

**Submission
No 97**

INQUIRY INTO EMERGENCY SERVICES AGENCIES

Organisation: Fire Brigade Employees' Union

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Submission to the Legislative Council Portfolio Committee No. 4 – Legal Affairs

Inquiry into Emergency Services Agencies

Introduction

The Fire Brigade Employees' Union of NSW is a trade union registered under the Industrial Relations Act 1996. Formed in 1910, the FBEU is the most established and democratic firefighters' organisation in this State, representing over 6,400 public and private sector members employed throughout NSW.

This submission is not intended to replicate or reinforce submissions from the various agencies, all of whom will presumably go to considerable length and detail about the measures they have taken address the issues raised by this inquiry. The great majority of the Union's public sector members are employed as permanent or retained firefighters with Fire and Rescue NSW and so FRNSW is the primary focus of this submission.

Nor is this submission intended as a comprehensive assessment of and response to all the issues raised by the inquiry's terms of reference, which are as complex as they are broad. The Union is however willing and available to appear before the Committee to expand on any of these issues should the Committee request this.

The prevalence of bullying, harassment and discrimination

Bullying is a problem that afflicts all workplaces and industries, including the firefighting industry. Whether it is more prevalent within the firefighting industry is open to question, but there can be no doubt that it continues despite the repeatedly-stated commitment of both the employer and the Union to eliminate it. In a message to members issued in August 2014 under the unambiguous title "Bullying & Harassment – no place in our Union", the-then FBEU State Secretary left no doubt about the Union's position:

Yesterday [FRNSW] Commissioner Mullins emailed all staff with a blunt warning regarding bullying and harassment between members of FRNSW. On this issue I stand in firm agreement with the Commissioner. It is 2014, and some of the attitudes that characterised the Brigades in days gone by are simply no longer on. Getting away with it in the past shouldn't be taken as an endorsement of this behaviour continuing now.

The Union's position on this question is informed by two things. One is simply that it is the right thing to do. Dignity and respect in the workplace should not be an optional extra. Much of the Union's history has been a fight for dignity at work – we must have the same standards in our treatment of each other as we demand from the employer. No one should be stood over or treated differently on the basis of their religion, sexuality, ethnicity or gender. As importantly, if we are to remain a



strong and united Union we cannot afford to have some members being treated differently to others. Solidarity with each other is a basic requirement for our ongoing strength, and any member who undermines that undermines our Union.

According to the public sector-wide “NSW People Matter Employee Survey 2016”, 19% of FRNSW employees responded yes to the question “In the last 12 months I have been the subject of bullying at work”. This was in line with the 21% response across the Justice cluster, and 20% across the wider public sector, although FRNSW employee participation in the survey was remarkably low. According to the same survey, 29% of bullying in FRNSW was attributed to senior managers, while Justice’s result was 25%, and the sector 23%.

In July 2017 FRNSW Commissioner Baxter conducted a week-long series of Strategic Planning Workshops in Manly which were attended by more than 200 people from across FRNSW. Consistent participant feedback from each of these workshops, and across all sections and levels of the organisation listed bullying as a major cultural problem.

The question is therefore not whether bullying, harassment and discrimination is occurring within the industry, but rather what is being done to manage and resolve complaints of bullying and harassment.

The effectiveness of the protocols and procedures in place to manage and resolve such complaints

Firefighter dissatisfaction with FRNSW’s complaint-handling processes is reflected in responses to the NSW People Matter Employee Survey 2016 statement “I have confidence in the ways my organisation resolves grievances”. Only 34% of FRNSW respondents agreed, as against the wider public sector’s 43% result. Of the statement “I am confident that I would be protected from reprisal for reporting misconduct/wrongdoing” 39% agreed compared to the public sector’s 49%. The Union’s submission should be taken as an overview of our members’ experiences with the FRNSW complaints procedures.

In 2014, the procedures for handling complaints of misconduct (including allegations of bullying, harassment and discrimination) were radically altered in pursuit of a quicker, more “streamlined” system. The FBEU opposed these changes however the Industrial Relations Commission of New South Wales eventually ruled against the Union and replaced the firefighters’ disciplinary system of preliminary and formal inquiries with new Procedural Guidelines for the Management of Conduct.

These Guidelines prescribe timeframes (6.1) that *“uncomplicated matters should generally be concluded within four weeks from when the initial allegation is made”* and *“irrespective of the complexity of the matter, the delegate will, after eight (8) weeks from receipt of the allegations by the delegate advise the employee who is the subject of the allegation(s) in writing of the progress of the investigation, the anticipated time it is expected to conclude and outline the reasons for any delays to date and expected delays. Reasons for a delay may include complexity of the matter, exceptional circumstances, a request for delay by an external investigating authority, or availability of the employee. Similar advice is to be sent each subsequent eight (8) weeks after the first advice.”*

The reality for firefighters is very different. The Union is aware of no matter that has been concluded within four weeks, and advice on the progress of an investigation is



rarely if ever provided, let alone observed.

