



Australian Government

Department of Employment

Senate Education and Employment Legislation Committee

Inquiry into the

**Fair Work Amendment (Respect for Emergency Services
Volunteers) Bill 2016**

Submission of the

Department of Employment

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Introduction

- 1.1 The Department of Employment welcomes the opportunity to make a written submission to the Senate Education and Employment Legislation Committee (the Senate Committee) inquiry into the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 (the Bill).
- 1.2 The *Fair Work Act 2009* (Fair Work Act) and the *Fair Work Regulations 2009* (Fair Work Regulations) provide the legislative framework underpinning the national workplace relations system, which covers the majority of Australian employers and employees. Part of that framework is to provide for the making of enterprise agreements through collective bargaining.
- 1.3 The Country Fire Authority (CFA) and the United Firefighters Union (the Union) have been involved in a protracted enterprise bargaining dispute. The CFA and the Union have been bargaining for a new enterprise agreement for over three years. The current enterprise agreement nominally expired on 30 September 2013.
- 1.4 The former CFA Board was concerned that the proposed agreement would see CFA in breach of its statutory obligations under the *Country Fire Authority Amendment (Volunteer Charter) Act 2011*. That Board was also concerned about the Union's claims in relation to the proposed agreement, stating: *'The proposed EBA [enterprise bargaining agreement] undermines volunteers, our culture, allows the UFU operational and management control of CFA and is discriminatory'*¹.
- 1.5 The former CFA Board indicated its preparedness *'to continue negotiating with the UFU....to reach an agreement that would be fair and reasonable for both career and volunteer firefighters and the State'*². However, on 10 June 2016 the Victorian Government began the process of removing the Board after it refused to support the proposed agreement. The Victorian Minister for Emergency Services resigned on 10 June, the CFA Chief Executive Officer resigned on 17 June and the Chief Fire Officer resigned on 30 June 2016.
- 1.6 The Victorian Government on 17 June 2016 appointed new government representatives to the CFA Board and four new volunteer representatives were appointed on 19 July 2016. The new Board reached agreement with the Union after some minor changes were made to the proposed enterprise agreement.
- 1.7 The proposed agreement has not progressed further as the CFA has deferred putting it to a vote while proceedings continue in the Victorian Supreme Court in relation to an

¹ Country Fire Authority Board: *Operational EBA Update (6 June 2016)*. Available at: <http://news.cfa.vic.gov.au/news/operational-eba-update-6-june-2016.html>.

² Country Fire Authority Board: *Message from the CFA Board to members*. Available at: <http://news.cfa.vic.gov.au/news/message-from-the-cfa-board-to-members.html>.

application by Volunteer Fire Brigades Victoria.³ Hearings in relation to this matter will commence on 22 September 2016. The proceeding in the Supreme Court is primarily concerned with the question of whether the CFA Board has complied with its obligations under the Victorian *Country Fire Authority Act 1958*. It is not a proceeding that will consider the lawfulness of the proposed agreement in so far as it is a valid agreement under the Commonwealth Fair Work Act.

- 1.8 During the 2016 Federal election, the Coalition committed that if re-elected it would amend the Fair Work Act so that enterprise agreements can no longer be used to undermine the capacity of volunteer emergency services bodies to manage their volunteers. It is important that the Fair Work Commission receives submissions from affected volunteer organisations in relation to an enterprise agreement that would affect them. The Australian Government still considers that the proposed agreement contains terms that may interfere with the capacity of the CFA to manage its volunteers in a range of areas. The Bill, if passed, would address this issue.
- 1.9 The Bill was introduced into the House of Representatives on 31 August 2016 and implements the Government's election commitment to amend the Fair Work Act to protect emergency services bodies and their volunteers.

Consultation

- 1.10 Major employer groups and unions were consulted on an exposure draft of the Bill through the Committee on Industrial Legislation via a confidential teleconference facilitated by the Department of Employment.
- 1.11 Confidential teleconferences on the draft legislation were conducted by the Department of Employment with Volunteer Fire Brigades Victoria and State and Territory senior officials with responsibility for workplace relations.
- 1.12 On 22 August 2016, the Government publicly released the draft Bill, making it available on the Department of Employment's website.

Changes to the *Fair Work Act 2009*

Existing Framework

- 2.1 The object of the Fair Work Act includes to 'provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians'.
- 2.2 The Act provides for the making of enterprise agreements through collective bargaining, particularly at the enterprise level. In approving an enterprise agreement, the Fair Work

³ Country Fire Authority: *Vote on Operational Enterprise Agreement deferred (17 August 2016)*. Available at: <http://news.cfa.vic.gov.au/news/vote-on-operational-enterprise-agreement-deferred.html>

Commission must be satisfied that it does not contain any unlawful terms. Unlawful terms of an enterprise agreement are legally ineffective but do not render the agreement invalid.

