



**Submission to the
Senate Education and Employment Legislation
Committee inquiry into the provisions of the
Fair Work Amendment (Respect for
Emergency Services Volunteers) Bill 2016**

September 2016

NFF Member Organisations





The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic and environmental fabric.

Social >

There are approximately 132,000 farm businesses in Australia, 99 per cent of which are Australian family owned and operated.

Each Australian farmer produces enough food each year to feed 600 people, 150 at home and 450 overseas. Australian farms produce around 93 per cent of the total volume of food consumed in Australia.

Economic >

The agricultural sector, at farm-gate, contributes 2.4 per cent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production in 2016-17 is forecast at 58.5 billion – a 12 per cent increase from the previous financial year.

Together with vital value-adding processes for food and fibre after it leaves the farm, along with the value of farm input activities, agriculture's contribution to GDP averages out at around 12 per cent (over \$155 billion).

Environmental >

Australian farmers are environmental stewards, owning, managing and caring for 52 per cent of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 94 per cent of Australian farmers actively undertaking natural resource management.

The NFF was a founding partner of the Landcare movement, which recently celebrated its 20th anniversary.

Contents

Statistics on Australian Agriculture	4
Contents	5
Executive Summary	6
1. Introduction.....	7
2. The context.....	7
3. The bill	9
4. The CFA dispute	10
4. The CFA Agreement.....	11
5. Conclusion	16
6. Recommendation	16

Executive Summary

The NFF supports the *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016*.

The bill seeks to protect volunteers from unreasonable and unjustifiable limits on their involvement in emergency service activities.

The bill has its origins in the long running and bitter dispute between the Country Fire Authority and the United Firefighters Union, although it affects volunteer emergency services across the country. This is an important step to provide clarity and support for volunteers. Despite repeated assurances that volunteer firefighters will not be adversely affected by the CFA Agreement, it contains a range of enterprise agreement terms that will constrain the CFA Chief Officer and limit the activities and employment and promotion opportunities of rural fire service volunteers.

There is no reason why the CFA Agreement cannot and should not be modified so that it operates fairly both for career firefighters and for volunteers. Recognising the important role of rural fire services volunteers is the least we can do as a community. These volunteers make up the overwhelming majority of Australia's rural fire services. They put their lives on the line when called upon, and they do so at no cost to the economy, saving taxpayers many millions each year.

The Committee should recommend that the bill be passed without amendment.

1. Introduction

On 1 September 2016, the Senate referred an inquiry into the provisions of the *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016* (the bill) to the Senate Education and Employment Legislation Committee for inquiry and report by 10 October 2016.

If passed, the bill will invalidate enterprise agreement terms that detract from the capacity of volunteer emergency services bodies, such as volunteer fire-fighting bodies, to properly manage their operations. It will also limit the capacity of the Commission to approve enterprise agreement terms of this kind.

This submission outlines the NFF’s views on the bill.

2. The context

There are approximately 220,000 volunteer rural firefighters in Australia and a further 5900 employees. In other words, more than 97% of rural firefighters are volunteers. For every day that a volunteer responds to an emergency in a rural area, the Australian economy saves up to \$300. If every volunteer was paid for just one day at that rate, it would cost the economy more than \$64 million.

Jurisdiction	Employees	Volunteers
Qld	2200	42000
Tas	250	4800
SA	133	13500
Vic	1180	55233
NSW	824	74516
WA	1100	29000
NT	180	300
ACT	343	531
Total	5830	219880

Local fire brigades are an important part of life in rural communities. They are made up of farmers, their families and friends. Volunteers give up their time and sometimes risk their lives to help others in times of emergency. They are called on to respond to a range of emergency situations, including bush and grass fires, house and structure fires, storm damage, search and rescue, motor vehicle accidents, community education and bush fire mitigation. This important contribution is one that should be recognized and supported by all Australian governments. Volunteers deserve better than to be put in a position where third party interests can dictate what they can and cannot do to support their communities in times of crisis.