To illustrate the problem, a firefighter who was suspended from duty in September 2016 was initially advised that there would be a 4 to 6 week investigation. The firefighter was given no further indication of expected timeframes and remained suspended, confused and distressed at the time of this submission some 11 months later.

A second contemporary example of the employer's revised "streamlined" disciplinary system involves a firefighter who, whilst not being suspended, has been ordered to not attend his own station since August 2016 whilst an investigation proceeds. It has not yet concluded. Again, no external agency is involved and no criminal matters are involved.

These are not isolated or atypical cases. Cases are regularly mishandled and delayed at the expense of the rights and well-being of individuals.

Firefighters experience significant distress whenever there is a delay in the process. It is during this period that psychological injuries can (and often do) arise. This can be the case for both those under investigation, and for those who make a complaint.

The Union calls for additional measures to ensure that the timeframes envisaged by the Procedural Guidelines are in future met as a rule and not an exception.

The support structures in place to assist victims of workplace bullying, harassment and/ or discrimination within emergency services agencies

The agencies are expected to explain their various support structures and services (many of which have been developed following agitation by and/or in consultation with the relevant unions, including the FBEU), so the Union sees little point in repeating those submissions here.

The provision of safe workplaces free from bullying, harassment and/or discrimination is a statutory responsibility of the emergency service agencies. The unions share an obvious interest in achieving these laudable outcomes, and assist wherever possible in helping the agencies achieve them, but the legal responsibility and the practical capacity to do so rests with the employer.

The FBEU is often limited in its ability to help members prosecute complaints of bullying and harassment due to the Union's very high membership density rates amongst FRNSW firefighter employees, the practical effect of which is that complaints are often against another member. It is neither the Union's role nor intention to judge and take sides amongst its members and so the Union will generally (but not always) rely on FRNSW to prosecute complaints and confine its involvement to assisting members who are facing allegations of misconduct.

While Melbourne's Metropolitan Fire Brigade (MFB) provides a similar array of support services to its employees as FRNSW and the RFS including independent Employee Assistance Programs, it also provides a dedicated "free, confidential and voluntary" Workplace Behaviour Line that is described online as follows:

MFB Workplace Behaviour Line

The MFB Workplace Behaviour Line is run by Davidson Trahaire Corpsych. It



is independent of the MFB and is an additional option to the existing Employee Assistance Program (EAP) services, including external counselling run by Optum.

The MFB Workplace Behaviour Line means you can call 1300 765 612 – 24 hours a day, 365 days a year – to access psychologists who may:

- Ensure your immediate safety and wellbeing*
- Respond in a professional, confidential, supportive, sensitive and ethical manner*
- Provide support – where required – to make a formal complaint to the MFB if you choose to do so*
- Make referrals to other and specialist support services (including the MFB EAP) where appropriate*

You can also contact the MFB Workplace Behaviour Line via email on mfb-wbl@davcorp.com. Information you provide is confidential.

The Union sees merit in the provision of a similar support service to NSW firefighters.

It had not yet done so but at the time of writing the Victorian Equal Opportunity and Human Rights Commission was shortly expected to publish its report and findings into the nature and prevalence of discrimination, including bullying, and sexual harassment amongst all Country Fire Authority and Metropolitan Fire Brigade employees and volunteers. The Union is obviously unaware of the report's content and/or findings but it would appear directly relevant and may be of assistance to the Committee in its deliberations. See <http://www.victorianhumanrightscommission.com/EDR/index.php>

The support services available to emergency services workers and volunteers to assist with mental health issues resulting from workplace trauma and the effectiveness of those programs

Again, the agencies are expected to detail these services and the Union does not propose to do so again here. The Union instead refers to the stark difference seemingly taken by the Berejiklian Government towards the funding of mental health support services for police and ambulance officers on the one hand, and for firefighters on the other.

In a letter to the unions covering NSW Paramedics in February this year the Premier wrote that *“Preventing workplace injuries and illnesses from occurring, and effectively managing workplace injuries and illnesses when they do occur, are fundamental to the wellbeing of paramedics,”*. She went on to state that *“the Government will also provide an additional \$30 million over the period to 2020-21 for health and wellbeing programs in NSW Ambulance,”*.

On 4 April this year the Daily Telegraph reported the Minister for Police and Minister for Emergency Services as saying that *“this Government [has] committed \$17.1 million over four years to expand health and wellbeing support for police officers,”* adding that *“Two million of the \$17.1 million total funding is to establish a new program to provide much needed support to former NSW police officers and their families, who may have experienced mental health issues as a result of their service.”*



The Government has therefore committed at least \$47.1 million over four years to health and wellness programs for the state's police and ambulance officers.

