

# Volunteer Fire Fighters Association

"The Voice of Volunteer Firefighters in NSW"

PO Box 123, Clarence Town NSW 2321



May 30, 2018

Portfolio Committee No. 4 – Legal Affairs  
Parliament House  
Macquarie Street  
SYDNEY  
NSW 2000  
The Director

## Inquiry into Emergency Services Agencies – Questions on Notice

Reference: Report on proceedings before Portfolio Committee No. 4 – Legal Affairs, Emergency Services Agencies, uncorrected proof at Macquarie Room, Parliament House, Sydney on Monday, 18 September 2017.

This document addresses the question on notice relating to the following transcript content:

**The Hon. CATHERINE CUSACK:** For things to escalate to that point from what is meant to be a democracy of volunteers electing their leaders—things were ending up in court and it is costing taxpayers a fortune. It is demoralising all sides of the debate. Do you have any thoughts on how these meetings could be run? Sometimes there is an awkward moment where they are trying to get fresh blood in. All organisations go through this, but people do not accept the outcomes and they end up in court.

**Mr HOLTON:** In the cases I have heard about, the way to resolve the problem is to let the locals elect the people and then the management will not step in unless there is a real reason to. That is probably the crux of the matter.

**Mr DAVID SHOEBRIDGE:** And maybe a direction to staff not to meddle in the elections.

**Mr HOLTON:** Absolutely.

**Mr CRAWLEY:** I have not heard of this in my district and it is a pretty poor district in a lot of ways.

**Mr WILLIAMS:** It would be fair if an outside person was to run the election—like a councillor should run a brigade election. It should not be anyone from the staff counting the numbers.

**Mr DAVID SHOEBRIDGE:** Perhaps you could reflect on that and give us further information on notice.

## VFFA Response

There are three areas that need to be addressed to provide further insight into the question on notice:

1. A shift in culture (driven by gradual change, additional controls and service bureaucracy).
2. Examples of staff manipulation.
3. Failure of the RFS to provide support when a volunteer questions these changes, controls or service bureaucracy.

### 1. A shift in culture

To properly understand this issue, we have to look back in time and consider how the service has changed and how these changes impact upon the autonomy of an individual Brigade.

## 1.1. An earlier prophecy

On Thursday 3rd of June 1999, the Sydney Morning Herald published an article by Andrew Clennell titled "Hollywood' fire chief has too much power".

### See Appendix 1

The article that was written almost 19 years ago was a reasonably accurate prediction of where we are today. The article included a cartoon depiction of Mr Phil Koperberg and it made the following key points:

- *If they keep [running] the whole thing out of Sydney, they're going to destroy it because its strength is being a voluntary organisation.*
- *Complaints gathered by the association in the past year include: lack of consultation, proliferation of regulations, an excessive focus on uniforms, rank and regalia, and that the RFS had become unnecessarily bureaucratic and top-heavy.*

The article also stated that a spokeswoman for Mr Koperberg said she "would not dignify" the claims made against him. She said the Rural Fire Service Association, representing volunteers, "fully supported" the direction of the RFS.

The VFFA acknowledges that the Rural Fire Service Association (RFSA) has represented volunteers and staff over the last 19 years but, as the article suggests, they seem to serve the RFS Commissioner as their first priority.

The decline in volunteer numbers as suggested in the article:

*"The Local Government Association's president, Mr Peter Woods, said too much power was in Mr Koperberg's hands and that the service was under threat following the departure of dissatisfied volunteers"*

...has been cleverly masked by the NSW RFS with a membership database that does not accurately reflect actual numbers of volunteers who are directly engaged in firefighting activities.

It is suggested that the NSW RFS has concerns about declining numbers of volunteers and is slowly building an army of full time, paid firefighters that may one day become the bulk of our NSW RFS firefighters. This strategy will come at a cost to the people of NSW that we simply cannot afford. There are more cost-effective solutions to this problem.

## 1.2. Volunteers concerns about constitutional changes

Volunteers have raised concerns about forced changes to their Brigade constitutions. Most of these changes appear to be sensible but there is some speculation that hidden agendas are driving these changes.

