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9 September 2016

Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Please find attached the ANMF (Vic Branch) submission to the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 (provisions).

Yours sincerely,

Lisa Fitzpatrick
Secretary, ANMF (Vic Branch)



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SUBMISSION TO THE SENATE STANDING COMMITTEES ON EDUCATION AND EMPLOYMENT

EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE

FAIR WORK AMENDMENT (RESPECT FOR EMERGENCY SERVICES VOLUNTEERS) BILL 2016

9 SEPTEMBER 2016

- 1) The Australian Nursing and Midwifery Federation (Victorian Branch) submits that the Committee should recommend that the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 ("the Bill") be rejected.
- 2) The Bill is flawed for the reasons that follow.
- 3) Submission rights before Fair Work Commission:
 - a) The Bill proposes according Volunteer Associations the extraordinary statutory right of making submissions to the Fair Work Commission on any matter arising under the enterprise bargaining provisions of the Fair Work Act 2009 ("the Act") that "could affect" volunteers.
 - b) Not even the Federal or relevant State Ministers have comparable rights to those proposed to be accorded to what are private associations that represent persons who are unable to be regulated by the Act.
 - c) The Bill introduces a statutory right of submission before the Commission of an outsider in relation to all enterprise bargaining matters under Part 2-4 between industrial parties that could affect volunteers.

It is submitted that this is an unwarranted and unprecedented according of rights of submission before the Commission and an erosion of the capacity of the Commission to regulate its own proceedings.
- 4) Intrusion on State responsibility:
 - a) The Bill is expressly directed to State agencies established for public purposes involved in the delivery of services that are quintessentially the province of the State. Such a focus for Commonwealth involvement demands more than rhetorical justification. It requires considered policy analysis. No such analysis has been hinted at by Government in respect of the Bill.

- b) The Constitutional basis for the bill is not without doubt. A Bill about “protecting” volunteers is hardly about the terms and conditions of employment of employees of particular State agencies. Similarly, it cannot be assumed that the relationship between volunteers and a trading corporation is sufficiently associated with the trading activities of the corporation, so as to attract the corporations constitutional head of power.
 - c) Constitutional questions aside, the combination of the remoteness of the relationship between volunteers and the State agency and any Commonwealth interest, and the centrality of the relationship with volunteers to the responsibilities of State Government, compel a conclusion that the Commonwealth should not involve itself in the area. Rather, it should permit the State agency to exercise its functions in accordance with the general law and not subject them to a special legislative regime in respect of the content of enterprise agreements.
- 5) Political not policy motivation:
- a) The Bill reflects the political genesis of the Government’s decision to intrude into what is a State matter. It does this for example, by seeking to legislate in relation to matters such as *“an ability to recognise, value, respect, promote the contribution of volunteers”*. The uncertainty attendant upon the meaning to be given to such language illustrates the point that it should not be legislated.
 - b) There is no proper policy basis for the intrusion into an arena of State responsibility by the Commonwealth. The justification in the Prime Minister’s second reading speech was that “the Government of Victoria has abdicated its authority” and accordingly it was the Commonwealth’s duty to intervene to protect the efforts of volunteers. That is no justification at all for the Commonwealth to limit a State agency and its employees’ access to the full extent of enterprise bargaining provisions under the Act.
 - c) The Bill does not represent an attempt to address volunteerism or the interest of volunteers generally. The Productivity Commission’s research report of February 2010 “Contribution of the Not-for-Profit- Sector” identified:
 - (1) 600,000 not-for-profit organisations
 - (2) 4.6 million volunteers working with not-for-profit services; and
 - (3) Volunteers contributing \$14.6B in unpaid work in 2006/7.
 - d) In stark contrast the Bill’s focus and practical effect, as the Second Reading Speech makes clear, is on a single entity, namely, the Country Fire Authority, and a single volunteer association, namely the Victoria Fire Brigades Association Incorporated.
 - e) The Bill is not the product of submissions from Volunteers Victoria or Volunteers Australia the relevant Volunteer bodies, rather, it is the product of political opportunism during an election campaign and special pleading by a single association. That association already has nominating rights for four members on the CFA Board and a statutory role provided for by section 100 of the Country Fire Authority Act.
 - f) The political character of the Bill is illustrated by Clause 195(A)(7). It provides in effect that the Bill is to have no application in respect of an enterprise agreement, if the term deals at all with respect to directions for the performance of work in relation to the provisions of essential services or situations of emergency and the Commonwealth doesn’t have constitutional power in this regard. The

operation and impact of this provision on the application of the Bill is uncertain. It appears, in respect of directions in an emergency and in relation to provision of essential services, that the Bill will have no effect in any event.

6) Drafting Matters:

a) Difficulties with the provisions and structure of the bill include:

- i) Uncertainty about whether a matter before the Fair Work Commission “could” affect volunteers and thus entitle volunteer associations to make submissions that would require the time and attention of the Commission and bargaining representatives regardless of the relevance, merit or being authorised by the Act.
- ii) The subject matter of volunteer association submissions are not even limited to the question of whether a proposed agreement contains any objectionable emergency management terms impacting volunteers. Rather, the submissions are at large subject to the “could affect” requirement. However, even if they were so limited, uncertainty as to the meaning of objectionable emergency management terms remains.
- iii) The capacity of the volunteer association to make submissions, whether or not the Commission is to conduct the hearing, at all stages of any matter arising under the entirety of part 2-4 of the Act. This includes section 240 proceedings as between bargaining representatives. Such interference in the difficult process of bargaining will cause delay and added difficulty to the process.
- iv) Uncertainty as to the meaning of objectionable emergency management terms. For example, determining whether a term limits a agency’s ability to work with another body in relation to volunteers or the term limits an agency’s ability to provide support for volunteers is likely to be fraught. The consequence of this uncertainty will lead to disputation and delay.

7) Scope of the Bill

- a) The uncertain scope of the Bill is of concern to the ANMF (Vic Branch). The reliance on regulations to determine the application of the Bill, if passed, underscores the fact that it is selective and targeted at the CFA but in an attempt to *appear* to be of more general application the Bill has created uncertainty. The necessity of having Regulations to include, and then also exclude, agencies from the scope of the Bill underscores its uncertain reach. Of course this uncertainty is the result of the highly political motivation of the Bill itself.
- b) As drafted the Bill has potentially extremely wide, and unintended, reach. The meaning of designated emergency management body extends to any body that is part of a State Emergency Service (however described) and is part of a body established for a public purpose under a State law. To illustrate this point, Victorian hospitals and health services would meet the description of a designated emergency management body given their role as part of the State Health Emergency Response Plan under which state health command can be implemented. Of course many hospitals have volunteers and thus the Bill might impact on a huge area of volunteerism and on employers’ involved in enterprise bargaining with many thousands of employees. Similarly public hospital emergency departments may be caught by the definition simply because of their role in the provision of co-ordinated state emergency health services.

8) Conclusion

The ANMF (Victorian Branch) submits that the Senate Committee should recommend that the Senate reject the Bill.

Branch Secretary
Australian Nursing and Midwifery Federation (Victorian Branch)