All Australian jurisdictions have their own rural fire service. The following table describes the agencies responsible for suppressing wildfires in Australia in greater detail:

Jurisdiction	Urban	Rural	Land management agency
	Principally attend fire incidents within major urban centres	Principally attend fire incidents in rural areas	Attend fire incidents in National Parks and state forests
Queensland	Queensland Fire and Rescue Service incorporates both urban and rural fire services (Queensland Rural Fire Service); is staffed by largely permanent and volunteer staff		Queensland Parks and Wildlife Service is responsible for managing parks and forests reserves
			Forestry Plantations Queensland is responsible for managing softwood and hardwood forest plantations from the former Department of Primary Industry – Forestry
			Department of Natural Resources and Water (Forest Products) subsequent to the South East Queensland Regional Forests Agreement (December 1999); is responsible for native forests set aside for logging
South Australia	Metropolitan Fire Service provides fire services to major urban centres in South Australia; permanent and retained firefighters working from fire stations		Department of Environment and Heritage is responsible for fires that are on, or threaten, national parks and other conservation areas in South Australia
	Country Fire Service – provides fire services in rural areas as well as in smaller urban centres in South Australia; draws on volunteer firefighters		Forests SA manages state-owned forest resources
Western Australia	Fire and Emergency Services Authority (FESA) provides and coordinates fire services across WA. The Operations Services division within FESA incorporates two components – the Fire and Rescue Service of Western Australia (career and volunteer) and bushfire brigades (volunteer). Career firefighters within the Fire and Rescue Service operate from stations in metropolitan Perth and some major regional centres. The remainder of the state outside national parks and forests is covered by the Volunteer Fire and Rescue Service and volunteer Emergency Service Units (ESU), which are an amalgamation of the FRS, Bush Fire Service (BFS) and State Emergency Service (SES)		Department of Environment and Conservation is responsible for fires that are on, or threaten, national parks and forests in WA
Tasmania	Tasmania Fire Service provides coverage for both urban and rural areas, excluding national parks and state forests; comprises both career and volunteer firefighters		Tasmania Parks and Wildlife Service is responsible for managing national parks and other conservation reserves
			Forestry Tasmania is responsible for managing the state forests
Northern Territory	NT Fire and Rescue Service comprises both urban stations and volunteer/ community fire units; includes permanent staff, part-time auxiliaries and volunteers; principally operates in urban/community settlements	Bushfires Council responds only to grass fires and bushfires on land outside the Fire and Rescue Service response areas	
Australian Capital Territory	ACT Fire Brigade principally provides fire services in urban areas; comprises career firefighters	ACT Rural Fire Service is principally responsible for suppressing bush and grass fires within rural and remote areas of the ACT; incorporates one brigade staffed by ACT land management agencies	

	<u>Urban</u>	<u>Rural</u>	<u>Land management agency</u>
Jurisdiction	Principally attend fire incidents within major urban centres	Principally attend fire incidents in rural areas	Attend fire incidents in National Parks and state forests
New South Wales	NSW Fire Brigades provides urban fire services to major metropolitan and regional urban centres; principally permanent and retained firefighters working from fire stations but also includes community fire units and their members	NSW Rural Fire Service provides fire services to most of regional New South Wales outside major urban centres, but does provide firefighting services in more than 1,200 towns and villages; fire-fighting duties principally lie with volunteers	Forests NSW is responsible for managing public native forests as well as hardwood and softwood planted forests
			National Parks and Wildlife Service is responsible for managing National Parks and other conservation reserves
Victoria	Metropolitan Fire and Emergency Services Board provides urban fire services coverage from the Melbourne CBD to the middle and outer suburbs; principally permanent and retained firefighters working from fire stations		Department of Sustainability and Environment is responsible for public lands
	Country Fire Authority provides urban and rural fire services coverage for all parts of Victoria other than the Melbourne Metropolitan Fire District and public lands; this includes outer metropolitan Melbourne and regional centres; incorporates some career firefighters who work from urban stations but is heavily reliant on volunteers in regional Victoria		

Source: Bryant C *Understanding bushfire: trends in deliberate vegetation fires in Australia* Australian Institute of Criminology 2008

3. The bill

The bill seeks to protect the role of volunteer emergency management bodies in retaining managerial control over their operations and decisions. A volunteer emergency management body is defined as either:

- a fire-fighting body (or part of such a body);
- a Territory or State Emergency Service; or
- a body prescribed by the regulations.

