



## **Submission to the Senate Education and Employment Legislation Committee**

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

*September 2016*



AMMA is Australia's national resource industry employer group, a unified voice driving effective workforce outcomes. Having actively served resource employers for more than 98 years, AMMA's membership spans the entire resource industry value chain: exploration, construction, commercial blasting, mining, hydrocarbons, maritime, smelting and refining, transport and energy, as well as suppliers to those industries.

AMMA works to ensure Australia's resource industry is an attractive and competitive place to invest, do business, employ people and contribute to our national wellbeing and living standards.

The resource industry is and will remain a major pillar of the national economy and its success will be critical to what Australia can achieve as a society in the 21st Century and beyond.

The Australian resource industry currently directly generates over 8% of Australia's GDP. In 2014-15, the value of Australian resource exports was \$171.9 billion. This is projected to increase to \$256 billion in 2019-20. It is forecast that Australian resources will comprise the nation's top three exports by 2018-19. Over 50% of the value of all Australian exports are from the resource industry.

Australia is ranked number one in the world for iron ore, uranium, gold, zinc and nickel reserves, second for copper and bauxite reserves, fifth for thermal coal reserves, sixth for shale oil reserves and seventh for shale gas reserves.

AMMA members across the resource industry are responsible for significant levels of employment in Australia. The resources extraction and services industry directly employs 219,800 people. Adding resource-related construction and manufacturing, the industry directly accounts for four per cent of total employment in Australia.

Considering the significant flow-on benefits of the sector, an estimated 10 per cent of our national workforce, or 1.1 million Australians, is employed as a result of the resource industry.

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## Introduction

1. AMMA welcomes the opportunity to make this brief submission to the Committee on the *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016* (the Bill).
2. AMMA and its members are not directly party to the Victorian Country Fire Authority (CFA) “dispute”; and AMMA has not been involved in negotiations between the CFA and the United Firefighters Union of Victoria (the UFU).
3. However, resource organisations have a clear interest in the efficiency and accessibility of volunteer firefighting services in Victoria; in the appropriate resolution of the CFA / UFU negotiations; and in the matters addressed in the current Bill.
4. AMMA's interest in this Bill encompasses at least the following:
  - a. AMMA members operate throughout the state of Victoria, including in fire-prone regional and rural areas. The safety of employees' homes, workplaces, and critical community infrastructure relies on the safety, efficiency and timeliness of the emergency services the CFA provides.
  - b. Resource industry employees and managers participate in volunteer firefighting to protect their communities. The resource industry values and supports the contribution all emergency services volunteers make to regional and rural communities, and to all Victorians.
  - c. Major hazard and site safety planning for Victorian resource workplaces often incorporates a specific role for the CFA, either as the sole fire-fighting service, or to work with on-site fire services.
  - d. The CFA plays a critical role in hazard / incident planning for resource workplaces beyond metropolitan Melbourne (in the rural and regional areas where the vast bulk of extractive operations are undertaken).
  - e. The safety of Victorian resource facilities, of employers, employees and the surrounding community, and the continuity of supply for gas and electricity rely on the services provided by the CFA, and in particular its volunteers.
  - f. Victoria has experienced the human and community impacts of a sustained interruption of gas supply during the past two decades, and all Victorians support the role of the CFA in ensuring that is not repeated.

- g. As a member of the National Workplace Relations Consultative Council (NWRCC) established under the *National Workplace Relations Consultative Council Act 2002*, AMMA takes seriously its role in considering and providing input to both government and parliament on the range of proposed amendments to the Fair Work Act.

## AMMA's position on key provisions of the Bill

5. With the above introductory comments, AMMA's input on the Bill is directed to its specific provisions.
6. **This is fundamentally about protecting volunteers:** We invite Senators to review in particular the Bill's proposed s.195A(1) and the matters that would be objectionable under that new section. Those matters directly reflect the very strong support for volunteers and volunteering across the Australian community.
7. If these changes are passed, enterprise agreements would no longer be able to impose limits on:
  - a. The engagement or deployment of volunteers (s.195A(1)(a)(i)).
  - b. Support for volunteers and the equipment they use (s.195A(1)(a)(ii)).
  - c. The capacity of an organisation like the CFA to manage its volunteer operations (s.195A(1)(a)(iv)).
  - d. The capacity of an organisation like the CFA to recognise and value its volunteers (s.195A(1)(c)).
8. These are essential capacities for a volunteer-reliant organisation such as the CFA to be able to operate effectively. These capacities must be retained in the community interest, and at its heart, that is what the Bill will achieve.
9. The importance of the Bill to the volunteers impacted on by the proposed CFA / UFU enterprise agreement is clear from looking at the reaction of Volunteer Fire Brigades Victoria (VFBV):

