



AFPA

Australian Federal
Police Association

Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

Standing Committee on Education and Employment

Submission by the Australian Federal Police Association

Level 3/53 Blackall Street

Barton ACT 2600

Tel: (02) 62851677

Email: afpa@afpa.org.au

Acknowledgments

The AFPA welcomes and thanks the Standing Committee on Education and Employment for the opportunity to provide comments relating to the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (the Bill), which will see the implementation of presumptive workers' compensation provisions for first responders with post-traumatic stress disorder (PTSD).

The AFPA acknowledges and thanks the Minister for Employment and Workplace Relations, the Honourable Tony Burke MP and the Department of Employment and Workplace Relations (DEWR) for their work through consultation with stakeholders, including the AFPA, regarding presumptive legislation. The AFPA believes this vital legislation would not have come to fruition without Minister Burke's and his office's support.

Overview of the AFPA

The AFPA is a registered organisation and an autonomous sub-branch of the Police Federation of Australia. The AFPA represents the industrial, political, and professional interests of members of the Australian Federal Police (**AFP**) and ACT Policing (**ACTP**), law enforcement officials in the Australian Criminal Intelligence Commission, and members of the Department of Parliamentary Services.

Our members provide an essential service to Australia and the Australian Capital Territory (**ACT**). They are the backbone of the ACT and the Commonwealth's principal law enforcement agency, performing crucial investigative, intelligence and national security functions.

The AFP is responsible for:

-  providing community policing services to the Australian Capital Territory and other territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay,
-  enforcing Commonwealth laws that combat complex, transnational, serious and organised crime, child exploitation, fraud, corruption, and cybercrime,
-  protecting Australians and Australian interests from terrorism and violent extremism,
-  removing illegally obtained assets and property from criminals,
-  protecting Commonwealth infrastructures such as designated airports, Parliament House, and embassies,
-  protecting domestic and foreign dignitaries, including the Governor-General, Prime Minister, and ambassadors,
-  protecting at-risk individuals,
-  representing Australian policing and law enforcement at an international level, and
-  developing unique capabilities and employing advanced technology to support Australia's national interests.

On top of providing industrial relations support, the AFPA provides welfare support for its members. Support takes on many aspects, including mental health and living support for our members injured mentally and physically in the workplace while executing their lawful duties in protecting Australia and its many communities.

Introduction of the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

On September 4, 2023, the Minister for Employment and Workplace Relations, the Honourable Tony Burke MP, presented the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* to the House of Representatives.

On September 7 2023, the Senate referred the provisions of the Bill to the Education and Employment Legislation Committee for inquiry and report by February 1 2024.

The AFPA's overall position regarding Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

The AFPA has reviewed the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 and supports the bill. The AFPA also strongly supports the second reading speech where Minister Burke states:

Every worker has the right to go to work and come home safely.¹

Unfortunately, the AFPA has experienced too many cases in which a police officer or appointee hasn't come home safely.

In this submission, the AFPA will focus on the key areas that will impact the AFP and policing, namely:

- simplify workers' compensation by implementing a presumptive legislation framework for first responders with PTSD, including AFP appointees, firefighters, and ambulance officers in Commonwealth jurisdictions.
- amendments to the road transport industry, which is currently operating in a way that undermines safety, impacting policing and the AFP, particularly ACT Policing.
- introducing a new offence of industrial manslaughter.

AFPA analysis of key focus areas

Schedule 1 – Part 16 – Provisions relating to regulated workers of the *Fair Work Legislation Amendment (Closing the Loopholes) Bill 2023*

The AFPA **supports** *Schedule 1 – Provisions relating to Regulated Workers* of the Bill, as it focuses on safety within the road transport industry.

The AFP, via ACT Policing, often deals with safety issues and serious or fatal collisions involving vehicles that would be considered part of the road transport industry. Unfortunately, police officers and other first responders are reminded all too often of the dangers within the road transport industry. This places a heavy mental toll on our members who respond to these collisions.

¹

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansard%2F27162%2F0159%22>

In general, police officers are over-exposed to traumatic incidents, and any legislative reform that can assist in making any industry safer should be considered and supported.

The trauma experienced by police officers at the scene of a fatal collision continues well past the initial response. Police are often the first emergency services organisation to attend the scene, and collision scenes are always traumatic. This trauma continues from the moment of the incident and can continue for years. Police officers must pass a death message to the family of the deceased, map the crime scene, which includes photographing and video recording the scene and deceased, including body parts if they are detached, organise formal identification of the deceased, organise witnesses for the collection of evidence and statements, attend an autopsy and ultimately, prepare a coronial brief, all while being the main point of contact for a grieving family. Police officers must relive the trauma until the completion of the coronial process, and just because the coronial process may end, it doesn't mean the memories or mental injuries cease. This takes a heavy toll and contributes to the effects of PTSD.