The entity must have been established for a public purpose under an Australian law, and the regulations can carve out certain bodies from the scope of the new rules.

The bill invalidates existing or future enterprise agreement terms to the extent that they undermine the role of emergency services bodies in:

- Engaging or deploying volunteers;
- Providing support or equipment to those volunteers;
- Managing relationships with other recognized emergency management bodies in relation to those volunteers;
- Managing their operations;

- Deciding whether to consult, or reach agreement with, any other person or body before taking certain actions;
- Recognising, valuing, respecting or promoting the contribution of volunteers to the well-being and safety of the community; and
- Complying with relevant State or Territory laws.

Consultation terms that comply with the *Fair Work Act 2009* (for example, the model consultation term) will generally not be affected by the bill unless they are designed to hinder volunteer operations.

Finally, the bill gives volunteer bodies (those with a history of representing their volunteers and those prescribed by regulations) the right to make submissions to the Fair Work Commission in connection with enterprise agreements and workplace determinations that affect volunteers. This includes submissions in connection with the pending approval of the *Country Fire Authority / United Firefighters Union of Australia Operational Staff Enterprise Agreement 2016* (the CFA Agreement).

4. The CFA dispute

Although the bill does not deal directly with the CFA Agreement, its origins lie in the longstanding and bitter dispute between the Country Fire Authority (CFA) and the United Firefighters Union of Australia (UFU) over wages and conditions of employment.

The dispute affects Australian farmers with connections and/or involvement in the CFA as well as because of its likely impact on the Fire Services Property Levy that Victorian farmers, households and businesses pay to fund the CFA. The levy is calculated on a combined fixed and variable basis, according to land value. A farmer whose property has a capital improved value of \$1,000,000 would pay roughly \$473.00 each year.

While the Victorian Government has agreed to cover the base salary costs of 509 new career firefighters required to be employed under the CFA Agreement, a range of 'on costs' will fall to the CFA to cover (station and equipment upgrades, training, overtime and increased allowances). Annual salary increases alone have a compounding effect of 19% over three years, before allowances including reimbursement of driving license costs, a minimum one hours' pay per after hours disturbance with double time after that, stamp duty reimbursement for employees promoted or transferred to a new location who purchase a new property within 4 years of moving; and gym membership where gym facilities are not provided.

It is likely that the range of unfunded additional costs will need to be recovered through increases in the Fire Services Property Levy. This means that much of the burden of costs agreed to in resolution of the CFA dispute will be passed on to the farm sector.

4. The CFA Agreement

At the heart of the CFA dispute is the terms of the CFA Agreement.

In an attempt to appease deeply held concern about its effect, the final “version 17.4” of the CFA Agreement included a new term as follows:

- 7A THE ROLE OF VOLUNTEERS
- 7A.1 The role of volunteers in fighting bushfires and maintaining community safety and delivering high quality services to the public in remote and regional areas and in integrated stations, is not altered by this Agreement.
- 7A.2 For the avoidance of doubt, except as provided in Clause 60- Peer Support, nothing in this agreement shall prevent volunteers in the CFA from providing the services normally provided by such volunteers without remuneration.

Despite this term, there are a number of terms in the Agreement that impede the efficient operation of CFA in relation to volunteers and prevent them from transitioning into paid employment.

Powers of the CFA Chief Officer

Under the *Country Fire Authority Act 1958* (CFA Act), the Chief Officer has control of all brigades and has a range of powers and duties:

- 27 Chief Officer to have control of all brigades etc.**
- (1) Subject to the general powers and directions of the Authority every brigade or group of brigades and all officers and members of brigades or group of brigades shall be under the order and control of the Chief Officer.
- (2) The Chief Officer may—
- (a) classify a brigade based on its risk profile; and
- (b) designate the area of operation of a brigade.

29 General powers and duties of Chief Officer

Within the country area of Victoria the Chief Officer shall in addition to such other duties as the Authority determines carry out the duties and exercise the powers following (that is to say):

(c) He shall at all times have the charge and control of all apparatus and other property of the Authority and shall cause the same to be kept in a fit state at all times for efficient service.

