

Submission to the Senate Education and Employment Committee

Inquiry into the Fair Work Amendment
(Respect for Emergency Services Volunteers) Bill 2016
[provisions]

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Australian Nursing & Midwifery Federation

PO Box 4239 Kingston ACT 2604

T: 02 6232 6533

F: 02 6232 6610

E: anmfcanberra@anmf.org.au

W: www.anmf.org.au

1. **Summary**

1.1 The Australian Nursing and Midwifery Federation (ANMF) opposes the *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016* and submits that it should be rejected. The Bill represents an unnecessary intrusion into existing collective bargaining arrangements. In addition, the proposed legislation has potentially far-reaching scope.

2. **The ANMF and nursing demographics**

2.1 The ANMF is the national union for nurses, midwives and assistants in nursing with branches in each state and territory of Australia. The ANMF is also the largest professional nursing and midwifery organisation in Australia. The ANMF's core business is the industrial, professional and political representation of its members.

2.2 As members of the union, the ANMF represents over 240,000 registered nurses, midwives and assistants in nursing nationally. They are employed in a wide range of enterprises in urban, rural and remote locations, in the public, private and aged care sectors including nursing homes, hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, and off-shore territories and industries.

3. **Specific comments on the *Fair Work Amendment (Respect for Emergency Services Volunteers) Bill 2016***

3.1 **General comments**

3.1.1 For the reasons largely outlined by the Australian Council of Trade Unions (ACTU) in its submission, which the ANMF supports, the ANMF opposes the Bill and submits that it should be rejected.

3.1.2 As noted by the ACTU, the Bill is inconsistent with the collective bargaining framework. It undermines collective bargaining by unnecessarily interfering with negotiations between employees, their representatives and employers.

3.1.3 While volunteers have an important role to play in many organisations, employees should retain their existing right to negotiate and agree with management on terms and conditions that may affect volunteers.

3.2 **Specific provisions**

3.2.1 In addition to the reasons outlined above, the ANMF considers that the Bill should not be passed for the following reasons.

Scope of provisions

3.2.2 The Bill constitutes a political reaction to one dispute in Victoria. While not justified in any event (as outlined above), the terms of the proposed legislation have the potential to extend well beyond that one dispute.

3.2.3 The Bill would amend the Act by adding “objectionable emergency management terms” to the list of unlawful terms that cannot be included in enterprise agreements.

3.2.4 The amendments would apply to enterprise agreements made by employers that are “designated emergency management bodies”, as defined in proposed subsection 195A(4). In addition to fire-fighting bodies or State Emergency Services, the Bill’s provisions would apply to “recognised emergency management bodies” prescribed by regulations.

3.2.5 Regulations are yet to be provided or released, and the Explanatory Memorandum sheds little light on which organisations will, or might be, prescribed by the regulations.

3.2.6 As noted by the Explanatory Memorandum (at [24]), the term “recognised emergency management body” is already defined by subsection 109(3) of the Fair Work Act.

3.2.7 This definition could easily enable regulations to be made that would bring a wide range of organisations within the scope of the Act.

3.2.8 Of specific concern to the ANMF is that several elements of the definition of “recognised emergency management body” could easily apply to various organisations in the health industry which employ nurses and midwives and engage volunteers, for example public hospitals, Australian Red Cross, etc.

3.2.9 This is because a “recognised emergency management body” includes “a body, or part of a body, that has a role or function under a plan that (i) is for coping with emergencies and/or

disasters; and (ii) is prepared by the Commonwealth, a State or a Territory” (proposed s.109(3)(a)).

3.2.10 State emergency management plans may specify a role or function for public hospitals and other health organisations. For example, in Victoria the State Emergency Response Plan outlines the arrangements for coordinated responses to emergencies by various agencies with a role or responsibility in emergency response.¹ The Plan includes references to the roles played by organisations such as the Victorian Department of Health and Human Services and the Australian Red Cross.

3.2.11 Public hospitals probably also fall within another limb of section 109 which (at paragraph(3)(c)), further defines a “recognised emergency management body” as ‘any other body, or part of a body, a substantial purpose of which involves: (i) securing the safety of persons or animals in an emergency or natural disaster; or ... (iii) otherwise responding to an emergency or natural disaster ...’

3.2.12 Clearly, a public hospital, especially an emergency department, or Red Cross could be called upon to care for victims of an emergency or natural disaster.

3.2.13 Another example is the South Australian Ambulance Service, which among other things is responsible for the emergency medical retrieval service (MedStar) which employs nurses and midwives. SA Ambulance as an organisation relies heavily on volunteers especially in rural locations where it engages more than 1400 volunteers.²

Content of objectionable term

3.2.13 The legislation would define an “objectionable emergency management term” as one which would have or be “likely to have, the effect of” restricting management’s ability to, among other things:

- engage or deploy its volunteers
- provide support or equipment to those volunteers
- recognise, value, respect or promote the contribution of its volunteers
- “otherwise manage its operations in relation to those volunteers”.

¹ <https://www.emv.vic.gov.au/plans/revisedserp/>

² <http://www.saambulance.com.au/Volunteering.aspx>

- 3.2.14 Further any enterprise agreement provision for consultation regarding these matters would be prohibited.
- 3.2.15 This provision is extraordinarily wide and, especially in conjunction with the catchall phrase “otherwise manage its operations in relation to those volunteers” appears to have the effect of prohibiting any term whatsoever which has the potential to relate to volunteers.
- 3.2.16 Numerous hospitals engage volunteers. For example, the Royal Melbourne Hospital has approximately 500 volunteers who among other things perform ‘Ward Assist Roles’ which provide ‘direct support to patients, visitors and staff as part of a ward team’ and ‘provide practical and emotional support to patients and their families receiving care in the Emergency Department.’³
- 3.2.17 Given the potential for the use of volunteers to impact upon the working conditions of nurses and midwives, it might be appropriate in a particular situation for an employer, its employees and their unions (including the ANMF) to agree on a provision in an enterprise agreement that relates (or partly relates) to the use of volunteers, for example consultation in relation to occupational health and safety issues.
- 3.2.18 It is no comfort to the ANMF if it is claimed that it is not the intention that particular types of organisations be covered by these provisions. If a particular dispute arose, just like the Country Fire Authority dispute in Victoria, the federal government could easily decide for political reasons to attempt to determine the outcome of the dispute by making a regulation. Or alternatively, a regulation could be made which at a later date (perhaps years later) retrospectively makes clauses in an enterprise agreement, agreed to by both management and its employees and their representatives, of no effect.
- 3.2.19 For the reasons outlined, the ANMF considers that the Bill should be rejected in its entirety.

³ <https://www.thermh.org.au/volunteer>. Also see <http://www.austin.org.au/Assets/Files/Volunteer%20Services%20Brochure.pdf> regarding volunteers at the Austin Hospital.