

WINEVVS

CFA lawyers to argue federal law overrides state requirement to consult volunteers on pay deal

By James Hancock

Posted Thu 15 Sep 2016, 6:03pm

Victoria's Country Fire Authority (CFA) will rely on constitutional powers to prove its controversial workplace deal for paid fire fighters is lawful, the Supreme Court has heard.

A judge last month agreed to send the long-running dispute to trial, with the case now listed for October 3.

Volunteer Fire Brigades Victoria (VFBV) will argue that the CFA board failed to properly consult its members on the deal, as it was meant to under the CFA Act, and that the deal is unlawful.

But the court heard that the deal was approved under the Commonwealth's Fair Work Act.

Lawyers for the CFA indicated on Thursday they would defend the case by arguing the Commonwealth legislation overruled the CFA Act.

Section 109 of the constitution states if there is a clash or inconsistency, Commonwealth law wins out over state legislation.

The VFBV's barrister Stuart Wood QC said he was only told about the constitutional defence last Friday.

Justice Michael McDonald said if the argument was successful, it could have far-reaching consequences for other organisations set up under state law.

The CFA's barrister Stephen Donaghue QC said the introduction of the Fair Work Act raised the ire of the states at the time.

"What you're seeing now is one of the consequences of that imposition," he said.

Justice McDonald suggested that under the Fair Work Act "the (CFA) board can lawfully do that which the (CFA) Act says it cannot do".

Mr Donaghue replied that it could "because a Commonwealth act says it can".

Attorneys-general can take part in case

Federal and state attorneys-general have been given an opportunity to take part in the case because it now relates to the constitution.

The court heard the legal argument could delay the start of the trial by a week.

VFBV previously said in court the deal would have wide-ranging consequences for the CFA by giving the United Fire Fighters Union "powers of veto" over every operational procedure.

The CFA Board has agreed to delay a vote on the workplace deal until the legal challenge is resolved.



PHOTO: Country Fire Authority members rally against a controversial pay deal in Victoria. (ABC News: Cameron Best)

RELATED STORY: Former CFA chief officer stands by decision to resign

More on this story:

- Former CFA chief Lucinda Nolan quit over 'destructive and divisive' EBA
- Senate to scrutinise CFA agreement before approving workplace changes
- Premier's popularity rating takes a hit over CFA dispute
- 'It's got to stop': Emergency commissioner calls time on war over CFA deal
- Victorian Premier maintains he was not advised of bullying allegations

Topics: state-parliament, emergency-planning, constitution, federal-parliament, federal--state-issues, courts-and-trials, law-crime-and-justice, unions, melbourne-3000

Contact James Hancock