30 Powers of officers at fires

(1) Where the Chief Officer believes on reasonable grounds that there is danger of fire occurring or where a fire is burning or has recently been extinguished anywhere within the country area of Victoria the Chief Officer for the purpose of preventing the occurrence of a fire, of extinguishing or restricting the spread of the fire or of protecting life or property shall have and may exercise the following powers and authorities:

(b) He shall have the control and direction of—

(i) any brigade or brigades present at the scene of the fire; and

(ii) any persons who voluntarily place their services at his disposal either individually or as members of any fire fighting organization (whether established by or for the purposes of a statutory authority or body corporate or not) whilst they remain present at the scene of the fire.

20A Attendances unconnected with a fire

(1) Notwithstanding anything in this Act the Authority, any group of brigades or any brigade (other than an industry brigade) may, subject to subsection (2), in response to a call for assistance, attend and carry out any function in relation to the provision of assistance to any person or the protection of any property involved in any accident or emergency not connected with the suppression or prevention of fire and the provisions of this Act shall with such adaptations and variations as are necessary apply to and in relation thereto to the same extent as in the case of the prevention and suppression of fire or the protection of life and property in the case of fire.

(2) No attendance or action shall be made or taken by any group of brigades or any brigade pursuant to subsection (1) unless the approval of the Chief Officer or the officer exercising the powers of the Chief Officer has been obtained or in any case where this is not practicable the Officer-in-Charge of any brigade involved has caused the attendance of such brigade to be subsequently reported to the Chief Officer or officer exercising the powers of the Chief Officer for his approval.

In addition, section 6G(c) of Part 1 of the CFA Act requires:

Recognition of the Volunteer Charter

The Parliament recognises that the Volunteer Charter—

- (a) is a statement of the commitment and principles that apply to the relationship between the Government of Victoria, the Authority and volunteer officers and members; and
- (b) requires that the Authority recognise, value, respect and promote the contribution of volunteer officers and members to the well-being and safety of the community; and
- (c) requires that the Government of Victoria and the Authority commit to consulting with Volunteer Fire Brigades Victoria Incorporated on behalf of volunteer officers and members on any matter that might reasonably be expected to affect them.

The CFA Agreement

Almost 40 separate clauses in the CFA Agreement require the CFA to go through a consultation process before making decisions to deploy staff or resources, procure new equipment or make policy changes. Under what is known as ‘clause 21 referral’, a range of matters must be referred to the Consultation Committee established under the CFA Agreement:

“21.5.5. No proposal for change arising from this agreement shall be implemented without referral to the Consultative Committee.”

The Consultation Committee is made up of:

“equal numbers of employer and employee representatives appointed by the employer and UFU respectively”.

Consultation:

“shall occur throughout the development of a proposal from concept through to implementation. This includes but is not limited to instances where the CFA commence projects or research that may affect an employees terms or conditions outlined in this agreement.”

Importantly, clause 21 requires the Committee to “operate on the basis of consensus”. In other words, the union has the right of veto. If agreement cannot be reached on a matter brought forward by the CFA or its Chief Officer, it cannot be implemented. Instead, the matter can be referred to the Fair Work Commission for conciliation or arbitration.

Examples of the decisions that require union approval through the Consultation Committee include:

- changes to Volunteer Support Programs or Officers (clause 16):

(at 16.1) “Given the agreed impact of such programs and roles on persons covered by this Agreement, the parties have agreed that the CFA will consult and reach agreement with the UFU under clause 21 on the structure of any Volunteer Support Programs impacting on employees and/or any implementation of Volunteer Support Officers (or person(s) engaged in any similar classification or position howsoever named) impacting on employees, prior to any such decision or implementation.”

...

(at 16.4) “In recognition of operational knowledge, experience and requirements, all operational personnel of the CFA shall have a administrative reporting line to operational staff.”

- Ability to deploy recruits (clause 44.20.9)

“At the conclusion of each recruit training course or as otherwise agreed between the CFA and the UFU, the CFA will deploy all qualified recruit firefighters in the manner determined following consultation in accordance with clause 21 Consultation”.

