

**REPORT ON THE
PROCESSES TO SELECT
NEW PERSONAL PROTECTIVE
CLOTHING FOR VICTORIAN
FIREFIGHTERS**

JUDGE GORDON LEWIS A.M.

28 FEBRUARY 2008

1.	SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS	4
1.1	Specifications	4
1.2	Project Management	5
1.3	EBA	6
1.4	Stakeholder Relations	7
1.5	The Future	7
2.	GLOSSARY OF TERMS	8
3.	REPORT OBJECTIVES AND SCOPE	9
3.1	The Terms of Reference	9
3.2	Submission and Consultation Process.....	9
3.3	The Parties Involved	10
	The Country Fire Authority	10
	Metropolitan Fire and Emergency Services Board	10
	United Firefighters Union	10
	Volunteer Organisations.....	11
3.4	Interstate and International Experiences	12
	NSW Fire Brigades	12
	Tasmania Fire Service	12
	South Australian Metropolitan Fire Service	12
	Fire & Emergency Services Authority of Western Australia	13
	New Zealand Fire Service	13
4.	THE TENDERING AND EVALUATION PROCESS	14
4.1	Background to Tendering Process.....	14
4.2	Commencement of the Request for Tender Process.....	15
4.3	The Tendering Process	17
	2002	17
	2003	19
	2004	21
	2005	23
	2006	25
	2007	28
4.4	Implementation.....	30
	The Present and the Immediate Future.....	30

5.	KEY OBSTACLES AND CAUSES FOR DELAY	31
5.1	Specifications.....	31
	Joint Request for Tender.....	31
	Product/Performance Based Approach.....	31
	Recommendation.....	33
5.2	Project Management.....	34
	Project Planning.....	34
	Testing Delays	35
	Recommendation.....	36
5.3	EBA	37
	Recommendation.....	37
5.4	Stakeholder Relations	39
	Recommendation.....	40
5.5	The Future	40

APPENDICES

Appendix 1:	Letter of Appointment to Judge Lewis
Appendix 2:	Metropolitan Fire Brigade Written Submission and Chronology
Appendix 3:	Country Fire Authority Written Submission and Chronology
Appendix 4:	Volunteer Organisations Written Submission and Chronology Including <i>Statement for Volunteer Fire Brigades – Brett Hume</i>
Appendix 5:	Worksafe Submission
Appendix 6:	Country Fire Authority Hearing Transcript
Appendix 7:	Metropolitan Fire Brigade Hearing Transcript
Appendix 8:	Volunteer Organisations Hearing Transcript
Appendix 9:	Letter Advising of Non Participation (UFU)
Appendix 10:	Country Fire Authority Letter of Clarification
Appendix 11:	Metropolitan Fire Brigade Letters of Clarification
Appendix 12:	Country Fire Authority and Metropolitan Fire & Emergency Services Board Enterprise Bargaining Agreement Extracts
Appendix 13:	Chronology of Events
Appendix 14:	The "Way Forward" document
Appendix 15:	The Volunteer Charter

1. SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

The period 2000 – 2007 represents a sorry history of lack of clearly defined purpose in the first place, lack of a sense of haste, lack of communication, lack of cooperation between all parties, a policy of obstruction by the United Firefighters Union (UFU) until it achieved what it wanted, lack of intervention on the part of the firefighting bodies at Board level, ongoing industrial action, and endemic intransigency between the parties when, as was ultimately demonstrated, mutual concessions might well have saved years of haggling.

The development of the new Australian Standard AS4967 highlighted that advances in technology had overtaken the PPC in use. Both the Country Fire Authority (CFA) and the Metropolitan Fire Brigade (MFB) had the opportunity to develop and secure replacement PPC and proceeded to do so through a joint tender project.

Initial estimates in May 2002 were that the contract with the successful tenderer would be in place by May 2003. While that estimate was ambitious considering interstate experience, at that time it would have been reasonable to expect the contract to be in place early in 2004 with the cooperation of all parties.

From the outset, the UFU took a product based approach to the specification of the requirements while the agencies took a performance based approach. The issue of a performance based specification compared to a product based specification was never fully resolved. The failure to reach agreement on the specification was an underlying cause of delay.

From the evidence I have seen, it appears that lack of proper project planning and clearly defined milestones, combined with inadequate management of the multiplicity of committees and the ongoing debate over specifications, meant that any original deadlines for the project could not be met.

For each agency, the negotiation of a new Enterprise Bargaining Agreement (EBA) was accompanied by industrial action that impacted on the PPC tendering process. The Department of Justice (DoJ) intervened in the EBA negotiations between the UFU and the CFA and sought solution of the impasse to the tendering process through the "Way Forward" document in mid 2006.

Firefighters and ultimately the public have been poorly served by the inability of the UFU, the MFB and the CFA to work cooperatively to deliver new PPC for firefighters in a timely fashion. Project difficulties were symptomatic of issues in the relationships between the CFA, the MFB, the UFU and Volunteer organisations.

In an endeavour to avoid the chaos and misdirection of the past seven years in respect of the implementation of new Personal Protective Clothing (PPC) I recommend the following:

1.1 Specifications

I recommend the creation of a Standing Technology Committee to represent all firefighters in Victoria, which will convene on a regular basis and monitor all developments in the fabric and design affecting PPC. I contemplate that it will assume the on-going role of considering any developments which may result in

improvement in the design and material components of PPC. On determining that there is either material or an improved design which is superior to existing firefighting uniforms, I contemplate that the Standing Committee, through the bodies represented upon it, will seek the approval of all firefighting bodies in Victoria to implement those improvements, where appropriate. In making those assessments, it should be recognised that technological change, which is manifestly beneficial for one type of firefighting, may be inappropriate for another.

The Standing Technology Committee should, at the outset, make a decision whether an attempt is being made to implement the one PPC for all firefighters or whether it should acknowledge that the needs of the CFA, the Volunteer organisations and the MFB, are at variance.

Action by the Standing Committee should not be dependent upon any change in relevant standards or emerge from a particular crisis. Rather its task should be that of an ongoing assessment, with a view to the phased introduction of improved clothing and equipment, should that be the recommendation of the Standing Committee.

For the purpose of its proper function, the Standing Technology Committee should liaise closely with firefighting bodies in all other states and, if need be, other countries.

To avoid the past morass of indecision and obstruction, the Standing Committee should be structured to ensure that a recommendation supported by a majority of its members, can be made to the appropriate firefighting agency or the Minister himself. Past history suggests that there should be an independent Chairman with a casting vote. The Standing Committee should be free to utilise the services of acknowledged experts on PPC, if it is deemed appropriate.

1.2 Project Management

A large joint procurement project of this type must be properly planned and managed. It must be supported by a business case specifying the costs and benefits expected to be realised by the joint project and a risk analysis addressing the major risks, including stakeholder management.

Project planning must include clear definition of the purpose and objectives of the joint project, its outcomes and the timelines for delivery. The procurement policies and guidelines of the Victorian Government Purchasing Board and Victorian Government Gateway Review process are useful references.

The project should be managed by a dedicated team. Team members who are involved in the evaluation process, should be freed from operational duties for the duration of the evaluation period.

Project governance arrangements must be in place at the commencement of the project, including the establishment of an overarching steering committee, a clear definition of the roles and responsibilities of all participants including senior management, and probity and conflict of interest policy and procedures.

Consideration should be given to testing the market and the interest of suppliers through an Expression of Interest process, preparatory to a request for tender.

The specification of requirements should be based on research and knowledge of relevant technological developments and available products, including interstate and overseas developments and experience.

A probity adviser should be appointed for the joint tendering process.

Independent reviews should be commissioned by senior management at the key decision points in the project, to ensure that the project is proceeding according to plan and should continue. Such reviews should identify any matters that need to be addressed before approval is given to proceed to the next stage.

1.3 EBA

The first paragraph of Clause 47 "Uniforms and Equipment" in the CFA Enterprise Bargaining Agreement (CFA EBA) requires the CFA and the UFU to reach agreement on the clothing and equipment to be worn and used by employees. The third paragraph of Clause 47 requires the agreement of the CFA and the UFU on the specifications of replacement Personal Protective Equipment and Station Wear and plan of distribution of clothing.¹

I recommend that in any future EBA entered into between the CFA and the UFU, in the corresponding clause the first paragraph should be amended to read

"The employer shall supply each employee and be responsible for the cost of replacing, repairing and/or cleaning the articles of clothing and/or equipment which the employer decides must be worn and/or used by the employee, after consultation with the Union."

There is no need to amend the second paragraph or to retain the third paragraph.

I recommend that similar changes be made in any further EBA entered into between the MFESB and the UFU after the present Workplace Relations Agreement expires on 19 April 2009.

In making those recommendations, I am of the view that in relation to negotiations between the CFA and the UFU, the UFU has consistently taken advantage of the wording of the clause as it presently stands, to achieve, in effect, a veto of any attempt by the CFA to improve clothing and equipment issued to employees, with which the UFU does not agree.

The Government and the CFA have recognised the value and importance of the role that volunteers play through the Volunteer Charter, signed in 2001.² Under the terms of the Volunteer Charter, the CFA must ensure that the views, concerns and opinions of volunteers are fully considered before adopting any new or changed policies, procedures or approaches which will impact on them, as CFA volunteers.

In respect of any future EBA reached between the CFA and the UFU, it should be made clear that the CFA is committed to consult with volunteer firefighters in Victoria, who shall be entitled to participate in any discussions directed at all matters that affect them, including the improvement of clothing and equipment issued to firefighters.

¹ Appendix 12 – CFA and MFB EBA Extracts

² Appendix 15 – Volunteer Charter

In recommending a change in the wording of the relevant paragraphs in the two EBAs that I have referred to, I express my confidence in the relevant provisions in legislation, including the *Workplace Relations Act 1996* (Cmwth) and the Victorian *Occupational Health and Safety Act 2004*, which would take over in the event of the UFU considering that either the CFA or the MFB is behaving unreasonably, pursuant to those paragraphs.

The CFA EBA has a number of other clauses, which require Union agreement before the implementation of change, for example Clause 52 Training Instructors/Training and Clause 12.3 Code of Conduct. My comments above are equally applicable to those clauses.

1.4 Stakeholder Relations

Firefighters and ultimately the public have been poorly served by the inability of the UFU, the MFB and the CFA to work cooperatively to deliver new PPC for firefighters in a timely fashion. Project difficulties were symptomatic of issues in the relationships between the CFA, MFB, UFU and Volunteer organisations.

I found only limited evidence of senior management actively sponsoring and guiding the ensemble project on an ongoing basis. Specific project problems did not seem to be addressed in a timely fashion nor solutions found to enable the project to proceed.