- 2.3 Currently, the Fair Work Commission is able to inform itself in relation to any matter before it in such manner as it considers appropriate, including by inviting oral and written submissions. However, the Fair Work Act does not entitle volunteer bodies as of right to make a submission about a matter involving an enterprise agreement that is before the Fair Work Commission, even if the matter could affect the volunteers they represent.

Key measures in the Bill

- 2.4 The Government committed to protect emergency services bodies and their volunteers by providing that an enterprise agreement cannot include terms that undermine the capacity of volunteer emergency services bodies to properly manage their volunteer operations or terms that are inconsistent with State or Territory laws that regulate such bodies.⁴
- 2.5 The Bill will amend the definition of unlawful terms to include an ‘objectionable emergency management term’ that cannot be included in an enterprise agreement that covers a ‘designated emergency management body’.
- 2.6 An ‘objectionable emergency management term’ that cannot be included in an enterprise agreement covering a designated emergency management body is a term that has or is likely to have, the effect of:
- restricting or limiting the ability of the body to engage or deploy its volunteers; provide support or equipment to those volunteers; or manage its relationship with, or work with, any recognised emergency management body in relation to those volunteers; or otherwise manage its operations in relation to those volunteers; or
 - requiring the body to consult, or reach agreement with, any other person or body before taking any action for the purposes of engaging or deploying its volunteers; providing support or equipment to its volunteers; managing its relationship with, or working with, any recognised emergency management body in relation to those volunteers; or otherwise managing its operations in relation to its volunteers; or
 - restricting or limiting the body’s ability to recognise, value, respect or promote the contribution of its volunteers to the well-being and safety of the community; or
 - requiring or permitting a body to act other than in accordance with a law of a state or territory that imposes on the body a duty, power or function that affects or could affect its volunteers.
- 2.7 A body is a ‘designated emergency management body’ if:
- the body is, or is a part of, a fire-fighting body or a State Emergency Service of a State or Territory (however described), or is a recognised emergency management body that is prescribed by the regulations; and

⁴ Liberal Party: *Labor’s union takeover of the Victorian CFA (10 June 2016)*. Available at: <https://www.liberal.org.au/latest-news/2016/06/10/labors-union-takeover-victorian-cfa>

- the body is, or is a part of a body that is, established for a public purpose by or under a Commonwealth, State or Territory law.
- 2.8 The Bill also provides that regulations may be made to provide that a body is not a designated emergency management body.
- 2.9 The amendments therefore apply to fire-fighting, State Emergency Service bodies and other prescribed recognised emergency management bodies that are covered by the Fair Work Act, established for a public purpose under a statute, use volunteers, and have made, or are seeking to make, an enterprise agreement that includes an objectionable emergency management term. Bodies that are covered by the Fair Work Act include constitutional corporations, bodies operating in a Territory and those covered by the State references of workplace relations matters to the Commonwealth. Note that Victoria is the only state that has referred power to the Commonwealth on workplace relations matters relating to state public sector employers and employees.
- 2.10 The amendments are not retrospective. Once the provisions commence they will apply to new and existing enterprise agreements. At the agreement approval stage, if the Fair Work Commission finds that an agreement includes an 'objectionable emergency management term', the Commission would not be able to approve that agreement with that term.
- 2.11 If an existing agreement has a term that is found to be an 'objectionable emergency management term' that term would have no effect from the time the provisions commence, but the agreement would otherwise continue to operate.
- 2.12 New sections 254A and 281AA also provide an entitlement to certain volunteer bodies to make submissions to the Fair Work Commission in relation to matters about enterprise agreements or workplace determinations that affect, or could affect, the volunteers of a designated emergency management body.
- 2.13 The Bill provides that, in order to be able to make a submission, a body must be either:
- a body corporate that has a history of representing the interests of the volunteers of the designated emergency management body; or
 - a body prescribed for this purpose by the regulations.
- 2.14 The Bill ensures that enterprise agreements covering relevant fire-fighting and emergency services bodies and their employees do not negatively impact on the capacity of the bodies to manage their volunteers. Without these amendments, the terms of an enterprise agreement may directly or indirectly impact on volunteers in such a way that their contribution is marginalised to the detriment of the broader Australian community.

Conclusion

- 3.1 The Department appreciates the opportunity to provide a submission to this inquiry and is available to discuss the submission at a hearing of the Committee.