

# Chapter 1

## Introduction

### Reference

1.1 On 31 August 2016 the Prime Minister, the Hon. Malcolm Turnbull MP, introduced the Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016 (the bill) in the House of Representatives.<sup>1</sup> On 1 September 2016 the Senate referred the provisions of the bill to the Senate Education and Employment Legislation Committee for inquiry and report by 10 October 2016.<sup>2</sup>

### Conduct of the inquiry

1.2 Details of the inquiry were made available on the committee's website. The committee also wrote to key stakeholders, groups, organisations and individuals to invite submissions.

1.3 The committee received 334 submissions as detailed in Appendix 1.

1.4 Public hearings were held in Macedon in regional Victoria on 19 September 2016 and Melbourne on 28 September 2016. Witness lists for the hearings are available in Appendix 2.

### Terminology

1.5 The enterprise bargaining agreement (EBA) between the Country Fire Authority (CFA) in Victoria and the United Firefighters Union (UFU) refers to paid firefighters as 'professional firefighters'. However, the committee is mindful of the view put by volunteer firefighters that they also consider themselves to be professional firefighters. To distinguish between the two groups of firefighters, this report refers to either career (paid) firefighters or volunteer firefighters.

### Context

1.6 The *Fair Work Act 2009* (FW Act) and the Fair Work Regulations 2009 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.<sup>3</sup>

1.7 In approving an EBA made under the FW Act, the Fair Work Commission (FWC) must be satisfied that it does not contain any unlawful terms. Unlawful terms

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1 *Votes and Proceedings No. 2*, 31 August 2016, p. 48.

2 *Journals of the Senate No. 3*, 1 September 2016, p. 92.

3 Department of Employment, *Submission 2*, p. 3.

of an enterprise agreement are legally ineffective but do not render the agreement invalid.<sup>4</sup>

1.8 The FWC is currently able to inform itself on any matter before it, including by inviting oral and written submissions. However, the FW Act does not entitle a volunteer body to make a submission about a matter involving an enterprise agreement that is before the FWC, even if the matter could affect the volunteers represented by that body.<sup>5</sup>

1.9 The CFA and the UFU have been involved in a protracted enterprise bargaining dispute for over three years. The current enterprise agreement nominally expired on 30 September 2013.<sup>6</sup>

1.10 The negotiations on the proposed EBA are complicated by the fact that the CFA is comprised overwhelmingly of a volunteer workforce (approximately 97 per cent). Moreover, the rights of those volunteers are explicitly recognised in Victorian legislation through the Volunteer Charter that is enshrined in the *Country Fire Authority Act 1958 (Vic)* (CFA Act).<sup>7</sup>

1.11 The former CFA Board was concerned that the proposed EBA would:

- be inconsistent with the CFA Act under which the CFA is required to operate, thereby placing the CFA in breach of its statutory obligations;
- undermine volunteers and the volunteer culture of the CFA and thereby adversely impact the predominantly volunteer firefighting capacity of the CFA;
- adversely affect how the CFA manages its large contingent of volunteer firefighters; and
- be discriminatory.<sup>8</sup>

1.12 On 1 June 2016, the FWC made recommendations intended to resolve the dispute. Commissioner Roe specifically noted that the requirement to dispatch seven career firefighters<sup>9</sup> to an incident only applied to the limited number of integrated fire stations (see chapter three).<sup>10</sup>

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4 Department of Employment, *Submission 2*, pp. 4–5.

5 Department of Employment, *Submission 2*, p. 5.

6 Department of Employment, *Submission 2*, p. 3.

7 *Country Fire Authority Act 1958 (Vic)*, sections 6F–6I, [www.austlii.edu.au/au/legis/vic/consol\\_act/cfaa1958292/](http://www.austlii.edu.au/au/legis/vic/consol_act/cfaa1958292/), (accessed 22 September 2016).