The relationship between the UFU and the agencies was adversarial and characterised by personal conflict; intransigence; and a lack of trust, shared commitment or respect. The issues raised contributed to the delay in the tendering process.

While it was understandable that the Department of Justice (DoJ) would have strong regard for the statutory independence of the agencies concerned, its intervention was demanded long before its involvement in the preparation of the document known as the "Way Forward".

The MFB, CFA, UFU and the Volunteer organisations must immediately address the identified issues in order to rebuild an effective relationship in the interests of the firefighters and the general public.

1.5 The Future

Whatever is important in this Report, it is not the attribution of blame or responsibility for the past seven years. Rather it is what can be learnt from the mistakes that have been made in the past, so that as new material and improved specifications become available, they can be quickly introduced for the mutual benefit of firefighters themselves and the general public as a whole.

2. GLOSSARY OF TERMS

Abbreviation	Term
ACTU	Australian Council of Trade Unions
AFAC	Australasian Fire Authorities Council
AIRC	Australian Industrial Relations Commission
ARUP	ARUP Risk Consultants
AS	Australian Standard
CFA	Country Fire Authority
CPSU	Community and Public Sector Union
CTE	Can't Tear 'Em Pty Ltd
Deloitte	Deloitte Touche Tohmatsu
DoJ	Department of Justice
EBA	Enterprise Bargaining Agreement
MFB EBA	2005 Metropolitan Fire and Emergency Services Board, United Firefighters Union of Australia, Operational Staff Agreement
CFA EBA	2002 Country Fire Authority/United Firefighters Union of Australia Operational Staff Agreement
EN	EN Standard
ERC	Expenditure Review Committee
MFESB	Metropolitan Fire & Emergency Services Board
MFB	Metropolitan Fire Brigade
Minister	Minister for Police & Emergency Services
NSCA	National Safety Council of Australia
PIN	Provisional Improvement Notice
PPC	Personal Protective Clothing
PPE	Personal Protective Equipment
OHS	Occupational Health & Safety
QIS	Quality Industrial Services
RFT	Request for Tender
SAMFS	South Australian Metropolitan Fire Service
S&H	Stewart & Heaton Clothing Co Pty Ltd
TGMS	Total Garment Manufacturing Solution
UFUA	United Firefighters Union of Australia
UFU	United Firefighters Union – Victoria Branch
UOW	University of Wollongong
UK	United Kingdom
USA	United States of America
VUFBA	Victorian Urban Fire Brigades Association
VFBV	Volunteer Fire Brigades Victoria
VRFBFA	Victorian Rural Fire Brigades Association

Note:

1. Throughout this report the term "PPC" has been used to indicate the structural ensemble being procured by the CFA and the MFB, unless quoting directly where the term PPE may be used.
2. The acronym "MFB" has been used to indicate events involving the Metropolitan Fire Brigade. Where there was an event involving the Metropolitan Fire & Emergency Services Board the acronym "MFESB" has been used.

3. REPORT OBJECTIVES AND SCOPE

3.1 *The Terms of Reference*

On 25 October 2007 The Honourable Bob Cameron MP, Minister for Police & Emergency Services, requested that I investigate the process undertaken by the Country Fire Authority and the Metropolitan Fire & Emergency Services Board to identify Personal Protective Clothing (PPC) and determine reasons for delay in the process.

The Terms of Reference are:

1. Investigate and report on the procedures and processes undertaken since 2002 to identify and procure Personal Protective Clothing for fighting structural fires – the structural ensemble.
2. Identify the causes for delay in timely decisions/agreements about the type of equipment to be procured.
3. Determine the key obstacles in the decision making processes that prevented a more timely decision on the structural ensemble.
4. Make recommendations that would resolve the procedural obstacles that have been identified and that would prevent such obstacles from occurring in future equipment purchases.³

3.2 *Submission and Consultation Process*

On 19 November 2007, I sent a letter to parties involved in the negotiation for structural ensemble, inviting them to provide a submission to me, and advising that I would meet with all parties making submissions. Organisations invited were:

- Country Fire Authority (CFA)
- Metropolitan Fire & Emergency Services Board (MFESB)
- United Firefighters Union of Australia - Victoria Branch (UFU)
- Volunteer Fire Brigades Victoria (VFBV)
- Victorian Rural Fire Brigades (VRFB)
- Victorian Urban Fire Brigade (VUFB).

Following receipt of these submissions, hearings were conducted on 10, 11 and 13 December 2007 at the County Court, Melbourne:

Monday 10 December 2007	10.00am	CFA
Tuesday 11 December 2007	10.00am	MFESB
Thursday 13 December 2007	10.00am	combined Volunteer Brigades. ⁴

The United Firefighters Union advised it would not be participating in the Inquiry.⁵

In January 2008, the MFESB and the CFA provided further written clarification of issues raised in their submissions.⁶ WorkSafe also provided a submission in response to Section 3.4 of the MFESB Submission.⁷

³ Appendix 1 – Letter to Judge G. Lewis from the Hon. Bob Cameron

⁴ Appendix 2, 3 and 4 – Written Submissions and Appendix 6, 7 and 8 Hearing Transcripts

⁵ Appendix 9 – Letter Advising of Non Participation by UFU

⁶ Appendix 10 and Appendix 11 – Letters of Clarification

⁷ Appendix 5 – WorkSafe Submission

3.3 The Parties Involved

The Country Fire Authority

The Country Fire Authority (CFA) is a statutory body corporate established under Section 6 the *Country Fire Authority Act 1958*, with all the powers necessary to carry out its functions of preventing and suppressing fire in the country area of Victoria. It is subject to the general direction and control of the Minister for Police and Emergency Services in the performance of its functions and the exercise of its powers.

Following serious fires across Victoria in 1939, a Royal Commission recommended a single firefighting organisation for country Victoria. The devastation of the 1944 fires emphasised the urgency of better coordination of country fire services. Legislation was passed to establish a country fire authority and the CFA commenced operation on 2 April 1945.

The CFA is one of the world's largest volunteer-based emergency services with around 60,000 members of whom approximately 59,500 are Volunteers and 570 career firefighters.

Situated in Victoria, there are 2.5 million people and 150,182 square kilometres of land in the CFA area. This area includes more than 980,000 homes, and covers all of rural Victoria, and the provincial cities and towns (except State forests and National Parks). The area also includes more than a million residents in outer Melbourne suburbs such as Frankston and Dandenong, and key growth suburbs such as Cranbourne, Melton and Werribee.

Metropolitan Fire and Emergency Services Board

The Metropolitan Fire and Emergency Services Board (MFESB) is a statutory body corporate established under Section 6 of the *Metropolitan Fire Brigades Act 1958* with all the powers necessary to carry out its functions. Its functions are to provide for fire suppression and fire prevention services and emergency prevention and response services in the metropolitan fire district. It is subject to the general direction and control of the Minister for Police and Emergency Services in the performance of its functions and the exercise of its powers.

The area served by the Metropolitan Fire Brigade (MFB) covers more than 1,000 square kilometres incorporating Melbourne's central business district, its inner and middle suburbs and part of Port Phillip Bay.

The MFB is a career based fire and emergency services organisation with over 1,600 operational staff providing services from 47 fire stations. All MFB firefighters are permanent employees (no volunteers).

United Firefighters Union

The United Firefighters Union of Australia (UFUA) was originally registered in 1964 by the Deputy Industrial Registrar of the Conciliation and Arbitration Commission. On August 1 1990, the UFUA became an official national union representing more than 11,000 Australian firefighters. The inaugural meeting of the UFUA was held in the same month and officially opened by the then Premier of Tasmania, Michael Field.

In Victoria, the United Firefighters Union of Australia – Victoria Branch (UFU) provides industrial representation for approximately 1,900 members, of which 1,450 are MFB and 450 are CFA salaried firefighters. Given that around 12,500 volunteers are trained and equipped for structural firefighting, UFU members make up 15% of the firefighting force in Victoria affected by the outcomes of the structural PPC deliberations.

Volunteer Organisations

In 1928, a meeting of representatives of bush fire brigades from across the State resulted in the establishment of the Bush Fire Brigades Association. With the enactment of the *Victorian Country Fire Authority Act 1944*, the name of the Association was changed to the Victorian Rural Fire Brigades Association (VRFBA). The VRFBA represents the welfare of rural volunteers. The VRFBA is the largest and most representative organisation of its type in Australia. Two members of the association are represented on the CFA Board.

This Act also created the Victorian Urban Fire Brigades' Association (VUFBA), a sister organisation to the VRFBA. The VUFBA is charged with the responsibility of representing Victoria's urban volunteer firefighters in their dealings with the CFA in regard to welfare and efficiency. Two members from the VUFBA are represented on the CFA Board.

The Volunteer Fire Brigades Victoria (VFBV) is an umbrella body for the VRFBA and the VUFBA, and provides a united voice for CFA volunteers, advocating on their behalf to CFA and other key stakeholders. The VFBV Board drives policy development based on volunteer input and is involved in management of issues that are of central importance to all CFA volunteers. There are eight members of the VFBV Board comprising the Presidents of both the Urban and Rural Associations and six other board members: three are selected from brigades affiliated with the VRFBA and three from brigades affiliated with the VUFBA. Day to day issues are managed by a Chief Executive Officer and policy and issues are debated and formulated through specialist committees.

Volunteer Charter

The individual and collective interests and needs of members of the CFA and their Associations who operate under the *Country Fire Authority Act 1958* are covered by the Volunteer Charter, signed in December 2001. The Charter is a statement of principle that applies to the relationship between the CFA, the State of Victoria, and the CFA's Volunteers. It ensures that the State of Victoria and the Authority will commit to consultation with volunteers about all matters which might reasonably be expected to affect them.

3.4 Interstate and International Experiences

A number of fire brigades throughout Australia and New Zealand were contacted during the preparation of this report to provide background information on similar procurement processes.

NSW Fire Brigades

The process for the tendering of the large-scale replacement structural Personal Protective Equipment for the NSW Fire Brigades (the Brigade) started in 1998 and took 12 months from the decision to explore alternative products to identification of a suitable ensemble with the best overall performance. This process involved extensive testing of the effects of metabolic heat on firefighters when wearing different combinations of PPE and was conducted at Wollongong University. The test criteria were decided by the working group, which included union representation. The final garment selected was manufactured by the contractor in place at the time. The contract was re-tendered in 2002, specifying the design which was favoured on the basis of performance, as a result of the study done by Wollongong University. That tender, which included every item of uniform, not just PPE, took about 6 months to conclude. The result was that a new contractor was appointed.

Between January and July 2007, the Brigade again reviewed all of its specifications and proceeded to go to tender again, as the existing contract was about to expire. The tender was re-awarded in December 2007 and will commence in July 2008.