*Yesterday, Monday 22 August, the Federal Government released its draft legislation, the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 in accordance with its commitment made during the Federal Election (you can download a copy of the Bill below).*

*VFBV was able to provide valuable input to the development of the legislation, and we are very pleased that it has shaped up in a way that we believe meets our concerns and deals with the practical issues affecting volunteers.*

*The legislation will be a simple change to the Fair Work Act, making it objectionable for workplace agreements to restrict or limit the emergency service organisation's ability to:*

*engage or deploy its volunteers;*

*provide support or equipment to those volunteers;*

*manage its relationship with, or work with, any recognised emergency management body in relation to those volunteers;*

*otherwise manage its operations in relation to those volunteers;*

*The legislation will also provide an ability for volunteers, through bodies such as VFBV, to make submissions to Fair Work Australia in respect of these issues if we have any concerns.*

*The amendments aim to fix an anomaly in Commonwealth law that affects CFA volunteers and the volunteers of other emergency service organisations covered by the Fair Work Act. The anomaly, which has been of concern over recent months, allows enterprise agreements for paid emergency service workers to override State emergency management laws such as the CFA Act.*

*For CFA volunteers, the anomaly means that if the proposed UFU agreement was adopted under current Commonwealth industrial law, it would effectively allow industrial interference into the organisation, operation and support of CFA volunteers, and CFA decision making affecting volunteers.<sup>1</sup>*

10. **“Objectionable terms” is already a well-accepted concept in industrial law:** This Parliament has for more than a decade regulated what can and cannot be included in an enterprise agreement.
11. Employers and employees have never been free to agree to whatever they wish in enterprise agreements under the Fair Work Act (or the preceding legislation), particularly not where third parties are impacted upon.
  - a. The concept of “objectionable terms” already appears in the Fair Work Act, and was inserted in the current legislation by the former Rudd / Gillard Government in 2009 (with Greens' support).

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<sup>1</sup> <http://www.vfbv.com.au/index.php/component/k2/item/538-the-federal-government-s-volunteer-protection-amendments-to-the-fair-work-act> (emphasis added)

- b. That concept was also included in the pre-2009 legislation as “prohibited content” and, before that, through long standing restrictions on award making.
  - c. Both major political parties have accepted the concept of restricting agreement content for well over a decade.
  - d. It is entirely legitimate for the Parliament to regulate the matters that can and cannot be included in an agreement that becomes legally enforceable.
12. **We have long accepted giving voice to the voiceless in approving agreements:** The Bill's proposed s.254A and s.281AA seek to empower bodies representing volunteers to make submissions in the approval of agreements that will impact on them. Our workplace relations system has long accepted that persons and organisations potentially impacted by the independent umpire's decisions can and (generally) should be heard prior to such decisions being made (through the long standing notion of intervention in proceedings).
13. In this case, the Bill's proposed amendments would provide natural justice to volunteers to inject their views into the making of rules that will impact upon them.
14. **The impact of these changes is restricted to emergency services:** The impact of the Bill's proposed amendments is tightly qualified and will apply only to emergency management and to actions “restricting or limiting”<sup>2</sup> volunteering.
- a. This highly specialised and targeted legislation will have very tightly restricted application.
  - b. AMMA can see no scope for any impact on bargaining outside the emergency services sector.

## How the senate should proceed

15. The Senate should **pass this Bill as a matter of urgency**.
16. This should allow the CFA and UFU to return to the negotiating table with greater clarity on the legitimate parameters for their negotiations, and equip them to progress a revised agreement as rapidly as possible.
17. The proposed amendments will also provide greater certainty for CFA volunteers that their contribution will be properly respected and not be prejudiced by negotiations between the CFA and UFU.

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<sup>2</sup> Proposed s.195A(2).

18. Urgent passage of these amendments and clarity for all concerned appears particularly important as Victoria enters another annual fire season, notwithstanding that any revised agreement is now very unlikely to be secured prior to active CFA deployments.
19. We welcome recent indications from the CFA that operational arrangements are in already in place to ensure that enterprise agreement negotiations do not impact on operational matters in coming months:

*The summer fire season is approaching, and the CFA Board has acted decisively to give communities certainty by advising CFA's Chief Officer, Steve Warrington, that he has full authority over all volunteers and career firefighters to protect public safety.<sup>3</sup>*

20. AMMA does not seek to participate in the Committee's hearings on the Bill, preferring to leave that opportunity for organisations closer to the CFA dispute. We would, however, be pleased to clarify or provide any further information on this submission that may be of assistance.

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<sup>3</sup> Source: <http://news.cfa.vic.gov.au/news/vote-on-operational-enterprise-agreement-deferred.html>