These strong funding commitments stand in stark contrast to the Government's approach to firefighters, who are exposed to similar traumatic incidents and environments and yet have received no comparable funding for health and wellness – and indeed no additional employee support service funding at all.

The Union welcomes the Government's financial commitment to mental health support services for police and ambulance officers but expects and calls upon the Government to provide a commensurate commitment to the state's firefighters.

The Union refers the Committee (without necessarily either concurring or disagreeing with it or its relevance to NSW firefighters) to a comprehensive "Review of the MFB Employee Support Program" that was published in December 2016 following a detailed investigation of that Program and of mental health issues within Melbourne's Metropolitan Fire Brigade. See <http://apo.org.au/node/72512>

The appropriateness of uniforms provided to personnel in emergency services agencies

The Union considers the current lack of sufficient differentiation between police and FRNSW uniforms to pose a genuine health and safety risk for firefighters given the ease at which they can presently be mistaken for police officers (or even Corrective Services officers) and consequently subject to abuse and/or assault by persons who can and do seek to injure or harm those officers. This is not to suggest that police or prison officers should be subjected to any form of harm, only that firefighters should not be exposed to an obvious and easily avoidable risk of this kind.

The largest confusion has traditionally occurred with the FRNSW dress uniform, which closely resembles the NSW Police Force "service dress" uniform of black ankle boots, dark trousers, sky blue shirts (with navy jumpers), and peak caps. The dress uniform shirts for the RFS and Ambulance Service are both white and therefore do not give rise to same problem (the latter having been changed from sky blue in the mid-1990's for precisely this reason). Unfortunately the similarity between FRNSW "duty wear" and NSW Police Force "field dress" is arguably now more problematic than the dress wear.

Most FRNSW firefighters below senior officer ranks spend the great majority of time on-shift not in dress uniform but in FRNSW duty wear consisting of GP-style boots, navy blue cargo pants with map pockets, navy blue drill shirts with epaulettes and rank insignia and navy blue baseball-style caps. The NSW Police Force has moved in recent years for day to day operational duties from "service dress" to "field dress" consisting of GP-style boots, navy blue cargo pants with map pockets, blue shirts with epaulettes and rank insignia and navy blue baseball-style caps. While most (but not all) police officers wear the sky blue shirt with this field dress, many instead wear a similar navy blue drill shirt (or a navy blue jumper) with epaulettes and rank insignia similar to that worn by FRNSW firefighters.

The Union submits that the FRNSW sky blue dress shirt should be replaced together with navy-coloured FRNSW uniform items (including jumpers and duty wear) with another suitable colour (eg, grey or black) in order to minimise possible confusion of firefighters and police officers.



The relocation of the New South Wales Rural Fire Services Headquarters to Orange, Dubbo or Parkes

There are over 140 different NSW Government agencies and yet only two include the word “rural” in their titles – the Rural Assistance Authority and the Rural Fire Service. The former is sensibly located in western NSW, at Orange. The latter is inexplicably located in the geographical centre of Sydney (and FRNSW jurisdiction) at Lidcombe, although the property’s owner gave notice in 2015 of its intention to evict the RFS by 2018.

Most reasonable people would have viewed the forced eviction of RFS HQ as an opportunity to relocate the Rural Fire Service to where it always should have been – in regional NSW. This was certainly consistent with the Government’s own stated policies. In the lead up to the 2011 the-then Opposition promised:

The NSW Liberals & Nationals will:

- *Actively pursue strategies and policies to encourage decentralisation - steady and strategic growth in our regions;*
- *Identify more public sector job opportunities to locate in regional areas;*

This decentralisation policy was to effect not only relocations from the Sydney CBD to the Greater Sydney Area (as recently occurred with FRNSW), but also from the Greater Sydney Area to regional NSW.

An O’Farrell Government “Decentralisation Taskforce” of regional MPs reported in April 2013 that: *“One suggestion supported by a variety of interest groups on the basis of there being ‘a good regional fit’ was to relocate a range of fire, emergency and volunteer services and functions from Sydney to regional NSW. The Taskforce notes that the proposal has the potential to develop into a business case based on sustainability, operational benefits and the alignment of skills and interest for staff, communities and functions.”*

The same taskforce went on to recommend (as part of 19 recommendations in total) that:

15. *The NSW Government should plan and implement a clear strategy to relocate appropriate public sector functions and jobs to regional NSW to stimulate regional economic development and support regional involvement in decision-making.*
16. *The NSW Government should underpin the relocation of government business units and functions with strong business cases that match community needs and prospects for growth with regional servicing capacity and government functions. This will improve the prospects and sustainability of these relocations.*
17. *The NSW Government should consider not only whole agency relocations but partial agency and co-location of services and discrete core business functions that demonstrate a natural fit with the communities in regional locations.*

The RFS and RFSA lobbied both the Government and Opposition for the retention of a relocated RFS Head Office within Sydney, relying on questionable operational benefits and a transparent desire to remain immediately accessible to the media.