As the Brigade was aware of new developments in the overall performance of fabrics, and wished to see how they compared to the fabrics that it is using today, the Brigade is reviewing the performance of the PPE ensemble throughout 2008, in the same manner that it did in 1998. Dependent on the results of that regime of performance testing, a decision will be made if a change is required. If a change is required, then that change will take place with its existing contractor.

Tasmania Fire Service

For the last eight or nine years, the Tasmania Fire Service (TFS) has used the NSW contract for its structural PPE. About 18 months ago, it formed a working party to look at the next generation of clothing with an expected completion time of 12 months. TFS tested four combinations, Nomex and PBI Gold both with and without a moisture barrier, but the UFU advised that PBI Gold with a moisture barrier was the only acceptable combination and as a result, the testing process halted. Following agreement by the UFU to test both the Nomex and PBI Gold combinations, the working party resumed in early December 2007 and is now expected to complete its work in May 2008 (two years after commencement). TFS will then go to tender or use another State's contract.

South Australian Metropolitan Fire Service

The PPE replacement project commenced in 2003 following a risk assessment by the South Australian Metropolitan Fire Service (SAMFS). The project working group was managed by the South Australian Fire and Emergency Service Commission with representatives from the SAMFS, Country Fire Service, Attorney-General's Department and two members of the UFU Executive. Following expressions of interest being received from suppliers, registrants were then briefed on the broad requirements based on the EN Standard (the Australian Standard AS4967 was not

used, as it was an interim standard at that time). The registrants were asked to provide samples and three suppliers were selected to proceed to the request for tender stage. PPE garments prepared to specifications were purchased from the suppliers and tested. Lion Apparel was the successful tenderer and PBI Gold with Airlock moisture barrier was the chosen ensemble. The project took around 16 months from March 2003 to the signing of the contract in mid July 2004 and the roll out of garments commenced in May 2005.

Fire & Emergency Services Authority of Western Australia

Following a period of six to eight months spent specifying requirements, the Fire & Emergency Services Authority (FESA) commenced trialling of structural PPE garments in June/July 2007 in Nomex viscose material. The trials are due for completion in February/March 2008, allowing for the fire season. The garments will be assessed and FESA will go to the market for the supply of PPE.

New Zealand Fire Service

The New Zealand Fire Service (NZFS) spent two years on the procurement process for its current PPE. It formed a committee including union and volunteer representatives who developed the user requirements based on international standards. NZFS specified PBI Gold for the outer shell as PBI Gold had been supplied under the previous contract. Previously Nomex had been used for 20 years with no significant issues. Once the user requirements were completed, the project was handed to the procurement group for tendering. Tenderers were assessed on their commercial ability to fulfil the contract and some were eliminated at this point. The acceptable tenderers manufactured and sized trial garments, which were then evaluated. The trial scores were pooled and following the recommendation of the trialists, Lion Apparel was selected as the supplier. The current contract is for a five year term plus two one year options and both options have been exercised. The NZFS has begun to develop user requirements and will tender for PPE again next year.

4. THE TENDERING AND EVALUATION PROCESS

4.1 *Background to Tendering Process*

What initially appeared to be a complex, challenging, but relatively straightforward tendering process, ultimately proved to be anything but that.

The MFB had used its current PPC for the past 20 years, during which time it monitored performance to ensure compliance with standards and quality procedures. The CFA and the MFB firefighters sustained few burn injuries during firefighting operations, with MFB data showing only 51 reported burn injuries to its firefighters between mid 1993 and mid 2006.

Significant technological advances in both fabrics and design had occurred since the issue of their current PPC. A decision was made by the CFA and the MFB to investigate whether technical advances might further improve safety and effectiveness of firefighters.

In 2001 the existing MFB uniform supply contract was coming to the end of its term and this provided impetus for the MFB to issue the Request for Tender (RFT).

On 20 March 2001, a draft Australian Standard (AS4967) was issued by the Joint Standards Australia/New Zealand Committee. This interim Standard specified the minimum requirements and test methods for assessing structural firefighting protective clothing where there was a risk of heat and/or flame. The Standard covered the general clothing design, minimum performance levels of materials used and the methods of testing to determine the performance levels. AS4967 included an edge ignition test requiring that "the mean value of the afterflame time shall be $\leq 2s$ and the mean value of the afterglow time shall be $\leq 2s$ ".

The PPC then in use by the CFA and the MFB did not comply with the requirements of this new Australian Standard. Following the change to the Standard, the CFA commenced its PPC replacement project.

The MFB and the CFA have Enterprise Bargaining Agreements (EBA) with the UFU. Clause 47 of the CFA EBA and Clause 31 of the MFB EBA, which applied during the majority of the PPC procurement timeframe, contain similar wording on the clothing to be worn and used by employees. Additionally, in the CFA EBA, Clause 47 required that replacement Personal Protective Equipment and Station Wear shall be as agreed between the CFA and the UFU. Such agreement relates to the specifications and distribution of clothing.

4.2 Commencement of the Request for Tender Process 2000 – August 2002

The MFB commenced its new structural PPC procurement projects and PPC specifications were first developed in 2000. According to an MFESB Report dated March 2006, agreement on performance specifications was reached on 13 December 2000 between the MFB and the UFU after inclusion of UFU clauses.

In June 2001, the UFU provided specifications to the CFA for its consideration. The CFA PPC Working Party met in September 2001 and agreed to conduct a risk assessment to facilitate the introduction of a new structural clothing ensemble.

The CFA had to take into account specific design requirements involved in the use of PPC by volunteers. The PPC used by volunteers was likely to have increased exposure to UV due to the uniforms often not being kept in stations.

The MFB required supply of PPC, as well as dress tunics, shirts and trousers. The CFA's focus was on operational firefighting clothing including protective coats and protective trousers, shirts and trousers for station wear, and polo shirts.

The MFB was seeking to continue with a Total Garment Management System (TGMS) similar to that already in place with the current supplier. The MFB proposed a single contract with a supplier or consortium of suppliers to supply, manufacture, warehouse and distribute the required garments. The CFA required only the supply and delivery of replacement PPC and did not seek a TGMS.

From the outset, the UFU expressed concerns, both through its representatives on the MFB (TGMS) project, and formally as the UFU, about the TGMS approach. The UFU alleged that the TGMS approach would give the current supplier an unfair advantage, and that replacement PPC would be unacceptably delayed by the size of the evaluation task. The UFU also alleged that some suppliers would be unwilling to tender because of the requirements for sundry items and non PPC items. The UFU proposed that the structural PPC be tendered for separately. While the MFB Request For Tender (RFT) was modified in response to the UFU's concerns, to allow for tenders for the structural PPC alone or as part of TGMS tender, those concerns remained. The UFU reminded the MFB that the EBA and the OH&S agreement contained clauses that required UFU agreement to any new PPC.

In October 2001, Arup Risk Consultants alerted the MFB that its supply department and Uniform Committee appeared to disagree about what was specified in the RFT. ARUP recommended that the supply department review the RFT, in particular the associated recommendation on each item of PPC, and provide feedback as to those items forming part of the RFT and what might be used instead.

Both the MFB and the CFA specifications provided for a layered approach to the construction of structural PPC, which the UFU did not support. As late as 29 May 2002 the UFU advised that it refused to trial the layer approach to protection included in specifications for the PPC.

The CFA and the MFB worked separately until February 2002 when the CFA Board and the MFB agreed to issue a joint RFT. A joint tender was seen to be a means of achieving economies of scale and scope, and also in assisting to acquire Government funding. Within the joint tender, the MFB specification required that

PPC be certified to AS4967 while the CFA specification included additional criteria over and above AS4967.

In May 2002, the CFA and the MFB advised DoJ of the decision to develop the joint RFT to procure new PPC, with replacement ensembles to be phased in over five years.

4.3 The Tendering Process

June 2002 – December 2007

The RFT was issued on 8 June 2002 and closed on 7 August 2002. A number of expressions of interest were received but only four tenders.

The Joint Tender Panel, with representatives from the MFB, the CFA and the UFU, oversaw the evaluation tendering processes up to the time of shortlisting the two preferred tenderers. It formed a PPC Working Party to review submitted garments and develop draft design specifications.

The MFB had an original PPE/Uniform committee with MFB and UFU representation, which had advised on PPC design specifications and made recommendations to the Design Development Advisory Committee, which submitted recommendations for approval to the MFB Executive Management Team.

The MFB Tender Evaluation panel, which included representation from the UFU, was responsible for the evaluation of the PPC provided by the shortlisted tenderers.

The CFA had two committees with a role in the procurement of the new structural ensemble – the Personal Protective Clothing/Protective Equipment Committee (PPC/PPE Committee) and the Structural Apparel/Ensemble Consultative Committee (Ensemble Committee). The PPC/PPE Committee had been consulted in the development of the CFA structural PPC performance specifications and the proposed RFT. It provided recommendations to the Director of Operations/Chief Officer and was responsible for the development and ongoing review of PPC risk assessment. This committee has never ratified its Terms of Reference.

The CFA Ensemble Committee was established in June 2002 as the committee with overriding responsibility to progress issues relating to the development of the new PPC under the tendering process. This committee also included representatives from CFA management, UFU, and Volunteer organisations.

Appendix 13 "*Chronology of Events*" provides a graphical illustration of the key events in the procurement process covered in this section. This chronology is based on information received from the participants in the Inquiry.⁶

2002

Given the difference in specifications required by the two organisations, following the receipt of the tenders, the MFB and CFA conducted separate technical evaluations of the PPC received, as part of the four responses.

There were four types of tests planned by the CFA and the MFB for the evaluation of PPC:

- Laundering – to simulate the condition of garments in every day use
- University of Wollongong (UOW) – Metabolic stress testing -Trials conducted in a controlled climate chamber with a number of personnel performing simulated activities. This tested for physiological limitations, and determined which ensemble was the most comfortable and practical

⁶ Appendix 13 – Chronology of Events

- Fiskville – intensive trials in structural fire situations where operational staff reported on performance against specific criteria
- In field – firefighters used the garments over an extended period reporting against criteria at regular intervals.

RALPH (Research Aim Longer Protection Against Heat) testing, conducted in the UK, involved heat sensing mannequin testing where garments were subjected to testing at extreme temperatures. Although not originally planned as part of the testing, this was included at a later point at the instigation of the UFU.

In July 2002, the UFU raised its concerns about the perceived lack of consultation with the MFB Uniform/PPE Committee. Its grievances included that the tender had been developed by the MFB supply department and not the Uniform/PPE Committee, and that changes negotiated with the supply department had not been included. The UFU asserted that the Uniform Committee's function was to evaluate PPC and provide recommendations. It also asserted that specialist PPC providers were being cut out of the process by asking for a TGMS and that small providers would be disadvantaged in applying.