8 Department of Employment, *Submission 2*, p. 3.

9 As noted above, the term 'career firefighter' refers to what the EBA terms 'professional firefighter'.

10 Fair Work Commission, *Final Recommendation, United Firefighters' Union of Australia v Country Fire Authority*, 1 June 2016, Melbourne, pp. 2–3, <http://cfaonline.cfa.vic.gov.au/mycfa/Show?pageId=publicDisplayDoc&docId=026463> (accessed 22 September 2016).

1.13 On 6 June 2016, the CFA Board was unable to approve the proposed EBA (including the recommendations made by the FWC).<sup>11</sup>

1.14 On 10 June 2016 the Victorian government accepted the FWC's recommendations as a basis for agreement and inserted additional clauses into the EBA to protect the position of volunteer firefighters.<sup>12</sup>

1.15 On 10 June 2016 the Victorian government began the process of dismissing the Board after it refused to support the proposed EBA. The Victorian Minister for Emergency Services resigned on 10 June 2016, the CFA Chief Executive Officer resigned on 17 June 2016, and the CFA Chief (Fire) Officer resigned on 30 June 2016.<sup>13</sup>

1.16 A new CFA Board was appointed with five members nominated by the government and four members nominated by Volunteer Fire Brigades Victoria (VFBV). The new CFA Board reached agreement with the UFU after some minor changes were made to the proposed EBA.<sup>14</sup>

1.17 The proposed EBA 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 application by VFBV. Hearings in relation to this matter will commence on 22 September 2016.

1.18 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 CFA Act. It is not a proceeding that will consider the lawfulness of the proposed EBA in so far as it is a valid agreement under the Commonwealth FW Act.<sup>15</sup>

### **Purpose and overview of the bill**

1.19 In his second reading speech the Prime Minister stated that the bill was a response by the federal government to protect volunteer firefighters in Victoria from a union takeover. The Prime Minister further stated that the Victorian state government had taken sides against the volunteers.<sup>16</sup>

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11 Department of Employment, *Submission 2*, p. 3.

12 The Hon. James Merlino MP, Deputy Premier of Victoria and Emergency Services Minister, 'Statement on the CFA Board', *Media Release*, 10 June 2016, <https://284532a540b00726ab7e-ff7c063c60e1f1cafc9413f00ac5293c.ssl.cf4.rackcdn.com/wp-content/uploads/2016/06/160610-Statement-On-The-CFA-Board.pdf> (accessed 22 September 2016).

13 Department of Employment, *Submission 2*, p. 3.

14 Department of Employment, *Submission 2*, p. 3.

15 Department of Employment, *Submission 2*, pp. 3–4.

16 Prime Minister, the Hon Malcolm Turnbull MP, Second reading speech, *House of Representatives Hansard*, 31 August 2016, pp. 24–26, [http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/f706773d-28cd-4fb7-b62a-9ed884a645d8/0045/hansard\\_frag.pdf;fileType=application%2Fpdf](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/f706773d-28cd-4fb7-b62a-9ed884a645d8/0045/hansard_frag.pdf;fileType=application%2Fpdf), (accessed 22 September 2016).

***Objectionable emergency management term***

1.20 The bill seeks to amend the FW Act to protect emergency services bodies and their volunteers. It does this by providing that a term which meets the definition of an 'objectionable emergency management term' is not to be included in an enterprise agreement, or that it has no effect, if it undermines 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.<sup>17</sup>

1.21 The bill amends the definition of unlawful terms in enterprise agreements to include an 'objectionable emergency management term' that cannot be included in an agreement covering a designated emergency management body.<sup>18</sup>

1.22 A designated emergency management body is defined as:

- a body that 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
- a body that is, or is a part of a body that is, established for a public purpose by or under a Commonwealth, State or Territory law.<sup>19</sup>

1.23 The bill also provides that regulations may be made to provide that a body is not an emergency management body.<sup>20</sup>

1.24 An enterprise agreement that covers a designated emergency management body cannot include an objectionable emergency management term—that is, a term that has, or is likely to have, the effect of:

- restricting or limiting the body'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; 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 those volunteers; managing its relationship with, or working with, any recognised emergency management body in relation to those volunteers; otherwise managing its operations in relation to those 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

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17 Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016, *Explanatory Memorandum*, p. iv.

