why does the coroner just have the mandate to investigate fires?

Mr DAVIS — I suppose this other body we are suggesting would not just sit around and wait for a fire. We are saying that they would collect the data from all fires. For every fire that is investigated by the CFA, there is a fire report done. It is the same with the MFB. That is all fed in. They are looking for trends and getting all that evidence. There might be one where they say, ‘We need to go out and talk to the fire investigators on this one’. It would not be a case of just sitting there waiting for something to cross their desk.

Mr MAUGHAN — With this body you are suggesting, am I right in assuming that you are proposing a relatively small coordinating group of people, so there would not be a mass of people? There would be a relatively small group of people coordinating those fire services that you already alluded to?

Mr MacDONALD — Yes, that is right. To an extent we have not got our heads around how it would work. We have 58 000 volunteers out there. If we asked them, we would get about 30 000 different ways of doing it. There are some smart people out there; we acknowledge that. We could give you some advice, but give us time.

The CHAIR — You indicate in your submission some concern about the length of time it takes the coronial system to investigate non-fatal fires. Do you have any views about what would be a more expeditious kind of time frame?

Mr MacDONALD — Depending on the extent of the incident you are talking about, it really should not take any more than six months from the time you do the investigation and put the information together. But it seemed too long to us for the Linton inquest to sit for 90-odd days, whereas the Nuremberg trials took a lot less than that.

The CHAIR — There was probably a lot of lead-up to the Nuremberg trials.

Mr MacDONALD — We believed it just went beyond the pale, really, to sit for four months for such an inquest.

Mr DAVIS — Or such a delay. This one at Gisborne, or the Woodend area, that was two and a half or three years ago — —

Mr MacDONALD — It happened at exactly the same time as the north-east fires, and the inquiry is on now.

Mr DAVIS — The information is not fresh in your mind three or four years later.

Mr MAUGHAN — So the body that you are proposing would have the advantage of dealing with that far more expeditiously than the coroners record to date.

Mr MacDONALD — We expect so.

Mr DAVIS — We would hope so.

The CHAIR — Have you raised these issues directly with the coroner?

Mr MacDONALD — No. We are meeting the coroner early next year.

Mr DAVIS — We did not want to offend him. This was the opportunity — —

The CHAIR — You thought you would splash it in *Hansard* first?

Mr DAVIS — When the review came up, we thought this was it. Following Linton we thought, ‘Linton was right, but why do we get involved in these other ones? Why does he get involved in them?’. When you had your review, we thought this was a great opportunity to put our views forward.

Mr MAUGHAN — It is an excellent suggestion.

The CHAIR — Any other questions?

Mr DALLA-RIVA — The meeting with the coroner, had that been prearranged?

Mr MacDONALD — No. We are talking to the coroner on the interpretation of some of his recommendations out of Linton.

Mr DALLA-RIVA — Did you advise him that you were going to be presenting to this inquiry?

Mr MacDONALD — No.

The CHAIR — Thank you very much, and thank you for giving us the opportunity to hear from you directly about your views in relation to investigation of fires. We appreciate it.

Mr MacDONALD — Thank you.

Mr DAVIS — Thank you.

Witnesses withdrew.