

Submission to the Senate Education and Employment Legislation Committee.

***Safety, Rehabilitation and Compensation Legislation
Bill 2014***



Australian Federal Police Association

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PO Box 6100
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To whom it may concern;

RE: The *Safety, Rehabilitation and Compensation Amendment Bill 2014*

1. The Australian Federal Police Association (AFPA) welcomes the opportunity to provide a submission to the Senate Education and Employment Committee in regards to proposed amendments to the *Safety, Rehabilitation and Compensation Act 1988* ('the SRC Act').
2. The AFPA represents the professional, industrial and social interests of its members who are employees of the Australian Federal Police (AFP) and Commonwealth law enforcement officers across a number of agencies. The AFPA and our membership operate in increasingly complex and dynamic law enforcement, national security and employment environment, both domestically and internationally.
3. The AFPA is an autonomous branch of the Police Federation of Australia (representing 57,000 Australian police officers) and is a Registered Organisation in accordance with the *Fair Work (Registered Organisations) Act 2009*.

Recess Breaks - proposed amendment to Paragraph 6(1)(b)

4. The current provision, Schedule 4, Part 1 Paragraph 6(1)(b), extends workers' compensation coverage for injuries sustained when an employee is *temporarily absent* from the workplace during an ordinary recess.
5. In part, the justification for compensation of recess break was explained by then Minister for Employment Participation and Childcare and Minister for the Status of Women in the Bill's second reading speech – the amendment was intended to "*realign the Comcare scheme with most jurisdictions and remove the inequity in coverage for employees whose employers do not provide on-site facilities for meal breaks.*" The AFPA submits that this justification is no less valid today.
6. The AFPA notes that the current provisions contained in Paragraph 6(1) of the SRC Act are not without limits and are subject to the normal exclusionary provisions. Compensation is therefore not payable for an injury sustained during an off-site recess break if it is:
 - a. sustained because the employee voluntarily and unreasonably submitted to an abnormal risk of injury [section 6(3)]

- b. intentionally self-inflicted [section 14(2)]
 - c. not intentionally self-inflicted but is caused by the employee's serious and wilful misconduct—unless the injury results in death or serious and permanent impairment [subsection 14(3)]; and
 - d. Compensable disease claims still require a significant causal contribution as set out in section 5B of the SRC Act.
7. The proposed amendment will repeal and substitute Paragraph 6(1)(b). The amendment will remove the current compensation coverage for AFP employees who are injured away from the employers premises while on a recess break. Given the flexibility and limitations which currently exist, the AFPA questions the intent and purpose of the amendment.
8. Police are prone to being exposed to risk. A police officer's Oath of Office compels him or her to act in all circumstances thus potentially exposing the officer to injury while off-duty, on a recess break or during travel to or from the workplace. The proposed amendment fails to accommodate the legal requirement and social obligation for Officers to respond to an incident, regardless of whether they are on a recess break away from their 'place of work'. Should the proposed amendment be accepted, police officers will be exposed to an unacceptable level risk and possible cost should they be injured in the course of their duty.
9. The AFPA assumes that it is the government's intent to reduce costs by minimizing employee's eligibility to claim compensation for injuries sustained in circumstances outside the control of the employer. This is commendable. However, the AFPA questions whether this will be achieved. The AFPA assumes that it is not the drafters intent to limit the protections for sworn officers, however is foreseeable that the vast majority of police compensation claims sustained while on recess breaks made pursuant to 6(1)(b) will be rejected at the first instance. Police (and their representatives) will have little choice but to request reconsideration or apply to the Administrative Appeals Tribunal (AAT). The AFPA suggests that this will ultimately represent a significant and unreasonable cost impost on the applicant and the Commonwealth.
10. In addition to the above, the Act provides no clear applicable definition for 'place of work'. For a sworn member (i.e. a Constable) working in the Australian Capital Territory (ACT) the definition of 'place of work' under the Act is particularly ambiguous. For example, given the nature of policing and the obligation placed upon the officer by virtue of the Oath of Office, does the entirety of the ACT constitute a 'place of work'?
11. The AFPA suggest that the current Paragraph 6(1)(b) should be retained. Alternatively, the proposed Paragraph 6(1)(b) should be amended to provide an exception for police, to ensure that the provision does not have an unforeseen and unreasonable impact on police exercising their duty as required.

Abnormal risk of injury - proposed amendment to Subsection 6(3)

12. The proposed amendment will repeal and substitute Subsection 6(3). The amendment will result in employees who 'voluntarily and unreasonably submitted to an abnormal risk of injury' being excluded from claiming compensation for an injury sustained at their usual 'place of work'.
13. The nature of much policing work is such that it is more likely that police employees will have significantly higher exposure to risk. The community expects that officers will place themselves in a position of risk of injury to uphold law and order. As stated above, a police officer's Oath of Office compels him or her to act in all circumstances thus further exposing the officer to injury.

14. This amendment would effectively exclude the police officer from compensation if the risk was deemed to be 'unreasonable'. The AFPA submits that the Act provides no guidance as to the requisite test for assessing 'unreasonable' or 'abnormal' levels of risk. The AFPA seriously questions the rationale behind this amendment and believes that the potential ramifications for police are severe.
15. Police frequently place themselves in harms' way to protect the community. This decision is often made in a split second and the test of whether such an act was "voluntary and unreasonable" is not appropriate. The AFPA suggests that Subsection 6(3) should not be substituted. Alternatively, the proposed Subsection 6(3) should be amended to provide an exception for police, to ensure that the provision does not have an unforeseen and unreasonable impact on police exercising their duty as required.

Serious and wilful misconduct - proposed amendment to Subsection 14(3)

16. The proposed amendment will omit the words at the end of Subsection 14(3) of the Act that currently extends compensation coverage to employees who engage in serious and wilful misconduct which result in death or serious and permanent impairment.
17. Policing is a particularly onerous, high stress and dangerous profession. Risk of injury, long work hours, precarious employment and shift structuring – the material industrial conditions of modern policing – are central to the stressors placed on police. Issues such as PTSD, depression and other conditions linked to the role pose a significant risk to the officer and contribute to the potential for mistakes to be made.
18. There is a community expectation that a police officer who is injured during the course of their employment will receive the appropriate compensation, regardless of how the injury is sustained. The proposed omission will only serve to unfairly burden the families of injured or deceased police in the event of a tragic incident.
19. Police are often faced with identical conditions to defense employees. The Australian Federal Police in particular are often deployed to hostile environments internationally. Given this, should the proposed amendment to Subsection 14(3) be accepted, the AFPA proposes that police are afforded the same protections provided to ADF members under the proposed Subsection 147(2)(1A). The proposed amendment provides for an exception for defense personnel who, by virtue of the amendment, will continue to have access to compensation in cases where serious and wilful misconduct has resulted in death or impairment.
20. Given the expectation placed on police by the community and the role that they fulfill both domestically and internationally, it is entirely fitting and appropriate that the protections afforded defense personnel are extended to serving police members.

Yours sincerely,

Dennis Gellatly
Chief Executive Officer