Closer inspection of these constitutional changes suggests that the NSW RFS is attempting to standardise Brigade control by removal of their rights as a "Brigade created by a local authority".

On May 21, 2014. Mr Michael Eburn (Australian Emergency Law), published a blog titled "Constitutions for NSW RFS Brigades".

Blog Link: <https://emergencylaw.wordpress.com/2014/05/21/constitutions-for-nsw-rfs-brigades/>

### See Appendix 2

In his blog, Mr Eburn addresses questions raised by his readers.

It appears that the constitutional rights of the volunteers are subject to change or manipulation if the outcomes do not suit the objectives of the RFS.

This example (below) could be viewed as a direct attack upon the constitutional right of a Brigade to select its own field officer positions.

*At the AGM the district staff present advised us that our 50% + 1 provision for single field officer nominees (as well as any other changes we have made that are not found in either the model constitution or the self help guide) is no longer valid and that there is a push from state headquarters to get rid of such provisions.*

One comment posted on Mr Elburn's blog stated:

*Anonymous - May 21, 2014 at 9:22 pm*

*An additional thought to consider is the practical application of "The constitution for a Rural Fire Brigade is to be in a form approved by the responsible authority..."*

*District management may either:*

- a) have delegation from the local authority to, or*
- b) would get the local authority/council to*

*specify the 'form approved' to be the service standard or a variant of it which was acceptable to the district management/RFS.*

### **1.3. Volunteers concerns about autonomy of NSW Rural Fire Brigades**

Volunteers have raised concerns about the autonomy of their local Brigades. In another question sent to Mr Eburn, a volunteer states:

*The Brigade has no written Rules or Constitution (at least none ever made by it that I have been able to discover). It will apparently soon have a template constitution to be mandated and imposed by the NSW RFS, but with a limited right for the Brigade to make local rules, provided they don't contravene or conflict with the standard constitution. None of this is yet of concern to the Brigade, but we wonder why we will soon have a constitution (not of our making) that will impose an umbrella control over how we will operate as an unincorporated volunteer emergency organisation into the future, but with a restricted capacity in a restricted time-frame to make rules (another word for constitution) provided they fit within this State Government mandated constitution umbrella. So, the question – How autonomous are NSW (volunteer) Rural Fire Brigades that have evolved as my local Brigade has?*

On February 25, 2015. Mr Michael Eburn (Australian Emergency Law), published a blog titled "How autonomous are NSW Rural Fire Brigades?".

Blog Link: <https://emergencylaw.wordpress.com/2015/02/25/how-autonomous-are-nsw-rural-fire-brigades/>

#### **See Appendix 3**

It appears that the volunteer who poses the question is also concerned about the motives behind the standardisation of Brigade control by removal of their rights as a "Brigade created by a local authority".

Even Mr Eburn displays an air of suspicion with his opening comment:

*It seems all my questions these days are coming from the NSW RFS. I'm happy to field questions from other services and other states? Until then this one is from the RFS and asks 'How autonomous are NSW Rural Fire Brigades?'*

There are also concerns that the NSW RFS has evolved into an untouchable and powerful entity with the backing of a powerful Act (Rural Fires Act 1997 No 65) that requires urgent review and a comprehensive library of Service Standards that appears to favour the NSW RFS rather than the individual brigade or its volunteer workforce.

*The Act refers to brigades formed by local authorities but, in reality, there are no such brigades. RFS Service Standard 2.1.1 Formation and Disbandment of Brigades and Groups of Brigades says, at [1.2]:*

*Under section 4.2(a) of the Rural Fire District Service Agreements (RFDSAs) and sections 15 to 17 of the Rural Fires Act 1997 (the Act) the functions of the Local Authority in the formation and disbandment of Brigades has been conferred on the Commissioner of the New South Wales Rural Fire Service (NSW RFS).*

**Mr Elburn's Conclusion:**

*An RFS brigade is not a QANGO. It is not an 'an indirect agency of the NSW Crown'. The RFS is an agency of the Crown and the brigade is part of the RFS. The brigade has no legal standing in its own right. The amount of freedom left to a brigade is determined by the Commissioner and is reflected by the standard constitution set out in the service standard. There are clauses that the brigades may draft to suit their own requirements and conditions.*

*It is my view that the status of a brigade is not that of 'an unincorporated association of emergency volunteers forming a Brigade under the NSW Rural Fires Act' rather it is a brigade formed by and as part of the Rural Fire Service. The RFS is not some separate agency that coordinates or manages disparate brigades, there is but one service and each brigade is part of it.*

## **1.4. Volunteer numbers**

It has been suggested that although the NSW RFS reports high volunteer numbers (on the books), there has actually been a decline in the numbers of volunteers that respond to fires.