Suppliers submitted materials to the MFB supply department for evaluation as part of normal business practice. During the RFT process, the MFB placed an embargo on suppliers submitting material to the MFB outside the RFT process. Discussions between the MFB, the UFU and the ACTU led the MFB to lift the embargo in September 2002, allowing suppliers to resume the previous practice of submitting products to the supply department. In October 2002, the UFU wrote to all suppliers advising that the MFB had agreed to modify the conditions of its RFT to allow all suppliers of PPC to submit their products for evaluation by the Uniform Committee. The MFB refuted these comments, noting that it had not agreed to modify the conditions of its RFT. The MFB advised that the sourcing of products in this manner conflicted with the Victorian Government Purchasing Guidelines. At the end of October 2002, the MFB wrote to the UFU clarifying the effect of the lifting of the embargo and advising that products could be submitted by non-tenderer suppliers for normal evaluation by the Research and Development Department. Those products would not be included in the tendering process, which had closed on 7 August 2002.

As early as August 2002, when the initial joint tender evaluation panel meeting was held, the UFU had directed its representatives not to attend and the evaluation process commenced in their absence. The UFU did not participate in these meetings until January 2003.

In August 2002, the UFU also expressed concerns over what it perceived to be a lack of UFU representation on the CFA PPC Committee, which had been responsible for the development of the CFA structural PPC specifications.

The CFA Ensemble Committee met for the first time early in October 2002. The UFU refused to participate due to the inclusion of Volunteer representatives in the consultative process. The UFU also indicated the CFA RFT specifications were different to those provided by the UFU in 2000. Variation of the specifications the UFU had provided to the CFA would be considered only if the CFA could provide valid data and reasons to justify the changes. Given that there were no items of PPC that had been agreed with the UFU, the UFU alleged that the CFA was in breach of both the EBA and the OHS agreement.

A probity briefing was provided to Committee members at this first Ensemble Committee meeting. As UFU members had not attended the meeting and so had not

received the probity briefing, they were requested not to attend further meetings until such time as they had completed the necessary probity requirements. By June 2003, UFU representatives had completed the required probity briefing. They were then able to attend their first Ensemble Committee meeting in June 2003, almost 8 months after the Committee first commenced meeting. However, their concerns regarding Volunteer representatives on the Committee and the differing specifications were not resolved.

In October 2002, Deloitte were engaged to conduct a probity assessment of the PPC tendering process and delivered a report in December 2002, which contained a number of findings and recommendations for implementation. Following that report the MFB referred another matter to Deloitte for investigation. An article had appeared in *"The Australian Firefighter"* providing information on the tender assessments, written by a UFU member of the Tender Evaluation Panel. An examination by Deloitte resulted in a finding that there was no significant probity breach at that time.

In October 2002, the MFB ordered sample PPC in line with its specifications and sent these to the UOW for testing in December. The UOW testing was directed at determining whether there were any ensemble differences in:

- The storage of metabolically produced heat
- Physiological strain during the performance of standardised physical tasks
- Evaporative heat losses
- Indices of psychophysical strain.

Seven PPC configurations were assessed, and both the experimental subjects and the researchers were blind to the thermal protective qualities or layering of each ensemble. The PPC included Nomex Delta and PBI Gold outer shells. Results were received in May 2003, a month later than originally estimated. The delay was caused by difficulties in testing including:

- Manufacture of garments was more time consuming than expected
- The UOW had difficulty locating participants in certain age groups for the testing
- Some garments were ill fitting due to withdrawal of participants for whom the garments had originally been measured.

The UFU lodged a notification of dispute with the AIRC in November 2002 regarding what it saw as unsatisfactory consultative procedures by the CFA in relation to the selection of the PPC.

Both the MFB and the CFA began laundering tests in November 2002 through Quality Industrial Services. Difficulty in interpreting the manufacturers' cleaning requirements for the garments led to laundering testing issues.

2003

The AIRC hearings of proceedings by the UFU against the CFA commenced in January 2003 and continued until the end of February 2003, ultimately not being settled as the AIRC found the matter was not conciliable. Another dispute concerning the application of Clause 47 to the process of consultation was heard in March 2003 and also found not to be conciliable.

In January 2003, following resolution of the MFB EBA negotiations, the UFU began to participate in the Tender Evaluation Panel.

In February 2003, all members of the MFB Tender Evaluation Panel were given a probity briefing and signed conflict of interest declarations. The panel commenced the technical assessment of the tenders, which was completed by August 2003. In August 2003, following the evaluation of results from site visits and the conclusion of assessment of the tenders against the technical, commercial and financial criteria, both the CFA and the MFB finalised a short list of two successful tenderers who were advised of the success of their tenders. The unsuccessful tenderers were excluded on commercial bases including total project cost and a lack of infrastructure to support a TGMS.

In March 2003, a working group of the Joint Standards Australia/Standards New Zealand Committee was established to consider changes required to AS4967.

By May 2003, the final UOW Report on "*Heat Storage in Firefighting Personal Protective Ensembles*" had been received by both the CFA and the MFB. The report found two of the seven configurations to be of superior performance (both Nomex outer shell).

The UFU did not attend the CFA Ensemble Committee meeting, held in May, that discussed the tests and their results in the context of developing final CFA samples. The UFU representatives were requested not to attend due to their not completing the required probity briefing.

In July 2003, the CFA Structural PPC Consultative Committee was advised the MFB were looking at five potential ensembles, all with a moisture barrier and that it had assessed the trial garments and was formulating a draft design specification to provide to manufacturers. The CFA sent its design specifications to manufacturers.

The two short listed manufacturers were asked in November 2003, by both the CFA and the MFB, to test four different samples for compliance with the tender specification. These samples were:

- Option A – Nomex Delta C with no interior moisture lining
- Option B – Nomex Delta C with interior moisture lining
- Option C – PBI Gold outer shell
- Option D – alpine ensemble using Nomex Delta C.

Both responded that Option C (PBI Gold outer shell) did not comply as it failed the edge ignition test required by AS4967.

The CFA Structural Ensemble Field Trial Working Party agreed in November 2003 that it would remove the PBI Gold outer shell ensemble (Option C) from trials. The UFU was unable to attend this meeting. It had requested postponement due to AIRC proceedings regarding election of an OH&S representative. Its request had been denied due to concerns about delays in trial ensemble production and the inability of other attendees to reschedule. A further CFA Ensemble Committee Working Party was held on 3 December 2003 at Fiskville. That meeting unanimously confirmed the earlier decision to omit Option C from the trials. The UFU were also unable to attend this meeting. The UFU lodged a grievance in December 2003 in relation to the proposed trial, noting the UFU representative had not been able to attend the December meeting and that it believed PBI Gold (Option C) should be included in the trial.

The MFB Uniform Committee agreed on Option B (Nomex Delta C with interior moisture lining) with design modifications for its field trials.

Standards Australia met in December 2003 to discuss the removal of the afterglow requirements of the edge ignition test from AS4967. The removal of this test would result in PBI Gold meeting the standard.

An email from AFAC in December 2003 to the MFB advised there was an error in AS4967 due to a "cut and paste" editing issue. As a result, the afterglow component would need to be removed. The Standard was due to be revised in April 2004.

In November 2003, a year after the laundry testing began, results were received. Continuing into 2004 there was conflict between the UFU and the MFB regarding the laundering testing process.

2004

By January 2004, the CFA had tested the Option A and Option B ensembles at Fiskville. These were both Nomex Delta C outer shells using a Sontara inner thermal liner, one with a moisture barrier and one without. UFU members did not participate in the trials due to their objection to the elimination of the PBI Gold option. The CFA received a report from the CSIRO confirming that PBI Gold did not comply with two supplementary tests (colourfastness and high visibility).

In January 2004, the MFB advised the UFU that PBI Gold could only be evaluated by the MFB if it met the Australian Standard. In February 2004, the MFB advised that it understood the Australian Standard would not be modified within the next three months and the testing of PPC would be undertaken at Fiskville from 17-19 March 2004. If, in the future other materials, including PBI Gold, met the Standard, the MFB would evaluate those products and if deemed viable, would alter the contract to include the material.

Summaries of the results of the Fiskville, UOW and CSIRO tests were provided at a CFA Ensemble Committee meeting in March 2004, at which the UFU were present. All data indicated Option B, the Nomex Delta C ensemble with interior moisture lining, was the preferred specification. The UFU sought to have tabled correspondence from AFAC noting that AS4967 was to be amended.

During the first six months of 2004, there was ongoing correspondence between the UFU and the CFA, regarding UFU representation on the Ensemble Committee and lack of agreement on the type of apparel to be trialed. In March 2004, the UFU lodged a dispute with both the MFB and the CFA about the Fiskville trials alleging that the specifications to be used in the trials had been altered by the CFA and MFB without consultation with the UFU. The UFU held the position that each organisation was required, under their respective EBAs, to reach agreement with the UFU on PPC, before equipment could be issued to staff for testing purposes. The UFU demanded that the proposed field trials be aborted or postponed and "the purchasing process/tender proceed no further" until the matter was resolved. Another grievance was lodged in August 2004 with the AIRC, seeking to have PBI Gold included in the evaluation and this grievance was found to be not conciliable.

The MFB commissioned RALPH mannequin testing in February 2004, but their Fiskville tests, scheduled for March 2004, were postponed due to UFU action. It purchased PPC in Option B (Nomex Delta C with interior moisture lining) from both manufacturers.

In April 2004, Standards Australia agreed to an amendment to the Standard, which removed the afterglow requirements from the edge ignition test, to come into effect

on 24 April 2004. The CFA and the MFB were notified of this change by AFAC at the end of June.

RALPH testing was conducted in May 2004 on behalf of both the CFA and the MFB. Although not a requirement of the MFB specification, the MFB agreed to conduct these tests following requests from the UFU. Results were received in June 2004.

In May 2004, the CFA Ensemble Committee met and agreed that changes to AS4967 were irrelevant, as PBI Gold still did not meet their specifications. The MFB agreed in May 2004 that it would include PBI Gold if the Standard was modified to include it. Six months later, in November 2004, the MFB placed orders for a set of PBI Gold and Nomex PPC with both manufacturers for RALPH testing. In November 2004, the MFB Fiskville trials were delayed again so that all sample garments, including PBI Gold, could be tested together.

The CFA sought legal advice, in September 2004, regarding the inclusion of PBI Gold in the tendering process. The advice received was to the effect that the introduction of PBI Gold could expose the CFA to legal action.