18 *Explanatory Memorandum*, p. i.

19 *Explanatory Memorandum*, p. i.

20 Department of Employment, *Submission 2*, p. 6.

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- requiring or permitting the body to act other than in accordance with a law of a State or Territory, so far as the law confers or imposes on the body a power, function, or duty that affects or could affect its volunteers.<sup>21</sup>

1.25 The bill therefore applies to fire-fighting, State Emergency Service bodies and other prescribed emergency management bodies that are covered by the FW 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.<sup>22</sup>

1.26 This means that the bill will apply to the Victorian CFA and Victorian State Emergency Service because Victoria is the only state that has referred power to the Commonwealth on workplace relations matters relating to state public sector employers and employees. The bill will also apply to State Emergency Services in the Australian Capital Territory and Northern Territory. However, the bill may not apply to fire-fighting bodies or emergency services in other States as, to the extent these bodies are not constitutional ('or trading') corporations, these bodies are not covered by the FW Act because, unlike Victoria, other States have not referred their industrial relations powers over their public sectors to the Commonwealth.<sup>23</sup>

1.27 The bill is not legally retrospective but does alter how agreements in force prior to commencement will operate in the future. Clause 14 provides that the amendments will apply to new and existing enterprise agreements. At the approval stage of an EBA, if the FWC finds that an agreement includes an 'objectionable emergency management term', the FWC would not be able to approve that agreement with that term. Subclause 14(3) provides that if an existing enterprise 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 enterprise agreement would otherwise continue to operate.<sup>24</sup>

### ***Entitlement for volunteer bodies to make submissions***

1.28 New sections 254A and 281AA provide an entitlement to certain volunteer bodies to make submissions to the FWC in relation to matters about enterprise agreements or workplace determinations that affect, or could affect, the volunteers of a designated emergency management body.<sup>25</sup>

1.29 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

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21 *Explanatory Memorandum*, p. i.

22 Department of Employment, *Submission 2*, p. 6.

23 Victorian Government, *Submission 1*, pp. 3–4.

24 Department of Employment, *Submission 2*, p. 6.

25 *Explanatory Memorandum*, p. i.

- a body prescribed for this purpose by the regulations.<sup>26</sup>

### **Structure of the report**

1.30 Chapter two provides a background to the firefighters' dispute in Victoria. The chapter outlines the key players in the dispute, relevant sections of the CFA Act, and provides a timeline of the firefighting dispute in Victoria.

1.31 Chapter three discusses the contested elements of the proposed CFA-UFU EBA and the key issues that the bill seeks to address.

### **Compatibility with human rights**

1.32 The bill engages the following human rights: the right to work, the right to just and favourable conditions of work, the right to equality and non-discrimination, the right to freedom of association, and the right to form and join trade unions.<sup>27</sup>

1.33 The bills' statement of compatibility with human rights states that the bill is compatible with human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.<sup>28</sup>

### **Scrutiny of Bills Committee**

1.34 The Senate Standing Committee for the Scrutiny of Bills had not reported on the bill at the time that this report was tabled.

### **Financial Impact Statement**

1.35 The explanatory memorandum states that the bill will have no financial implications.<sup>29</sup>

### **Acknowledgement**

1.36 The committee thanks those individuals and organisations who contributed to this inquiry by preparing written submissions and giving evidence at hearings. The committee particularly thanks those on-the-ground firefighters, both volunteer and career, that appeared before the committee in Macedon.

### **Notes on references**

1.37 References in this report to the Hansard for the public hearings are to the Proof Hansard. Please note that page numbers may vary between the proof and official transcripts.

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26 *Explanatory Memorandum*, p. i.

27 Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016, Statement of compatibility with human rights, p. v.

28 Statement of compatibility with human rights, p. iv.

29 *Explanatory Memorandum*, p. iii.