The issue of declining volunteer numbers has repeatedly been blamed upon an increase in the level of bureaucracy and a loss of local control. The VFFA claims that this is further evidence of a cultural shift driven by the NSW RFS.

This situation was reported in the General Purpose Standing Committee No 5, Report on Inquiry into the NSW Rural Fire Service, dated 23 June 2000.

**See Appendix 4**

That report stated:

*5.4.1 Volunteer numbers*

*It was suggested to the Committee that there has been a decrease of volunteers within the Service since the 1997 reforms were implemented. For example, the Steering Committee of the Volunteer Bush Fire Brigades stated in its submission:*

*Under the existing structure a large number of volunteers are leaving the organization. This is because of ...lack of local control, this control now being vested in the upper hierarchy...*

The Rural Volunteer Fire Fighters Association (RVFFA), in its submission concurred with this view:

*...a large number of volunteers have simply given the Bush Fire Brigade movement away in disgust.*

## **1.5. Review of local government engagement with the NSW Rural Fire Service**

The Local Government Shires Association (LGSA) conducted a review of local government engagement with the NSW Rural Fire Service and produced a discussion paper that was dated Feb 2012.

**See Appendix 5**

In that document, under the heading "Local Liaison Committee", the discussion paper raises the following issue:

*Concerns have been raised regarding the representation, communication and purpose of the Local Liaison Committees for councils and volunteers. It has been reported that the RFS often dominate these meetings with excessive focus dedicated to RFS plans and actions which is*

*external to council and volunteer involvement and dilutes the purpose for local representation, coordination and consultation.*

It is apparent that many local governments and shires share the view of the VFFA that the NSW RFS has eroded the original intent and culture of the NSW RFS over time.

## **2. Examples of staff manipulation**

It is suggested that the Portfolio Committee No. 4 will need to review some of the following cases in camera to protect the identity of those involved.

### **2.1. Staff manipulates other volunteers to displace an active critic**

The RFS has a long history of displacing staff and volunteers who dare to make a stand against the various cultural aspect changes, additional controls and service bureaucracy that all volunteers are being subjected to.

This example involves a volunteer who has given 20 years of service to the people of NSW.

The District Manager engaged in activities designed to publicly discredit this Brigade Field Officer and his Captain over an extended period (approx. 10 years).

Later on, the Volunteer who was targeted became a Brigade Captain and the attacks were intensified.

These attacks increased over time, reaching a point where a number of other volunteers were dragged into this inappropriate behavior.

The situation came to a head when unfounded allegations were made, claiming that the targeted volunteer had engaged in bullying, had been abusive and threatening at a group meeting. These allegations were by a number of Group Officers and other volunteers that seemed to be manipulated by the District Manager to do so.

The District Manager has previously failed to act upon another matter of such a serious nature that it cannot be discussed in this document. The targeted volunteer needs to tell his story so that the Portfolio Committee understand the potential problems.

It is suggested that the District Manager may have been actively trying to displace the targeted volunteer in an effort to remove the problems, even though the attack was knowingly, being made from the wrong direction.

The targeted volunteer began a privately funded legal battle that ultimately found the claims were vexatious. The law firm secured an audio recording of the meeting that was later transcribed at the targeted volunteers expense. This new evidence not only exonerated the targeted volunteer, but it implicated those who made the original claims. The audio recording clearly shows that the targeted volunteer was being bullied and attacked.

The RFS quickly distanced itself from this case, writing a letter that they would no longer proceed with any further investigations or disciplinary action against the targeted volunteer. There was no indication in that letter that the matter of bullying or harassment against the targeted volunteer would be investigated. The matter was dropped.