The CFA released their "Structural Firefighting Protective Clothing Regional Evaluation - Specification B" document for regional evaluations in June 2004. This specification was Option B (Nomex outer shell) under the RFT.

The UFU identified a moisture barrier (Airlock) which it believed provided superior performance to the moisture barriers proposed to be tested as part of the structural PPC process. The UFU sought the inclusion of this moisture barrier into the testing regime. Again, the MFB and CFA resisted this approach as a change to the RFT.

In September 2004, the UFU and the MFB discussed the UFU concerns about the tendering process and its proposal to incorporate the Airlock moisture barrier used by the South Australian and ACT Fire Services. The UFU was seeking to establish an agreed design and performance specification being PBI Gold with Airlock moisture barrier. The UFU alleged that the MFB specifications had been changed in August 2003. The MFB advised that the tender specifications had not been and would not be altered, and that the nomination of a particular material was inappropriate.

Notes from a September 2004 discussion between the UFU and the MFB indicate that the UFU representative had formed the view that the MFB was driven by cost considerations in the PPC selection, but he was advised that this was not so. The UFU apparently believed that the trial PPC, constructed with Nomex outer shell and poly barrier, did not meet the tender specifications and should have been eliminated. It also believed the position of the moisture barrier, as recommended by the manufacturer, did not meet the specifications.

A further MFB file note in September 2004 indicates that the UFU statement that "the moisture barrier in the Nomex garment does not comply with the specification", was due to an apparent misunderstanding regarding the purpose of Volume 2 of the RFT. The UFU understood that Volume 2 contained the specifications, whereas it was provided for information only, and did not form part of the tender specifications. It records that the location of the moisture barrier did conform to the specifications. A further meeting ensued on this topic between a representative of the UFU and the MFB in October 2004.

In October 2004, the MFB completed its evaluation of shortlisted tenderers.

By November 2004, the MFB had advised the UFU that the option of including Airlock for testing was not possible at that late stage of the tendering process. The UFU believed the RFT contained a wide discretion and recommended the MFB seek legal advice.

2005

Throughout 2005, the UFU and the CFA continued to debate the specifications. In February 2005, the CFA rejected the 2001 UFU specification, as it did not meet existing CFA minimum requirements. In February 2005, the UFU denied there had been agreement with the UFU on the CFA specification. The UFU advised it was willing to meet with the CFA to reach agreement and to use an agreed mediator with expert knowledge, to assist parties to reach agreement.

The UFU alleged that the MFB and CFA had changed their specifications with regard to the moisture barrier lining. There were two issues :

- (1) The location of the moisture barrier in relation to the thermal barrier -
The MFB advised that UOW testing indicated the location of the barrier needed to be closest to the skin, to provide the most breathable performance. The UFU was of the opinion that the thermal barrier should be protected by the moisture barrier. The dispute about the location of the moisture barrier in the PPC continued throughout 2006, despite both the CFA and the MFB stating that the specification had not been changed.
- (2) The number of layers that comprise the thermal barrier -
The UFU was of the opinion that the number of layers in the thermal barrier had changed from two to three. The MFB indicated this was not correct and the number of layers had not changed. The MFB suggested the mistake had come about as a result of a typing error in the CFA draft.

The MFB EBA was being renegotiated at this time. As part of the EBA discussions, the UFU requested agreement to adopt a specification provided by the UFU in December 2004. The PPC was PBI Gold natural gold colour with Gore Airlock moisture/thermal barrier located behind the outer shell.

The UFU issued a bulletin in March 2005 alleging that the fire services were pushing for the cheapest available clothing that offered inadequate protection. The UFU concerns included:

- Poor protection offered by the outer material on the proposed new garment
- Refusal of the MFB to allow the UFU access to garments trialed in the UK
- The fact that technology similar to the type of moisture barrier used in the garment had consistently failed in the USA, SA and QLD
- The location of the moisture barrier made it ineffective against moisture and pathogens.

In March 2005, the UFU wrote to the Minister for Police and Emergency Services requesting an independent investigation into probity and behaviour of the management regarding PPE. It alleged that an internal audit by OH&S representatives in 2000 showed "70% of PPC condemned". The UFU stated in this letter that the MFB had done nothing since 2000 in the procurement of new PPE. This letter was referred to the MFB for response.

The UFU advised the MFB, in May 2005, that it had no option but to refer the tendering process to the "appropriate authorities" with the request that the tendering

process be supervised externally, withdrawn, re-opened or any other action be taken to address UFU concerns.

The MFB Fiskville trials of new PPC were postponed again, due to UFU action, and WorkSafe became involved in a number of disputes at Fiskville in relation to the current PPC. By May 2005, the UFU advised both the MFB and the CFA that it must negotiate an agreed structural clothing specification with the UFU by June 2005. If this action was not taken, the MFB firefighters would "withdraw from internal structural firefighting activities for their own safety". In July 2005, the UFU issued a bulletin to its members advising that no CFA firefighter was to undertake hot fire training, alleging that the current PPC was inadequate.

All parties sought legal advice on the moisture barrier and potential changes to specifications. The MFB and CFA sought advice on whether they could reopen the tendering process, rather than whether changes to specifications were allowable within the tendering process. In May 2005 and again in July 2005, the UFU obtained legal advice that the MFB could ask tenderers to include a particular type of moisture barrier in their bids without compromising probity. This would simply constitute a refinement of their bids. In August 2005, the MFB and the CFA met with their legal advisers who indicated any change to specifications carried considerable commercial risks. Further legal advice to the MFB in August 2005, indicated that reopening the tendering process to include PBI Gold would amount to a breach of the "process contract". This was not consistent with the advice obtained by the UFU.

Deloitte carried out a probity audit on the MFB PPC selection process. That draft report, dated 24 May 2005, showed a number of issues with the PPC selection process including:

- The lack of a detailed evaluation methodology or evaluation plan
- The need for the plan to be endorsed and understood by all members of the Tender Evaluation Panel
- The assertion that not all information about the process appeared to have been made available to all members of the Tender Evaluation Panel
- The assertion that membership of the Tender Evaluation Panel had changed substantially
- The assertion that not all recommendations in earlier Deloitte probity audits had been implemented.

Deloitte suggested that the MFB should consider appointing a probity adviser to monitor the progress in high value and/or complex procurements, to assist the evaluation team to plan and complete its tasks. It also made a number of recommendations, which the MFB could consider implementing before the next stage. These included preparation of an interim evaluation report signed by all members of the Tender Evaluation Panel and investigating whether any new manufacturers/distributors had entered the market, considering the time that had passed since the closing date for tenders.

On 28 July 2005, formal discussions began between the CFA and the UFU on a replacement for the 2002 EBA. The CFA sought to replace the Clause 47 requirement to secure the UFU's agreement to new PPC with a requirement to consult with the UFU. This was not acceptable to the UFU.

In September 2005, the CFA sent the AIRC and the UFU a "Facts Pack" outlining the various tests and analyses undertaken by the CFA. This information was provided to demonstrate to the UFU and the AIRC the soundness of the basis upon

which PBI Gold was excluded, and that although the product now complied with the Australian Standard, that that alone did not overcome PBI Gold's failure to meet other CFA criteria.

For the MFB, the remainder of 2005 was taken up with the involvement of WorkSafe and the issue of a number of Provisional Improvement Notices (PIN). UFU and CFA hearings continued to be heard at AIRC. Moisture barrier location and durability continued to be the subjects of debate throughout the year. Continuing discussion also occurred between the UFU and the CFA on the format, timing and membership of the PPC/PPE Committee.

In December 2005, the CFA distributed sample garments for field testing. The UFU banned the MFB and the CFA firefighters from participating in the evaluation process.

The end of 2005 and the start of 2006 was another high activity fire season.

2006

When the CFA field trials commenced in January 2006, volunteer firefighters were involved, as were career firefighters. However, the career firefighters did not submit assessments. The CFA and the UFU continued to dispute both the specification of the PPC and the role of the Ensemble Committee.

In January 2006, a UFU media release stated the UK and USA had a safe and proven uniform that could be purchased at only a fraction more than the cost of the "substandard" uniform wanted by management, and alleged "penny pinching" by MFB management and the Victorian Government.

The UFU invited the MFB and the CFA to an open forum in February 2006 involving the South Australian Metropolitan Fire Service (SAMFS). SAMFS had just completed its evaluation and testing process for replacement PPC. It had chosen a PBI Gold outer shell with Airlock moisture barrier. Deloitte advised that this forum might be prejudicial to the integrity of the evaluation process and it did not go ahead.

In February 2006, the Volunteer organisations issued press releases criticising the protective material chosen by the UFU and claimed it deteriorated more quickly under sunlight. It also issued media releases regarding the then current EBA discussions between the CFA and the UFU, which criticised the prospect of a new EBA created without consultation with volunteer firefighters.

By May 2006, neither the MFB nor the CFA had PBI Gold as the preferred fabric. The UFU still considered that the only product that satisfied its criteria was PBI Gold. In May 2006, the UFU presented a paper, "Structural PPE Outstanding Issues" to an MFESB meeting, which set out the UFU's suggested way forward including a proposal to trial the SAMFS garment as a means of resolving the deadlock. The July MFESB meeting considered the UFU concerns and agreed that the UFU proposal was not acceptable.

By July 2006, long running discussions between the CFA and the UFU were still ongoing regarding the contentious issue of the type of fabric to be used in the construction of PPC and the siting of the moisture barrier in the finished product.

In June, the CFA held open forums with regional evaluation participants to receive their feedback on the structural apparel.

In June and July 2006, the MFB obtained further legal advice. In summary the advice was to the effect that:

- (1) To reopen the tender would constitute a breach of the 'process contract' formed with the two short listed tenderers
- (2) It would not breach process contract if it asked the two shortlisted tenderers to review the marketplace for advances in moisture barrier technology that met AS4967 or allowed the tenderers to amend their tender responses.

In July 2006, the UFU agreed to the proposal of asking tenderers to review the marketplace for any new moisture barrier materials. This was on the condition that the MFB based their choice of structural PPC on the results of testing in accordance with testing criteria agreed with the assistance of the Government. The UFU confirmed in July 2006 that the evaluation criteria were consistent with the tender documentation and the process for trial and evaluation developed by the PPC Committee was agreed.

In July 2006, Deloitte provided the MFB with advice about the implications of the introduction of AS4967 and continuation of the current tendering process. They advised it would not be possible to automatically shortlist the current tenderers if a new tendering process was to be commenced. The current tenderers might be disadvantaged if not given the chance to submit a new tender.

Both the MFB and the CFA approached the two short listed tenderers to seek their advice as to whether there were any technological advances since the date of their original responses, that could be included in the PPC. Both tenderers nominated the Airlock moisture barrier previously identified by the UFU in 2004.