The AFPA firmly believes that all police services across Australia are committed to improving road safety in Australia, and a pivotal mechanism to improving road safety is to ensure that there are high standards that can make the road transport industry a safer environment.

The AFPA **supports** the establishment of a Road Transport Advisory Group as per *Schedule 1, Division 3 – Establishment of Road Transport Group* of the Bill and would request consideration towards having a representative from a road safety organisation or police service as part of the group. This representative would provide the group valuable insight into road safety, which aligns with one of its key objectives of making the road transport industry safer.

Schedule 3 – Amendments of the Safety, Rehabilitation and Compensation Act 1988 of the Fair Work Legislation Amendment (Closing the Loopholes) Bill 2023

The AFPA **supports** *Schedule 3 – Amendments of the Safety, Rehabilitation and Compensation Act 1988* of the Bill, as it allows for presumptive legislation for PTSD for AFP appointees and other first responders.

The AFPA has reviewed the submission by the United Firefighters Union of Australia and supports their recommendations in their submission.

The Australian Federal Police Workforce

The AFP is a unique service within the Australian Public Service. Few other departments undertake the type of work with the high level of physical and mental risk in protecting Australia and its many communities, both in Australia and overseas than AFP appointees.

In terms of a staffing profile, the AFP has a small workforce when compared to similar agencies overseas, such as the Federal Bureau of Investigation (approximately 35,000 staff), the Royal Canadian Mounted Police (about 30,000 staff) and the Metropolitan Police (about 44,000 staff). As per the 2021-2022 AFP Annual Report, the AFP had about 7,460 appointees: sworn police officers and federal agents, protective service officers and unsworn appointees.

Due to these staffing levels, the AFP often utilises unsworn appointees in roles that traditionally fall to sworn police officers in other jurisdictions. These unsworn staff do not have police powers or powers of arrest, but they are often exposed to the same trauma and workplace conditions as police officers. Such appointees include, but are not limited to:

- Forensic Services
- Intelligence analysts
- Investigation assistants
- Covert operatives
- Cyber operatives
- Child exploitation investigative assistants
- Counter-terrorism investigative assistants and
- Triple Zero and Communication appointees

These appointees are often deployed alongside police officers to provide support and expertise. The vast majority of AFP Forensic Services appointees are not sworn police officers, yet they analyse crime scenes, collect and gather evidence, and attend court to provide evidence. Their role is just as crucial as a federal agent or police officer, and they are exposed to the same level of trauma.

Post Traumatic Distress Order (PTSD) in Policing

Post-traumatic stress disorder (PTSD) is frequent among police officers and law enforcement appointees who perform operational duties. PTSD continues to negatively impact their personal life and their families despite our knowledge of its consequences and available treatments.

The majority of what people consider to be PTSD is trauma experienced by military personnel and by soldiers. Police officers and law enforcement appointee PTSD, however, is distinctly different. A single or brief exposure to stress can frequently lead to PTSD in soldiers. However, PTSD for police personnel typically develops over time because of numerous stressful encounters. This is better known as cumulative PTSD.

Because cumulative PTSD is more likely to go unrecognised and untreated, it can be even more serious and deadly than PTSD brought on by a single traumatic experience. All Australian police services have procedures and personnel to aid police officers and appointees in addressing and managing the aftermath of a tragic occurrence.

The accumulation of incidents that occur throughout a police officer's career, however, typically does not call for specific attention unless the police officer or law enforcement appointee self-reports or is identified by work colleagues or family members. A police officer who has cumulative PTSD is less likely to receive treatment. Unlike a physical injury, a catastrophic mental injury can occur virtually daily. When PTSD manifests, it is frequently disregarded. If untreated, police officers and operational law enforcement appointees can become a risk to themselves and others.

Incidents, including, but not limited to, dangerous arrests, investigating child exploitation material, responding to death-related incidents such as homicides, fatal traffic collisions and non-suspicious deaths, being assaulted in the workplace, and handling other cases that involve significant injury or death, or disturbing scenes, such as terrorism offences, can result in PTSD in police officers and law enforcement appointees.

However, an officer can still experience a lot of less traumatic circumstances that are incredibly stressful. Other stressful situations include but are not limited to long hours, disrupted family life, poor work-life balance, limited workplace resources, people's attitudes towards police, anxiety over court timeliness, and even politics within the organisation.

In Australia, there is a significant movement towards the care of victims undergoing a judicial process. The AFPA supports this movement, but what is often forgotten in these discussions is the trauma that police officers undergo during the same process, especially in the case officer or corroborator role. Just like the victim, police officers must provide evidence as they experience it; they also have to relive the incident and investigation.

Then, on top of it all, AFP officers are frequently criticised, scrutinised, and investigated for decisions they make in split seconds. AFP officers are among the most highly scrutinised police officers in the country, with oversight by AFP Professional Standards, the Commonwealth Ombudsman, and the National Anti-Corruption Commission (NACC). Scrutiny and criticism can also come from the public and media. This places a lot of pressure and stress on the shoulders of police officers.