The volunteer is deeply distressed about this situation and is perusing redress through the courts.

This example needs to be followed up in camera to ensure that this example is properly examined by the Portfolio Committee.

### **2.2. Staff manipulates other volunteers to displace a “Trouble Maker”**

The RFS does not seem to like anyone who raises issues that could create problems. These people are often labelled “Trouble Makers” and every attempt to silence them or move them on is made.

Example (1): The VFFA received a call for assistance to help a senior volunteer who was being targeted by a District Manager and other senior volunteers. The senior volunteers who initiated the complaints against the targeted volunteer were not attached to the same brigade, they were part of the Senior Management Team.

The targeted volunteer was acting upon requests made by senior members of his own brigade. They had safety concerns and they asked the targeted volunteer to represent them to the District Manager via the Senior Management Team.

The targeted volunteer supplied the VFFA with a portfolio of evidence that clearly showed a pattern of bullying and inappropriate behavior from above.

When the evidence was examined, it appeared that the District Manager has overruled a concern for safety as reported by the targeted volunteer. The fact is that to address the issues raised by the targeted volunteer would require additional funding and commitment. The simple solution was to discredit the targeted volunteer.

These actions against the targeted volunteer have caused significant anxiety and emotional harm with the targeted volunteer unable to continue with his community service. He remains on extended leave of absence whilst he comes to terms with the situation.

This volunteer has indicated that he is prepared to share his story in camera, to the Portfolio Committee.

### **2.3. Volunteer - feels of little value to the RFS after      years of service**

A volunteer sent an email to the Professional Standards Unit, dated

**See Appendix 6** to read the entire email (some names removed)

Extracts relating to impacts upon staff and volunteer are as follows:

*I have been trying to document my concerns for almost 2 years but due to the emotional stresses that I succumb to it becomes impossible to complete. I would find it much more achievable to discuss matters in person.*

*After      years in the Service I am at the point where I am now of no value to the \*\*\*\*\* Zone and need to leave I guess. It is however a very hard thing to leave something that has been a major part of my life, when I have done nothing wrong, and it is the dishonesty and deception of staff that have made my involvement impossible.*

*I can only guess that what has happened in the past is beyond investigation, however I would like to demonstrate an ongoing pattern of behaviour. Some of the issues include:*

*Improper & unethical employment processes*

*Unethical disposal of Volunteer records*

*Virtual blackmail of brigades to complete capital works from volunteer brigade funds*

*Contractor engagement processes - unethical at least - possibly illegal*

*Discrimination and harassment of staff*

*Issues also include current distrust and disappointment in the RFS staff by Council managers after the relocating from the \*\*\*\*\* Fire Control Centre to \*\*\*\*\*.*

*This is not an exhaustive list but hopefully enough for you to see there are valid concerns regarding the ongoing management of this Zone.*

*Many Volunteers & Staff alike are reluctant to initiate any action because of their positions or otherwise. As I am now obviously beyond being of value to the RFS I am content to provide names/details etc.*

*Unfortunately I have no trust and faith in my Zone management to be able to continue trying to resolve anything, and Regional Staff will only defend Supt \*\*\*\*\* because of who he is in relation to both his Career and former Commissioners. Unfortunately the inappropriate behaviour of staff is well known from D/T/Z level into the higher levels at Lidcombe. Hopefully your section is detached from all this and genuinely trying to address issues such as mine.*

The volunteer also provided an exit letter, addressed to the NSW RFS Commissioner, dated when he resigned from the RFS:

**See Appendix 7** (some names removed)

Extracts from the exit letter (with some names removed):

*I apologise for taking up your valuable time but after almost     years as a Volunteer I selfishly feel entitled to a few moments in return for more than a few years I have given.*

*It is with great sadness and disillusionment that I have as of the     resigned from the NSW RFS in its entirety. Due to both personal health and hardship, along with questionable morals & ethics within the \*\*\*\*\* Zone, I am left without option.*

*I have "played by the rules" and submitted my concerns via the Professional Standards Unit and as recently as late     these investigations have concluded after two and a half years. The results of this are disappointing due to some inaccuracies and perhaps misunderstandings by the PSU of what happens within D/T/Z's but regardless, it is over.*