If there is one thing the RFS does better and invests more energy in than the other emergency service agencies it is self-promotion. There is no bigger or better media circus in NSW than RFS “State Operations” at Lidcombe during the height of another bushfire crisis, and it was presumably feared that this may no longer be the case if RFS Head Office had relocated to Orange, Dubbo or Parkes.

When the-then Minister for Emergency Services confirmed last November that the RFS would be remaining in Sydney, he claimed *“It is ... essential to have an inbuilt capability to enable media to easily transition to ... headquarters and conduct live broadcasts, with travel time an important consideration”*. Why it is necessary for the media to broadcast from RFS Head Office and not from their own studios is never explained.

The Government’s failure to relocate the RFS to Orange, Dubbo or Parkes proves that its decentralisation policy is nothing more than lip service. If the Rural Fire Service isn’t appropriate for relocation to regional NSW then what NSW Government agency is? Unfortunately the Opposition proved be no better on this question by nominating *“finding a new home for the RFS in western Sydney”* as a Labor priority in April last year - the same month that the Electrolux plant at Orange ceased manufacturing after 70 years, taking with it hundreds of jobs and tens of millions of dollars from the local economy.

Earlier this year FRNSW relocated its Head Office from the CBD to Greenacre. If the RFS was not to be relocated to regional NSW then co-location with FRNSW was plainly the next most logical and efficient alternative. That this option was never seriously considered (at least not openly) is a clear reflection of the significant divisions that remain between the state’s two fire services.

Presumptive legislation (any other related matter)

In June 2011 in the Commonwealth House of Representatives, Greens MP Adam Bandt introduced the “Fair Protection for Firefighters” Bill for ACT and Aviation professional firefighters who were diagnosed with one (or more) of seven listed cancers and who had the requisite years of service (ie, qualifying period) for that cancer, which would then be presumed to be an occupational (and therefore compensable) disease. The Bill was seconded by Independent Bob Katter and co-sponsored by Labor’s Maria Vamvakinou and the Liberals’ Russell Broadbent. See www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1112a/12bd083

The resulting Senate Inquiry Report went on to recommend the passage of the Bill, albeit expanded to include twelve occupational cancers, and that similar legislation be implemented in every Australian State and Territory, finding that:

“The committee has conducted its analysis in the hope that similar legislation will be introduced across state jurisdictions in future as part of the harmonisation of workers’ compensation laws. If this Bill is passed, the committee encourages state jurisdictions to engage in a dialogue which will eventually see a positive, and fair, outcome for firefighters across Australia.”

On 29 September 2013 the Tasmanian Parliament unanimously passed a Bill recognising the same 12 cancers and qualifying periods as the Commonwealth legislation for career firefighters and extended the presumption to volunteer firefighters who could demonstrate 150 exposures over 10 years.



On 29 October 2013 the West Australian Parliament unanimously passed a Bill replicating the Commonwealth legislation covering career firefighters. In 2016 the WA Parliament extended the presumption to volunteer firefighters who had attended at least 5 hazardous fires per year.

On 10 March 2014 the South Australian Parliament unanimously passed legislation based on the Tasmanian model. This was subsequently amended in 2015 to remove the 150 exposure requirement for volunteers.

In March 2015 the Northern Territory Parliament passed legislation based on the Commonwealth legislation for NT career firefighters and the Tasmanian model for NT volunteer firefighters.

In September 2015 the Queensland Government passed legislation based on the Commonwealth legislation for its career firefighters, and a new model for volunteer firefighters whereby claims are considered by a special administrative committee to consider evidence including fire service records and other information demonstrating the volunteer's fire scene exposures.

On 19 May 2017 the Victorian Government confirmed its intention to introduce presumptive legislation this year:

“Administered through WorkSafe, the new scheme will apply to career and volunteer firefighters who have served as firefighters for the relevant number of years, depending on the cancer type, and have been diagnosed since 1 June 2016.”

“Rules that require volunteer firefighters to have attended a specific number of fires are problematic, so the scheme will instead be modelled on the scheme in Queensland, which has no specific incident requirements.”

The expected passage of presumptive legislation by the Victorian Parliament will therefore shortly leave New South Wales as the only jurisdiction in Australia that does not provide its firefighters with this safety net. The Union looks to the Committee to support the passage of comparable legislation for professional and volunteer firefighters in this state.

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