In July 2006, DoJ intervened in the CFA/EBA negotiations, which had stalled, and a new agreement was signed by the CFA and UFU in late November 2007.

A series of DoJ facilitated meetings of the parties produced the "Way Forward" document under which combinations of Nomex and PBI Gold outer shells and two moisture barriers were to be evaluated. This document was agreed to by all parties in September 2006.⁹

The "Way Forward" was based on the view that the MFB and the CFA, including both career and volunteer firefighters, should have the same structural firefighting PPC. The document noted that all testing would be done on products known as at August 2006, and that the Boards of the two agencies expected the process to be completed by the end of April 2007. The document outlined the following process:

- Short listed tenderers to submit new technology moisture barriers
- New samples of the PPC to be provided by short listed tenderers
- Testing would be undertaken at the University of Wollongong, then Fiskville Hot Fire trials (involving both the CFA career and volunteer firefighters and the MFB firefighters); following that shift (field) testing would occur
- Results of all testing would be brought together to be evaluated against the agreed weighted matrix
- Pricing review would be conducted
- The stakeholder group would be reconvened to be given testing and evaluation outcomes
- Recommendations for acceptance of a tender would then be provided to the CFA Board and the MFESB.

⁹ Appendix 14 – The Way Forward Document

Shortly after having agreed to the 'Way Forward' document, in December 2006 the UFU suggested a process to replace the document. The text of this proposal was as follows:

"The evaluation of structural PPE commence at Fiskville utilising MFESB and CFA firefighters commence on 26 March 2007.

The MFESB issue structural PPE immediately for station evaluation prior to the Fiskville evaluations.

CFA utilise the list of career firefighters supplied by the UFU as trailers (sic) for both Fiskville and station evaluations.

All available test results be held confidentially and tabled to the Fire Services PPE committee for their recommendations to both the CFA and MFB Boards.

The CFA reach agreement through consultation with UFU over the career firefighters to trial station wear and other items of PPE.

Commencing in January 2007 one joint fire service PPE committee be established with representatives from CFA, MFESB and UFU to discuss, review, research, progress and implement all items of Personal PPE to be worn by firefighters in both fire services:

- a. The CFA may elect to include a volunteer representative as part of its contingent*
- b. The committee would have 10 members – two delegates from the MFB, two from the CFA, two from the UFU, two UFU OHS coordinators, Ken Brown, one government representative – Mr Alan Clayton from the Justice Department*
- c. The FS PPE Committee would meet monthly or as required and may nominate tasks to other groups that would report back to the committee*
- d. The CFA and MFB second Andrew Marmion and Philip Taylor (the CFA and MFB UFU OH&S coordinators) to the project outside their normal rostered duties to assist with this process*
- e. The CFA and MFB resource and support this process.*

Due to the fact that the previous agreement could not be carried out because of the current bushfire crises, this process replace the existing document "PPE The Way Forward.

In the event that CFA and MFB fail to agree to this process, the government direct the CFA and MFB to carry out this process."

This suggested new process was rejected by the CFA, and the evaluation process continued under the "Way Forward" document with the assistance of the Department of Justice.

In October 2006, following receipt of correspondence from the two shortlisted suppliers, the CFA introduced PBI Gold into the trial process. The CFA ordered new PPC for testing in November, and by December 2006, most of the Fiskville participants had been measured by the manufacturers.

The MFB sent further samples to the UOW in October 2006 for metabolic heat testing. In November 2006, internal MFB correspondence indicates the results of its Fiskville trials, due to commence in December 2006, would be kept confidential, so as not to prejudice CFA tests. By December 2006, the MFB Fiskville trials were again deferred, due to the CFA PPC not being ready. Neither the CFA nor the MFB considered it acceptable for the MFB to commence its testing on its own.

2007

There were issues with the provision of PPC from the manufacturers in time for the Fiskville trials, now scheduled for February. There were also issues with the availability of personnel due to the fire season, and the UFU disputed the list of career participants. However, the Fiskville trials commenced early in February 2007, followed by the commencement of the regional field trials later that month.

On 12 April 2007, the MFB Tender Evaluation Panel met to assess its field trial evaluations.

On 13 April 2007, the CFA proposed a timeline to the MFB for the evaluation process whereby the final evaluation of short listed tenderers' offers should be done jointly. The tender evaluation itself was to be done by each agency independently. A series of evaluation meetings, held individually by the CFA, by the MFB, and then jointly, would occur.

On 26 and 27 April 2007, the CFA Tender Evaluation Working Group met at Deloitte to consider the results of the feedback and data from its trials. This group included Volunteer and UFU representation. On 2 May 2007, the CFA Tender Evaluation Working Group reviewed the feedback from its on-site and field trials and examined the garments to assess manufacturer quality. The group ranked the PPC based on these evaluations and all members, including UFU representatives, signed off on the ranking outcomes.

On 8 May 2007, the Tender Evaluation Group considered the rankings and proposed that a recommendation be made to both the CFA Board and the MFESB.

On 15 May 2007, the MFB requested from tenderers final pricing and whole of life guarantees on PPC. This information was provided to both the CFA and the MFB on 24 May 2007.

On 31 May 2007, the joint Evaluation Panel met at Deloitte and reached agreement on the recommendation to the MFESB.

On 31 July 2007, MFESB approval was received to award the tender to Stuart & Heaton. Manufacturers were notified in August by the MFB of its choice. On 10 September 2007, Stuart & Heaton was recommended to the CFA Board who then identified two preferred products, allowing CFA firefighters to be given a choice of PPC, one being Nomex based and the other PBI Gold based. Both had the same inner lining.

The CFA Board was advised at the October 2007 Board Meeting that the MFESB had not chosen a PPC. A PPC would not be chosen until after the completion of further RALPH testing. The CFA would now not place their orders for the new PPC until these results were received.

The CFA had a requirement for its members to have PPC that was comparatively the same in colour, to ensure consistency between CFA and MFB personnel, who would then appear to possess a standard structural PPC. Accordingly, it would be necessary to dye the Nomex PPC to provide a colour match to that of PBI Gold. Testing needed to be conducted by the yarn suppliers, to determine whether such a procedure would affect Nomex's ability to comply with the relevant specification. The CFA received advice from DuPont International in September 2007 that the Nomex PPC could be dyed to match the colour of PBI Gold. This would take six months to develop! (My emphasis.)

4.4 Implementation

The MFB advised the Minister, in a briefing in October 2007, that before the PPC could be introduced, the MFB would need to receive the results of the RALPH testing, firefighters needed to be measured, and the yarn would have to be imported from the USA. This would not be received before February 2008. Upon receipt of the yarn, production would commence at a rate of 350 sets per week. The total requirement for the MFB was 5000 sets.

The UFU provided an implementation proposal to the MFB in October 2007, which made a number of requests. Included in these was the suggestion that garments certified to the Australian Standard be purchased immediately off the shelf. It also requested an Expression of Interest (EOI) be sought for the replacement of existing footwear and structural helmets. The MFB responded that PBI Gold product would be ordered for the first issue of PPC. The MFB agreed to progress helmet procurement and commence evaluation of turn out footwear. The UFU advised members of this in a bulletin late in October.

In November 2007, the CFA Board was provided with a roll out plan, which indicated design would be finalised in December 2007. Procurement and distribution of 21,200 PPC was planned to occur over a three year period, with approximately 7,000 PPC to be rolled out annually, beginning with Melbourne and Geelong. The Board was advised ERC funding had been approved.

The Present and the Immediate Future

Even at the time of conducting this Inquiry there are many matters unresolved. These include:

- Although both the MFB and the CFA have now selected a final manufacturer, there are still delays for the CFA in the procurement of the structural PPC due to the requirement to dye the Nomex material to ensure consistency between CFA and MFB personnel. This will require further testing to ensure that it will not affect compliance with the standard
- Final design of the PPC is yet to be completed
- The CFA has not developed a plan as to how firefighters will select their PPC from the two choices, and the UFU and CFA need to reach agreement on this process under Clause 47
- A further issue is the storage of the PBI Gold based PPC due to its deterioration under high UV environments. This may require storage facilities to be reviewed, which in turn, may result in extra funding requirements
- Final results of the RALPH testing are yet to be evaluated
- The CFA are now considering whether or not to proceed with a TGMS project.

And so the chaos continues.

5. KEY OBSTACLES AND CAUSES FOR DELAY

5.1 Specifications

Issues with the specifications were evident in the early stages of the MFB and CFA projects, well before the joint RFT was issued.

I have been particularly surprised how little liaison there appears to have been between Victoria and New South Wales during the past five years. Discussions with New South Wales' representatives and perusal of documentation indicates that in New South Wales (the State which boasts the most firefighters), peaceful compromise was reached between the relevant Unions (the ACTU and the CPSU) and controlling bodies, in a timeframe far more acceptable than that achieved in Victoria.

Joint Request for Tender

The RFT document contained different specifications for the CFA and the MFB. The RFT provided a joint approach to the market but, in effect, the two agencies continued with their separate specifications and separate approaches to evaluation and testing of PPC ensembles. The common element between the MFB and the CFA in the RFT, was the mandatory evaluation criteria. Although the aspiration was to have one structural uniform for both agencies, the adoption of separate specifications and evaluation processes created barriers to achieving this aim.

Both agencies had a number of committees who were involved in the PPC project. Although it was a joint tender, there was neither an overarching project plan nor steering committee that had ownership of the entire procurement project. The two agencies went in different directions, with the UFU being the common denominator between them.

Although all stakeholders professed a commitment to the best outcomes for firefighters, I have seen limited evidence of cooperation to achieve this aim.

Product/Performance Based Approach

The UFU took a product based approach, while the agencies took a performance based approach to the specification of requirements.

The UFU provided its own specifications in 2000, which were not adopted in the RFT. Once the tendering process was under way, it was evident that the UFU had a preference for a particular product (PBI Gold) which it would relentlessly pursue in preference to any other product, regardless of the outcome of the evaluation process. The UFU were putting forward a solution before the question to be answered was asked.

It was also evident that the MFB and CFA were not prepared to alter their performance based approach to the selection of new structural PPE. In this tendering process, performance specification and product specification were incompatible.

Specifying PBI Gold as the only option would have breached the tendering process. However, once it met the Standard, PBI Gold could have been included for evaluation purposes, without breaching the tendering process.

The MFB and the CFA treated the specification differences as a technical issue to be addressed by working parties/committees within the tendering process. However, it had become an industrial relations issue also, and senior management (in both agencies) were slow to actively address the risk.