*I never considered myself "just a Volunteer", and engaged in what I felt was a Voluntary Career. In the early years under guidance from those that were prepared to "give people a go", such as \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\* , \*\*\*\*\* etc it was great to be involved, included, consulted. Two of my early highlights were visiting Rosehill HQ with my Mentor at the time, \*\*\*\*\* , to visit the "memorable" \*\*\*\*\* in regard to early GRN matters. and my first introduction to now Commissioner Fitzsimons, at the original Communications SOP's workshop at Rosehill also.*

*These were times when the "Organisation" certainly steered the ship, but various roles, training committees et etc were not only accepted but encouraged. Due to the much lesser staff in those days it was nothing unusual to cover phones & radios for staff etc when short, or any multitude of tasks where Volunteers were trusted and genuinely appreciated.*

*Interestingly things have changed somewhat, due to becoming the NSW RFS, due to more staff, due to the ever ongoing change of staff, sometimes unfortunately some becoming employed because of their Service membership and Certification more so than their suitability to be able to not only manage, but manage Volunteers.*

*Many things that occur in workplaces can cause problems with how people perform and get along and the RFS is no exception. Whenever there may be improper behaviours or conduct between service members, as long as both parties acknowledge and accept the relevant situation is one thing, BUT when various negative attitudes, behaviours and conduct of Staff start being directed to innocent parties such as Volunteers then maybe everyone needs to step back and re-evaluate.*

*I have witnessed others, as well as myself be put down, negatively discussed and treated like second class citizens. At times we all get on each other's nerves but I don't think that justifies sexist, discriminatory, and character assassination type behaviours that have become commonplace.*

*Many years ago at a Captain's meeting, a local Captain feeling overwhelmed by new and increasing requirements of the newly formed NSW Rural Fire Service stood up and declared "I joined the Bush Fire Brigades, I didn't join the Rural Fire Service". Whilst I concur with most of you that the RFS was a key step on the path of progression, there are still some key components*

*that have become harder to find. The Goals of the Service are more often now overshadowed by the Goals of Staff themselves. The bickering between staff over positions, and propriety of Transfers and EOI's etc, Staff "punishments" used to manage fleet requirements etc are an embarrassment to those of us that have given 'til it hurts. Ironically this includes many of those engaged in the above issues, but the animosity has eaten up the camaraderie and goodwill of the people.*

*It is due to this arrogance and disrespect, that my departure has become a necessity. By my own admission, due to mental health issues (not created by the RFS, but certainly exacerbated by some actions) I have become more difficult to communicate with, and have gained a very severe inability to accept anything less than truth and fairness. I don't at all claim this to be good or a defence, it is simply a reason for my manner at times. Even though D/T/Z Staff etc have known I have been battling and suffering, in the last few short years I can be grateful for a couple of staff members that have kept in touch but overall the oft used term of being in the "RFS Family" certainly hasn't been my experience, I don't know if it's a \*\*\*\*\* or \*\*\*\*\* mantra, but "kick 'em while their down" seems to be the local tactic. Even after submitting my resignation, I only have to thank one person for making contact and showing some acknowledgement of my existence. (Thanks mate, you don't know how much that meant.)*

*In closing, why did I feel the need to make you read this? Because I would like to think that mateship, integrity, ethics & morals and hell, even "Family" might one day return to the RFS, especially in the \*\*\*\*\*. Because I would like you to know that sometimes Managers can and do break people. People such as Volunteers that have no impact on their earnings, career progression etc. We're not about to take their jobs or lurks and perks. Some of us actually just want to Volunteer to contribute to a common effort and goal.*

*I don't understand how in this day and age, workplace discrimination, harassment and bullying and general mistreatment of individuals can be so rife and so many staff are too scared and intimidated to speak out. THIS IS WRONG.*

*As a Corporate Entity and a leading Fire Service the RFS excels, as for people retainment, fair and equal treatment etc it still has some long roads ahead.*

## **2.4. Volunteer investigations dropped by the NSW RFS**

In this example, the targeted volunteer holds a senior Field Officer position but is being targeted in a way that is consistent with a ploy to displace the volunteer from his elected position and have him removed from the NSW RFS altogether.

