

**Submission
No 137**

INQUIRY INTO EMERGENCY SERVICES AGENCIES

Name: Mr Robert Reid

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NSW Parliament – Legislative Council
Portfolio Committee No.4 – Legal Affairs
Inquiry into emergency services agencies

Terms of Reference

This submission is in response to:

- Scope 1 a) i – New South Wales Rural Fire Service
- Scope 1 a) v – New South Wales State Emergency Service
- Scope 1 f) – any other related matter

Issue: Lack of External Review of Administrative Decisions - Discrimination

Volunteer members of the NSW State Emergency Service (SES) have never had the right to external review of a decision by the Commissioner of the SES.

The State Emergency Service Act 1989 No 164 is silent on the issue.

In 1993 an attempt was made in a precedent jurisdictional test case for SES volunteer members to have access to the NSW Government and Related Employees Appeal Tribunal (GREAT). Assistance was obtained from the Public Interest Advocacy Centre (PIAC) and Blake Dawson Waldron appeared pro bono on behalf of myself and (2) other members.

Regrettably the attempt failed.

GREAT ceased operations on 01 July 2010 and the records are available through the NSW Industrial Relations Commission:

- refer Appeal Nos.434-439/93 – Gregory James Ford, Alan Desmond Luxford, Robert Fyfe Reid v State Emergency Service

Please note it is understood that the NSW Rural Fire Service volunteer members also do not have access to external review of a decision by the Commissioner of the RFS.

Volunteer members have no access to the NSW Industrial Commission as they are not employees in respect of receiving a wage. However, volunteer members do meet many of the common law and other indicators regarding status as employees. The most important indicator is the availability of workers compensation.

The Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987 No 83 provides cover for RFS members at Section 5.

The Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2012 provides cover for SES members at Clause 4.

NSW SES volunteer members also have no access to the NSW Civil and Administrative Tribunal.

The Tribunal's Administrative and Equal Opportunity Division would appear to be the appropriate entity for the hearing of SES volunteer member concerns and it would be appreciated if the Committee would recommend to the Government that jurisdiction be conferred on the Tribunal in accordance with Section 28 of the Civil and Administrative Tribunal Act 2013 No 2 by way of:

- preferably, a Ministerial recommendation to the Governor of a Clause in a State Emergency Service Regulation (the quickest way):
 - the Regulation was repealed
 - a Regulation may be made as provided by Section 29 of NSW SES Act
- a new Section in the State Emergency Service Act 1989 No 164 (the slowest way).

Issue: Allowances - Discrimination

During the serious and extensive fires that occurred in 1994 the NSW Rural Fire Service volunteer members received an allowance. Members of the SES assisted the RFS in non-direct fire-fighting roles but no similar allowance was paid to SES volunteer members.

Issue: Recognition – Non-remunerated workers in the service of the Crown

In the NSW Work Health and Safety Act 2011 No 10:

- the NSW SES is a “person conducting a business or undertaking”(PCBU) – Section 5
- NSW volunteer members are a “worker” – Section 7(1)(h).

In the State Emergency Service Act 1989 No 164:

- Section 7 State Emergency Service, states in part, that:
 - (2) The State Emergency Service is to comprise:
 - (b) the volunteer officers and volunteer **members** of all SES units
- Section 10 Ministerial control:
The Commissioner, Deputy Commissioner and other **members** of the State Emergency Service are, in the exercise of their functions under this Act, subject to the control and direction of the Minister.
- Section 18 AA Granting, suspension and withdrawal of membership of SES units:
[This is the Section that is silent on access to external appeal of a decision of the Commissioner]
 - (1) Membership of an SES unit may be granted, suspended or withdrawn by any of the following:
 - (a) the Commissioner,

- (b) a region controller, local controller or unit controller responsible for the SES unit.
- (7) This section has effect despite any other law relating to membership of an association that is an SES unit.

Compare S18AA(7) with:

- Section 26 This Act not to limit the operation of any other Act or law.

As:

- the SES is formed and administered under State legislation
- the SES members are subject to the control and direction of a Minister of the Crown
- the St Edwards Crown is part of the SES emblem which is worn on their uniform (hats, “blues” uniform shirts, jacket, coat – see attachment)
- the SES members are workers under the WHS Act
- the members work/services are therefore on behalf of the Crown
- SES members are eligible to receive Commonwealth and NSW State Government awards, viz., National Medal (Crown of St Edward), NSW SES Long Service Medal (Crown of St Edward)

it seems incongruous that SES volunteer members are not recognised as being non-remunerated workers in the service of the Crown.

It would be appreciated if the Committee could facilitate official recognition that NSW SES volunteer members are non-remunerated workers in the service of the Crown.