While credit is due to the UFU for raising the impasse on PPC with senior management, the Secretary of the ACTU, DOJ and the Minister, its purpose did not seem to be to reach a negotiated outcome, but rather to impose its specifications based on PBI Gold. Its insistence on one particular outer shell and moisture barrier, prior to the agreed testing and evaluation processes, negated any suggestion of genuine participation in the tendering process.

In their initial response to the RFT, manufacturers supplied various options against the tender specifications, based on both Nomex and PBI Gold. The elimination of PBI Gold, due to non compliance with AS4967, left both the CFA and the MFB with only Nomex based ensembles. The subsequent reference to Nomex in specifications was seen by the UFU to be an apparent change of tender specifications.

After the amendment to AS4967, PBI Gold met the MFB specification. However, it still did not meet the CFA higher specification as to visibility and the UV resistance. It was, therefore, not possible to accommodate the UFU insistence on PBI Gold without changes to the CFA requirements.

The UFU used the South Australian and New Zealand experience as the basis for its request, both of which are smaller fire services than Victoria. The UFU seemed reluctant to take into account the NSW fire service PPC project, which has high user acceptance of its PPC and is a large fire brigade.

In 2004, further issues with the specifications came into play after the identification of the Airlock moisture barrier, as the preferred choice by the UFU. Strong contrary views were held on the positioning and type of moisture barriers in the PPC, and these remained ongoing issues until apparently resolved in 2006, with the "Way Forward" document.

There was no timely consideration of options within the tendering process that might accommodate the inclusion of PBI Gold and Airlock, once the MFB and the CFA had knowledge that the Standard was to change, to correct an error in the interim standard.

Whatever else can be said about the respective virtues of Nomex and PBI Gold, the ultimate acceptance by the CFA of both as PPC, suggests to an outside observer that there is little to choose between these alternatives.

The actions of the UFU in attempting to secure the PPC it required would also have led to confusion amongst its members and concern for their safety when wearing the current PPC.

The issue of a performance based specification, compared to a product based specification, was never fully resolved. The failure to reach agreement on the specification was an underlying cause of delay.

Recommendation

I recommend the creation of a Standing Technology Committee to represent all firefighters in Victoria, which will convene on a regular basis and monitor all developments in the fabric and design affecting PPC. I contemplate that it will assume the on-going role of considering any developments which may result in improvement in the design and material components of PPC. On determining that there is either material or an improved design which is superior to existing firefighting uniforms, I contemplate that the Standing Committee, through the bodies represented upon it, will seek the approval of all firefighting bodies in Victoria to implement those improvements, where appropriate. In making those assessments, it should be recognised that technological change, which is manifestly beneficial for one type of firefighting, may be inappropriate for another.

The Standing Technology Committee should, at the outset, make a decision whether an attempt is being made to implement the one PPC for all firefighters or whether it should acknowledge that the needs of the CFA, the Volunteer organisations and the MFB, are at variance.

Action by the Standing Committee should not be dependent upon any change in relevant standards or emerge from a particular crisis. Rather its task should be that of an ongoing assessment, with a view to the phased introduction of improved clothing and equipment, should that be the recommendation of the Standing Committee.

For the purpose of its proper function, the Standing Technology Committee should liaise closely with firefighting bodies in all other states and, if need be, other countries.

To avoid the past morass of indecision and obstruction, the Standing Committee should be structured to ensure that a recommendation supported by a majority of its members, can be made to the appropriate firefighting agency or the Minister himself. Past history suggests that there should be an independent Chairman with a casting vote. The Standing Committee should be free to utilise the services of acknowledged experts on PPC, if it is deemed appropriate.

5.2 Project Management

Project Planning

From the evidence I have seen, it appears that lack of proper project planning and clearly defined milestones, combined with inadequate management of the multiplicity of committees and the ongoing debate over specifications, meant that any original deadlines for the PPC project could not be met.

Pervading overall was the same lack of haste which seemed to contaminate the process from the outset. Although the MFB have provided an initial plan for its TGMS project, and the CFA have provided its original Project Definition document, I have not sighted any project plans for the overall implementation of the new PPC. Bumbling and uncoordinated progress continued throughout the project.

The agencies decided to test the market within a formal RFT process, rather than explore options through a more flexible separate EOI process. This created problems at a later stage of the tendering process.

On the issue of the RFT in 2002, all the conditions were present for a failure to deliver the project in a reasonable time:

- Different specifications within the one RFT
- Decision to tender jointly but evaluate separately, added another layer of complexity
- No evidence of commitment to a definite time for completion of the project
- Lack of agreement by the UFU, and in fact actual resistance to, the specification and the chosen RFT process
- The impact of Clause 47 of the CFA EBA and Clause 31 of the MFB EBA
- Apparent absence of independent expert research/advice on specifications for PPC.

Whilst the CFA Consultative Committee earnestly endeavoured to advance its considerations, its make up and the manner in which it approached the task in hand, were flawed. It should have been obvious, even at the early stages of the tendering process, that the path to progress was to be a rocky one.

Importantly, the project was allowed to proceed without resolution of the basis for the request for tender – the specification of requirements. The fact that the specifications continued to be a matter of contention throughout the process, underlines the absence of a sound basis for the commencement of the entire project.

Throughout the tendering process, no critical project review processes appear to have been in place, allowing corrective action to be undertaken when milestones were not reached. Delays in the project were caused by the ineffective resolution of issues. An independent circuit breaker was not introduced until the "Way Forward" process began.

UFU representatives did not appear to have the authority to commit or bind their organisation to decisions reached in the various committees. If the UFU had been a genuine participant in the process and willing to accept that the evaluation process could result in the choice of an appropriate product for structural PPC, other than its choice, the tender evaluations could have been completed in the second half of 2004.

Delays were caused by the UFU resorting to AIRC hearings, and bans placed by the UFU on its members attending CFA Ensemble Committee meetings. Existing decisions had to be revisited every time the UFU rejoined the process. The meetings, however, continued without UFU attendance. The November and December 2003 CFA meetings, which removed Option C (PBI Gold), for example, were vital meetings at which the UFU were not present. These meetings should have been rescheduled.

Bans by the UFU on its members participating in the MFB Evaluation Panel, meant that the Evaluation Panel was not able to complete its initial tender evaluation due to a lack of a quorum, until June 2003.

The MFB submission indicates that when members of the MFB PPC Committee were unavailable for meetings and proxies attended in their place, often the decision making process stalled due to the reluctance of proxies to make recommendations. There were also instances where participants in the process required a higher level of technical knowledge or better understanding of the process issues involved.

Neither the CFA nor the MFB created a project team of employees, who had been removed from operational duties, and dedicated solely to the procurement project. If a dedicated, well-designed team had been in place, it would have mitigated any problems, such as loss of focus, lack of technical knowledge, time delays and lack of continuity. All these problems arose when project team members had to juggle their operational duties against their participation in the evaluation.

Testing Delays

During the project time frame, there were a number of significant wildfire seasons, especially 2002-2003. The CFA indicated that senior personnel, who would otherwise have been available to contribute to the structural ensemble project, were redirected to firefighting duties. 2006-2007 was also a bad wildfire season, resulting in the deaths of two volunteer firefighters. This season was prolonged and a massive use of resources, including personnel, was required in the response.

However, while firefighting commitments have been advanced as having an impact on the tendering process, the extent of the impact is unclear, given that trials were scheduled and carried out during the fire season in 2004 and again in 2007.

A delay of one month ensued when the MFB sent samples to the University of Wollongong for testing in December 2002. The testing took longer than expected for a variety of reasons:

- Manufacturing of garments was more time consuming than had been anticipated
- The UOW had difficulty locating participants in certain age groups for the testing
- Some garments were ill fitting due to withdrawal of participants for whom they had originally been measured

There were also laundering testing issues, such as poor washing instructions, the need for air drying, and problems with washing temperatures. Further delays were due to the number of fabrics that required testing.

RALPH testing was not part of the original process, but following UFU requests, ensembles were ordered and sent to the UK for testing. The RALPH tests (including PBI Gold) had to be repeated following the introduction of the Airlock moisture barrier.

Recommendation

A large joint procurement project of this type must be properly planned and managed. It must be supported by a business case specifying the costs and benefits expected to be realised by the joint project and a risk analysis addressing the major risks, including stakeholder management.

Project planning must include clear definition of the purpose and objectives of the joint project, its outcomes and the timelines for delivery. The procurement policies and guidelines of the Victorian Government Purchasing Board and Victorian Government Gateway Review process are useful references.

The project should be managed by a dedicated team. Team members who are involved in the evaluation process, should be freed from operational duties for the duration of the evaluation period.

Project governance arrangements must be in place at the commencement of the project, including the establishment of an overarching steering committee, a clear definition of the roles and responsibilities of all participants including senior management, and probity and conflict of interest policy and procedures.

Consideration should be given to testing the market and the interest of suppliers through an Expression of Interest process, preparatory to a request for tender.

The specification of requirements should be based on research and knowledge of relevant technological developments and available products, including interstate and overseas developments and experience.

A probity adviser should be appointed for the joint tendering process.

Independent reviews should be commissioned by senior management at the key decision points in the project, to ensure that the project is proceeding according to plan and should continue. Such reviews should identify any matters that need to be addressed before approval is given to proceed to the next stage.

5.3 EBA

The tendering process for the new PPC was intrinsically entwined with the MFB and the CFA EBAs. Clause 47 of the CFA EBA and Clause 31 of the MFB EBA require that the CFA and MFB reach agreement with the UFU on the equipment to be worn and/or used by the employee. Additionally, in the case of the CFA UFU EBA, agreement must also be reached on PPC specifications and a plan of distribution for new PPC.

It was futile in the face of these clauses to presume that the tender could be concluded in the absence of agreement with the UFU.

The UFU used Clause 47 as the basis for a number of applications to the AIRC, including alleging unsatisfactory consultative procedures and objecting to volunteer involvement on the Committee. The UFU used Clause 47 to justify its overall obstruction of the tendering process, unless it resulted in the selection of PBI Gold.

As part of the negotiations for the new EBA, the UFU refused to participate in the MFB tendering process. It was not until the resolution of EBA negotiations in December 2002 that the UFU indicated it would participate in the Tender Evaluation Panel.

By July 2006 with both the CFA EBA negotiations and the joint MFB/CFA PPC tendering processes stalled, the Department of Justice became actively involved in the resolution of the impasses. As a result, the MFB, the CFA, the UFU and all the Volunteer organisations agreed in September 2006 on the "Way Forward" solution to select and purchase new structural PPC.