- Creation of new positions (clause 44.20.10)

“Consultation on the creation of any new positions and the deployment of personnel into positions shall occur in accordance with clause 21 Consultation.”

- Appliances (introduction, refurbishment and rebuilds) (clause 83.12-5)

“Any new appliance proposed to be introduced into the CFA will only be introduced via the consultation clause in accordance with clause 21. No introduction will occur otherwise. Consultation will be on all aspects including but not limited to the design and specification, infrastructure, staffing levels and conditions, training and allowances related to the appliance...

...“UFU will inspect appliance/s at least three stages during the build and on completion or at any change in a Manufacturer or at the completion of a run of appliances.

...“For the avoidance of doubt, this clause will also apply to any refurbishment or rebuild of an appliance/s.”

A number of other terms of the CFA Agreement limit the discretion of the CFA and its Chief Officer in directing and controlling work performed by volunteers:

- Industry Brigades (Clause 18)

“In determining the appropriate number and location of career staff and the work those career staff are to perform, the CFA will not rely on the existence of alleged capacity of any industry brigades, emergency brigades or other private emergency teams....

...The CFA shall provide a copy of any MoU having any impact on the work of CFA employees between the CFA and any third party regarding industry brigades, emergency brigades or other private emergency teams to the UFU within 7 days of it being entered into....”

- Commencing firefighting operations (clauses 43.2.7 and 77.5)

“Consistent with the increases in staffing provided in this Agreement, the CFA will conduct an extensive range of preventative and preparedness programs and meet its duty of care by ensuring a minimum of seven professional firefighters to fireground incidents are dispatched before commencement of safe firefighting operations. This requirement applies to integrated stations in Districts 2, 7, 8, 13, 14, 15 and 27. Consistent with the increases in staffing provided for in this Agreement, CFA will also ensure that there is a minimum of seven professional firefighters to fireground incidents that professional firefighters are dispatched to before commencement of safe firefighting operations for the following integrated stations being Shepparton and Mildura professional firefighters by no later than 1 January 2017 and Warrnambool professional firefighters by no later than 1 January 2018.”

- Minimum crewing levels (clause 44.14)

“The CFA will meet its duty of care by ensuring that there are four professional career firefighters on all appliances except as where agreed as provided in the Charts in Schedule 1 as applicable from time to time and clause 43.2.6.”

- Cross crewing (clause 44.15)

“There will be no cross crewing of any appliance unless otherwise agreed by the parties.”

In addition, there are direct prohibitions on the CFA’s general right to employ and to terminate employment:

- Classifications, Career Paths and Opportunities (clause 12)

“Where Communications Technical Services Officer, Protective Equipment Technician, Senior Protective Equipment Technician, Pad Operator and Pad Supervisor vacant positions arise, the CFA will offer these positions to employees already employed under the Agreement...”.

“No new classification or rank will be created other than by agreement of the parties (clause 12.13).”

- Employment of part-time and casual employees (clause 50.2)

“The CFA will not employ an employee on a part-time or casual basis, and no employee may hold a position on such a basis, unless in each case there is agreement between all parties on a case by case basis (agreement is required for each employee).”

- Redundancy (clause 44.18)

“The CFA will not make any employee redundant, either by targeted or voluntary redundancy.”

These are just some examples of terms in the CFA Agreement that may adversely affect the role of volunteer firefighters working within the CFA.

5. Conclusion

The NFF supports the bill, because it seeks to avoid adverse outcomes for volunteers that will otherwise flow from enterprise agreements such as the CFA Agreement.

Despite assurances that volunteers will not be affected by the CFA Agreement, it is clear that there are a range of enterprise agreement terms that will constrain the CFA Chief Officer and limit the activities and employment opportunities of volunteers.

There is no reason why the CFA Agreement cannot be modified so that it operates fairly for career firefighters without unfairly impacting on volunteers. If passed, the bill would have this effect without needing to once again revisit negotiations between the parties in what is likely to be an increasingly hostile environment.

6. Recommendation

The NFF encourages the Committee to recommend that the bill be passed without amendment.