This volunteer was elected to a senior position by his volunteer peers, but it appears that the District Officer has engaged the assistance of other senior volunteers to discredit the targeted volunteer.

This example includes samples of NSW RFS documentation, the use of an external investigation company (employed by the NSW RFS) and then another letter from the NSW RFS stating that the matter will not proceed further.

It is disappointing that there seems to be no on-going investigations by the NSW RFS into those who targeted this volunteer in the first place, the issue has been dropped by the NSW RFS.

The targeted volunteer is unhappy about this treatment and has engaged a law firm to pursue the matter further.

### **See Appendix 8**

The documents (Appendix 8) are a collection of documents that clearly highlight the example described above.

It is highly recommended that the volunteer that was implicated in this example is given the opportunity to speak to the Portfolio Committee in confidence.



## 2.5. Many other examples on file

The VFFA has many other examples of bullying and harassment on file. Some of these relate to the question on notice, whilst others do not.

The VFFA is happy to provide additional evidence as required.

## 3. Failure of the RFS to provide support

In two of the examples above, not only did the NSW RFS fail to provide a suitable level of support, it aggressively worked against the two individuals concerns and failed to properly investigate serious matters that will come to light when these volunteers are given an opportunity to share their stories with the Portfolio Committee in confidence. As soon as the NSW RFS realised that they may be exposed, they quickly send a letter saying that the matter will not proceed further.

Most volunteers choose to leave the service, rather than take on the NSW RFS.

The VFFA has provided financial assistance to four volunteers that have been abandoned by the NSW RFS and we are aware of other cases where volunteers have taken a stand on their own.

### 3.1. RFS has denied legal support for volunteers involved in disciplinary processes

Reference: Report on proceedings before Portfolio Committee No. 4 – Legal Affairs, Emergency Services Agencies, uncorrected proof at Macquarie Room, Parliament House, Sydney on Monday, 18 September 2017.

**The Hon. DAVID CLARKE:** Today the Committee heard that the RFS has denied legal support for volunteers involved in disciplinary processes. What is the process for application for legal support? Have you ever received a request for legal assistance by a member of the Volunteer Firefighters Association? What was the outcome?

**Mr FITZSIMMONS:** I will answer that question in a number of ways, if I have heard it correctly. Inherent in our doctrine members can bring with them legal assistance to grievance matters. That is just inherently available in the service standard. There is a provision in the RFS for members to access what we call ex gratia assistance particularly if they have got a matter that they find themselves needing to deal with in the course of their duties. In the last seven or eight years since I have been commissioner, I am aware of five applications being received. All of those were supported in respect of ex gratia assistance.

There is a service standard to follow and it is in line with the Premier's guideline on seeking ex gratia assistance. When we get it, we consider them and we make the application through the Department of Justice. I am not aware ever of receiving anything from the Volunteer Fire Fighters Association [VFFA] concerning legal assistance in my time as commissioner. Moreover, if I did, we would respond to them and say the individual would need to make the application because there is an obligation and also some privacy issues around disclosing things which are personal and typically private when weighing up the provision of endorsing that legal representation.

I would like to bring to the attention of the Portfolio Committee, a legal battle where it appears that a volunteer has been targeted by NSW RFS Staff. This example is being provided because the NSW RFS has denied legal support.

The details of this example can be provided in confidence to the Portfolio Committee.

In the example provided, the circumstances are such that this situation could have been handled locally but the NSW RFS staff involved the Police. In the statements concerning this example, the Police also indicated that the situation could have been handled internally (within the RFS).

The evidence suggests that this example was poorly handled, it got out of control, it then became a Police matter when it was pursued by NSW RFS staff and the NSW RFS backed their staff in favour of the volunteer.

**See Appendix 9**

A copy of a request for assistance (with names removed).

Please note that this case has subjected a volunteer to an extreme level of anxiety and personal cost. The legal costs to defend this volunteer have been sourced from the VFFA and by way of donations from other groups.

**See Appendix 10**

A copy of the letter that denies assistance (with names removed).

Regards

Michael Holton  
President  
Volunteer Fire Fighters Association