The Department of Justice also intervened in July 2006 in the CFA EBA negotiations, which then recommenced with a new agreement being signed by the CFA and the UFU in late November 2007. This agreement is currently going through the process of approval and the parties to the agreement (the CFA and the UFU) have requested that the Workplace Authority Director undertake a pre-lodgement assessment of the agreement. Clause 42 of that agreement contains similar wording to Clause 47.

Recommendation

The first paragraph of Clause 47 "Uniforms and Equipment" in the CFA Enterprise Bargaining Agreement (CFA EBA) requires the CFA and the UFU to reach agreement on the clothing and equipment to be worn and used by employees. The third paragraph of Clause 47 requires the agreement of the CFA and the UFU on the specifications of replacement Personal Protective Equipment and Station Wear and plan of distribution of clothing.¹⁰

I recommend that in any future EBA entered into between the CFA and the UFU, in the corresponding clause the first paragraph should be amended to read

"The employer shall supply each employee and be responsible for the cost of replacing, repairing and/or cleaning the articles of clothing and/or equipment which the employer decides must be worn and/or used by the employee, after consultation with the Union."

¹⁰ Appendix 12 – CFA and MFB EBA Extracts

There is no need to amend the second paragraph or to retain the third paragraph.

I recommend that similar changes be made in any further EBA entered into between the MFESB and the UFU after the present Workplace Relations Agreement expires on 19 April 2009.

In making those recommendations, I am of the view that in relation to negotiations between the CFA and the UFU, the UFU has consistently taken advantage of the wording of the clause as it presently stands, to achieve, in effect, a veto of any attempt by the CFA to improve clothing and equipment issued to employees, with which the UFU does not agree.

The Government and the CFA have recognised the value and importance of the role that volunteers play through the Volunteer Charter, signed in 2001.¹¹ Under the terms of the Volunteer Charter, the CFA must ensure that the views, concerns and opinions of volunteers are fully considered before adopting any new or changed policies, procedures or approaches which will impact on them, as CFA volunteers.

In respect of any future EBA reached between the CFA and the UFU, it should be made clear that the CFA is committed to consult with volunteer firefighters in Victoria, who shall be entitled to participate in any discussions directed at all matters that affect them, including the improvement of clothing and equipment issued to firefighters.

In recommending a change in the wording of the relevant paragraphs in the two EBAs that I have referred to, I express my confidence in the relevant provisions in legislation, including the *Workplace Relations Act 1996* (Cmwth) and the Victorian *Occupational Health and Safety Act 2004*, which would take over in the event of the UFU considering that either the CFA or the MFB is behaving unreasonably, pursuant to those paragraphs.

The CFA EBA has a number of other clauses, which require Union agreement before the implementation of change, for example Clause 52 Training Instructors/Training and Clause 12.3 Code of Conduct. My comments above are equally applicable to those clauses.

¹¹ Appendix 15 - Volunteer Charter

5.4 Stakeholder Relations

Firefighters and ultimately the public have been poorly served by the inability of the UFU, the MFB and the CFA to work cooperatively to deliver new PPC for firefighters in a timely fashion. Project difficulties were symptomatic of issues in the relationships between the CFA, the MFB, the UFU and Volunteer organisations.

I found limited evidence of senior management actively sponsoring and guiding the ensemble project on an ongoing basis. Specific project problems did not seem to be addressed in a timely fashion nor solutions found to enable the project to proceed.

The relationship between the UFU and the agencies was adversarial and characterised by personal conflict; intransigence; and a lack of trust, shared commitment or respect. The UFU contested every aspect of the evaluation and delayed the tendering process by adopting the following tactics:

- The use of industrial action and OH&S and EBA processes
- Lack of attendance at meetings
- Holding public rallies
- The UFU media releases and bulletins issued to members at many points throughout the process, critical of the tendering process and senior management. Some of these bulletins instructed members not to participate in the process
- The UFU approach to the Minister in 2004 requesting an investigation into the probity and behaviour of the MFB management, regarding the PPC project
- The UFU banning its members from participation in field trials of structural PPC under the tender evaluation processes.

At the time that the joint MFB/CFA evaluation panel met in August 2002, it should have been apparent to participants that there were major issues that needed to be resolved. If this did not warrant the direct intervention of the most senior administrators of each agency, then one queries what would? Further confrontation and confusion needed to be addressed at a more senior level including:

- The UFU's continuing initiation of AIRC proceedings, alleging failure to properly consult on structural PPC
- The FOI request lodged in June 2001 by the UFU
- The 2006 media campaign by the volunteer organisations, which was indicative of frustration and concern about their relationship with the CFA, the UFU and impact on the volunteers. The use of PPC by volunteers created special design requirements, which needed to be taken into account.
- The UFU disputing the role and involvement of volunteers in the consultation and testing processes. This stance continued throughout the entire project, and as late as November 2007, the UFU published another Bulletin regarding elimination of Volunteer organisations from PPC related committees
- The UFU objection to the TGMS approach
- The UFU's repeated withdrawals from the various committees due to objections to the tendering process
- Personal tension between members of the CFA Ensemble Committee leading to allegations by the UFU of bullying and inappropriate behaviour.

While the UFU continued to be obstructionist, the agencies also displayed an obstinate refusal to give ground.

The Volunteer Charter, which was created to recognise the value and importance of volunteers within the CFA, specifically commits the State of Victoria and the CFA to consult with volunteers on all matters that may impact upon them. This would include the introduction of new PPC. The Volunteer organisations had a genuine right to be involved in the procurement process and have their views considered in the renegotiation of the CFA UFU EBA.

In March 2004 and again in March 2005, through correspondence from the UFU, the then Ministers for Police and Emergency Services¹² and DoJ were made aware that the UFU was concerned about the tendering process and the exclusion of PBI Gold. Those matters were considered appropriate for resolution between the UFU, the MFB and the CFA, given the statutory responsibilities and independence of the MFESB and the CFA. It was understandable that DoJ would have strong regard for the statutory independence of the agencies concerned. However, the responsibility DoJ held, demanded its intervention by 2005, with the continuing delay in the tendering process and issues with the UFU.

It took until August 2006 and the "Way Forward" document, facilitated by DoJ, before the parties agreed on a common course of action to select PPC. In my view, intervention of this nature by DoJ was warranted long before this. This course of action, set out in the "Way Forward", contemplated a deadline of April 2007. However, relationships were still tense and the Way Forward took a left hand turn in December 2006 when the UFU proposed to make changes to what had been agreed and signed by all parties. This proposal was rejected.

Despite the agreement, it still took almost a year after the Way Forward document was signed, for the final decision on the successful tenderer to be approved by both the CFA Board and the MFESB. In September 2007 the CFA Board identified two preferred products for its PPC, one being Nomex based and the other PBI Gold based. If that course was acceptable in September 2007, it prompts the question why it was not acceptable at least three years earlier when PBI Gold first complied with AS4967?

Throughout these years, the machinations and intransigence of the CFA, MFB and UFU contrasted starkly to the Volunteers' cooperative participation.

Recommendation

The MFB, CFA, UFU and the Volunteer organisations must immediately address the identified issues in order to rebuild an effective relationship in the interests of the firefighters and the general public.

5.5 The Future

Whatever is important in this Report, it is not the attribution of blame or responsibility for the past seven years. Rather it is what can be learnt from the mistakes that have been made in the past, so that as new material and improved specifications become available, they can be quickly introduced for the mutual benefit of firefighters themselves and the general public as a whole.

¹² Note: The Honourable *Andra Heermeyer* was Minister for Police and Emergency Services in 2004, followed by The Honourable *Tim Holding* in 2005.

APPENDICES

- Appendix 1: Letter of Appointment to Judge Lewis
- Appendix 2: Metropolitan Fire Brigade Written Submission and Chronology
- Appendix 3: Country Fire Authority Written Submission and Chronology
- Appendix 4: Volunteer Organisations Written Submission and Chronology including *Statement for Volunteer Fire Brigades* – Brett Hume
- Appendix 5: Worksafe Submission
- Appendix 6: Country Fire Authority Hearing Transcript
- Appendix 7: Metropolitan Fire Brigade Hearing Transcript
- Appendix 8: Volunteer Organisations Hearing Transcript
- Appendix 9: Letter Advising of Non Participation (UFU)
- Appendix 10: Country Fire Authority Letter of Clarification
- Appendix 11: Metropolitan Fire Brigade Letters of Clarification
- Appendix 12: Country Fire Authority and Metropolitan Fire & Emergency Services Board Enterprise Bargaining Agreement Extracts
- Appendix 13: Chronology of Events
- Appendix 14: The "Way Forward" document
- Appendix 15: The Volunteer Charter

**REPORT ON THE
PROCESSES TO SELECT
NEW PERSONAL PROTECTIVE
CLOTHING FOR VICTORIAN
FIREFIGHTERS**

APPENDIX 1
Letter of appointment to Judge Lewis

FEBRUARY 2008



Minister for Police and Emergency Services

121 Exhibition Street
Melbourne, Victoria 3000
GPO Box 4356QQ
Melbourne, Victoria 3001
Telephone: (03) 8684 0900
Facsimile: (03) 8684 0910
DX 210077

Judge Gordon Lewis
County Court
Level 1, 250 Williams Street
MELBOURNE VIC 3000

Dear Judge Lewis

Report on the processes to select a new structural ensemble for the CFA and MFESB firefighters

I am writing to request you to provide me with a report on the processes to select new personal protective clothing worn by firefighters in Victoria.

Discussions between parties developed an agreed performance specification for personal protective clothing (namely the structural ensemble) for firefighters in 2002. In October 2006 agreement was reached on how to progress the choice of the structural ensemble, leading to announcements by the Country Fire Authority and Metropolitan Fire and Emergency Services Board in October 2007 that a decision had been made. Arrangements are now in place for the manufacture and supply of the new equipment. The significant delay between 2002 and 2007 suggests that the reasons for delay need to be identified so that delays of this magnitude can be avoided in the future.

The Terms of Reference for your report are as follows.

1. Investigate and report on the procedures and processes undertaken since 2002 to identify and procure personal protective clothing for fighting structural fires – the structural ensemble.
2. Identify the causes for delay in timely decisions/agreements about the type of equipment to be procured.
3. Determine the key obstacles in the decision making processes that prevented a more timely decision on the structural ensemble.
4. Make recommendations that would resolve the procedural obstacles that have been identified and that would prevent such obstacles from occurring in future equipment purchases.

I have asked Dr Roslyn Kelleher, Executive Director, Police, Emergency Services and Corrections in the Department of Justice to make the necessary arrangements to enable you to complete your report. I would appreciate receiving your report by 29 February 2008. Please contact Dr Kelleher (on 8684 1500) to discuss your requirements and any queries you may have.

Yours faithfully

Bob Cameron MP
Minister for Police & Emergency Services

25/10/07

