



Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016

No. 62, 2016

**An Act to amend the *Fair Work Act 2009*, and for
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title	1
2	Commencement	2
3	Schedules	2
Schedule 1—Amendments		3
<i>Fair Work Act 2009</i>		<i>3</i>



Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016

No. 62, 2016

An Act to amend the *Fair Work Act 2009*, and for related purposes

[Assented to 12 October 2016]

The Parliament of Australia enacts:

1 Short title

This Act is the *Fair Work Amendment (Respect for Emergency
Services Volunteers) Act 2016*.

No. 62, 2016 *Fair Work Amendment (Respect for Emergency Services Volunteers)* 1
Act 2016

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	13 October 2016

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Fair Work Act 2009

1 Section 12

Insert:

designated emergency management body: see subsections 195A(4) and (5).

objectionable emergency management term of an enterprise agreement: see section 195A.

volunteer of a designated emergency management body: see subsection 195A(6).

2 At the end of subsection 29(2)

Add:

Note: In addition, a term of an enterprise agreement could be an unlawful term and of no effect if it requires or permits a designated emergency management body to act other than in accordance with a State or Territory law and this affects or could affect the body's volunteers (see paragraphs 194(baa), 195A(1)(d) and 253(1)(b)).

3 After paragraph 194(b)

Insert:

(baa) an objectionable emergency management term; or

4 At the end of Subdivision D of Division 4 of Part 2-4

Add:

195A Meaning of *objectionable emergency management term*

Objectionable emergency management term

- (1) A term of an enterprise agreement is an ***objectionable emergency management term*** if an employer covered by the agreement is a designated emergency management body and the term has, or is likely to have, the effect of:

- (a) restricting or limiting the body's ability to do any of the following:
 - (i) engage or deploy its volunteers;
 - (ii) provide support or equipment to those volunteers;
 - (iii) manage its relationship with, or work with, any recognised emergency management body in relation to those volunteers;
 - (iv) otherwise manage its operations in relation to those volunteers; or
 - (b) requiring the body to consult, or reach agreement with, any other person or body before taking any action for the purposes of doing anything mentioned in subparagraph (a)(i), (ii), (iii) or (iv); or
 - (c) 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
 - (d) 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.
- (2) However, a term of an enterprise agreement is not an ***objectionable emergency management term*** if:
- (a) both of the following apply:
 - (i) the term provides for the matters required by subsections 205(1) and (1A) (which deal with terms about consultation in enterprise agreements);
 - (ii) the term does not provide for any other matter that has, or is likely to have, the effect referred to in paragraph (1)(a), (b), (c) or (d) of this section; or
 - (b) the term is the model consultation term.
- (3) Paragraphs (1)(a), (b), (c) and (d) do not limit each other.

*Meaning of ***designated emergency management body****

- (4) A body is a ***designated emergency management body*** if:
- (a) either:

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- (i) the body is, or is a part of, a fire-fighting body or a State Emergency Service of a State or Territory (however described); or
 - (ii) the body is a recognised emergency management body that is prescribed by the regulations for the purposes of this subparagraph; and
 - (b) the body is, or is a part of a body that is, established for a public purpose by or under a law of the Commonwealth, a State or a Territory.
- (5) However, a body is not a ***designated emergency management body*** if the body is, or is a part of a body that is, prescribed by the regulations for the purposes of this subsection.

*Meaning of **volunteer** of a designated emergency management body*

- (6) A person is a **volunteer** of a designated emergency management body if:
- (a) the person engages in activities with the body on a voluntary basis (whether or not the person directly or indirectly takes or agrees to take an honorarium, gratuity or similar payment wholly or partly for engaging in the activity); and
 - (b) the person is a member of, or has a member-like association with, the body.

Limited application of subsection (1) for certain terms

- (7) If:
- (a) a term of an enterprise agreement deals to any extent with the following matters relating to provision of essential services or to situations of emergency:
 - (i) directions to perform work (including to perform work at a particular time or place, or in a particular way);
 - (ii) directions not to perform work (including not to perform work at a particular time or place, or in a particular way); and
 - (b) the application of subsection (1) in relation to the term would (apart from this subsection) be beyond the Commonwealth's

legislative power to the extent that the term deals with those matters;

then subsection (1) does not apply in relation to the term to that extent.

Note: See paragraph (l) of the definition of *excluded subject matter* in subsections 30A(1) and 30K(1).

5 Subsection 205(2)

After “a consultation term,”, insert “or if the consultation term is an objectionable emergency management term,”.

6 After section 254

Insert:

254A Entitlement for volunteer bodies to make submissions

- (1) A body covered by subsection (2) is entitled to make a submission for consideration in relation to a matter before the FWC if:
 - (a) the matter arises under this Part; and
 - (b) the matter affects, or could affect, the volunteers of a designated emergency management body.
- (2) The bodies are as follows:
 - (a) a body corporate that:
 - (i) has a history of representing the interests of the designated emergency management body’s volunteers; and
 - (ii) is not prescribed by the regulations for the purposes of this subparagraph;
 - (b) any other body that is prescribed by the regulations for the purposes of this paragraph.
- (3) Subsection (1) applies whether or not the FWC holds a hearing in relation to the matter.

7 Section 258 (paragraph relating to Division 7)

Repeal the paragraph, substitute:

Division 7 deals with other matters relating to workplace determinations.

8 After section 281

Insert:

281AA Entitlement for volunteer bodies to make submissions

- (1) A body covered by subsection (2) is entitled to make a submission for consideration in relation to a matter before the FWC if:
 - (a) the matter arises under this Part; and
 - (b) the matter affects, or could affect, the volunteers of a designated emergency management body.
- (2) The bodies are as follows:
 - (a) a body corporate that:
 - (i) has a history of representing the interests of the designated emergency management body's volunteers; and
 - (ii) is not prescribed by the regulations for the purposes of this subparagraph;
 - (b) any other body that is prescribed by the regulations for the purposes of this paragraph.
- (3) Subsection (1) applies whether or not the FWC holds a hearing in relation to the matter.

9 In the appropriate position in Schedule 1

Insert:

**Part 3—Amendments made by the Fair Work
Amendment (Respect for Emergency
Services Volunteers) Act 2016****13 Definitions**

In this Part:

amended Act means this Act as amended by the *Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016*.

commencement means the commencement of this Part.

14 Application of amendments—objectionable emergency management terms

Application of amendments

- (1) The amended Act applies, after commencement, in relation to enterprise agreements approved, and workplace determinations made, before or after commencement.
- (2) Sections 254A and 281AA of the amended Act apply in relation to a matter that is before the FWC on or after commencement, even if the matter was before the FWC before commencement.

Enterprise agreements approved before commencement— preservation of terms in accordance with amended Act

- (3) If an enterprise agreement approved before commencement includes an objectionable emergency management term, a term of the agreement has effect after commencement to the extent that:
 - (a) the term can have effect in accordance with the amended Act; and
 - (b) it would not exceed the Commonwealth's legislative power for the term so to have effect.

[Minister's second reading speech made in—
House of Representatives on 31 August 2016
Senate on 15 September 2016]

(84/16)