PTSD Presumptive Arrangements in Australia by Jurisdiction for Police

Please refer to Attachment A of this submission

Previous inquiries undertaken by the Senate

*The People Behind 000: Mental Health of our First Responders*² was the subject of an inquiry by the Senate Education and Employment References Committee in 2018.

This inquiry found that the Committee is, in principle, persuaded by evidence supporting the introduction of presumptive legislation covering PTSD and is of the view that the benefits of a coordinated national approach should be fully considered. It is vital that any new national initiative builds on progress already made in this direction by some states and that this progress is not stalled while the recommendations below are implemented.

As part of its recommendations, the inquiry recommends that the Commonwealth Government establish a national stakeholder working group, reporting to the COAG Council of Attorney's-General, to assess the benefits of a coordinated national approach to presumptive legislation covering PTSD and other psychological injuries in first responders and emergency services agencies. This initiative must take into consideration and work alongside legislation already introduced or being developed in state jurisdictions, thereby harmonising the relevant compensation laws across all Australian jurisdictions.

The issue wasn't furthered by the Government's response to the 2018 Senate Inquiry. Recommendation 8 (above) was supported in principle but never developed further.

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https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024252/toc_pdf/Thepeoplebehind000mentalhealthofourfirstresponders.pdf;fileType=application%2Fpdf

The response provided by the Government was *it supports a nationally consistent approach to workers compensation arrangements and the opportunity to convene a working group, reporting to an appropriate ministerial forum, to consider the benefits of a coordinated national approach to presumptive legislation covering PTSD and other psychological injuries in first responder and emergency services agencies.*

However, as workers' compensation is primarily a state and territory responsibility, any such working group would depend on the cooperation of the states and territories. Any legislative changes to address first responder mental health will also need to take into account the different characteristics and circumstances of the various schemes.³

Previous consultation undertaken by the AFPA

In 2022, the AFPA was part of a consultation group where the Department of Employment and Workplace Relations (DEWR) consulted on its *Presumptive Workers Compensation Provisions for First Responders – Stakeholder Consultation Issues Paper*. The AFPA was an active participant in this consultation, and the recommendations made by the AFPA at this time have been adopted into these amendments.

Schedule 4 – Amendments of the Work Health and Safety Act 2011 of the *Fair Work Legislation Amendment (Closing the Loopholes) Bill 2023*

The AFPA **supports** *Schedule 4 – Amendment of the Work Health and Safety Act 2011.*

Part 1 – Industrial manslaughter of the Bill proposes the introduction of industrial manslaughter to the *Work Health and Safety Act 2011*.

Minister Burke stated in his second reading speech that ‘*every worker has the right to go to work and come home safely.*’ The AFPA strongly supports this statement and believes introducing industrial manslaughter will allow for greater accountability and improved industry safety conditions.

All too often, police attend building sites and industrial locations due to fatal accidents. Again, this can devastate the mental health of police officers and other first responders. Industrial accidents where a fatality has occurred are often traumatic due to the heavy machinery usually found on sites.

The AFPA also supports the penalty proposed in the amendments. Both penalties are significant, act as a deterrent and align with the seriousness of the incident in which a person has died.

³ <https://www.aph.gov.au/DocumentStore.ashx?id=3378dc4e-9ef3-44f5-8136-5509cf45770e>

Conclusion

The AFPA thanks the Committee for the consultation on the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*, and while there are amendments within the Bill that don't apply to the AFPA or policing, the Bill, overall, offers an opportunity to address many concerns within the industrial relations environment.

The AFPA fully supports the passing of the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* in its entirety as it addressed many shortfalls in workers' protections in workplaces, as well as providing long overdue support for police and other first responders. For too long, AFP appointees have suffered from a lack of presumptive legislation, and we thank Minister Burke for his work in addressing this shortfall.

The AFPA would welcome the opportunity to address the Committee and answer any further questions. The AFPA also approves for this submission to be published at the discretion of the Committee.

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Attachment A - PTSD Presumptive Arrangements in Australia by Jurisdiction for Police

Jurisdiction	Legislation or Policy	Year Introduced	Diagnosis		
			Psychiatrist	Psychologist	Physician
Australian Capital Territory	No				
New South Wales	No – under development				
Northern Territory	Legislation – <i>Return to Work Regulations 2020</i>	2020	✓	✗	✗
Queensland	Legislation – <i>Workers’ Compensation and Rehabilitation Act 2003</i>	2021	✓	✗	✗
South Australia	No				
Tasmania	Legislation – <i>Workers Rehabilitation and Compensation Act</i>	2019	✓	✓	✓
Victoria	No				
Western Australia	Legislation – <i>Workers Compensation and Injury Management Regulations 1982</i>	2021	✓	✗	✗



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