



**AFPA**

Australian Federal  
Police Association

***Inquiry into the Fair Work Amendment  
(Supporting Australia's Jobs and Economic  
Recovery) Bill 2020 [Provision]***

**The Senate Education and Employment  
Legislation Committee**

**Submission by the Australian Federal Police Association  
Level 3/53 Blackall Street  
Barton ACT 2600**



## Introduction

The Australian Federal Police Association (“**the AFPA**”) welcomes the opportunity to make a submission into the *Fair Work Amendment (Supporting Australia’s Jobs and Economic Recovery) Bill 2020* (Cth) (“**the Bill**”). We thank the Committee’s time in considering this submission and for the opportunity to furnish our views regarding the proposed changes to the *Fair Work Act 2009* (Cth) (“**the FW Act**”).

We would be happy to appear before the inquiry should this be required. We also note that the Police Federation of Australia has made a submission in relation to the Bill and we would be happy to appear with them before the inquiry.

## **The AFPA**

The AFPA is a registered organisation and an autonomous sub-branch of Police Federation of Australia. The AFPA represents the industrial, political and professional interests of members of the Australian Federal Police (“**the AFP**”), as well as 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. It is the Commonwealth’s principal law enforcement agency, performing crucial investigative, intelligence and national security functions. The AFP are responsible for:

- enforcing Commonwealth laws, such as complex, transnational, serious and organised crime, child exploitation, fraud and corruption, and cybercrime;
- providing community policing services to the Australian Capital Territory and Australia’s territories, including Christmas Island, Cocos (Keeling) Islands, Norfolk Island and Jervis Bay;
- protecting Australians and Australian interests from terrorism and violent extremism;
- removing wealth and property from criminals that has been illegally obtained;
- protecting Commonwealth infrastructure, including 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 police and law enforcement on an international level; and
- developing unique capabilities and exploiting advanced technology to support Australia’s national interests.

During the COVID-19 pandemic, our members have been at the coalface of much of the Commonwealth and ACT Government’s response. The pandemic shut down large parts of the

Australian economy. However, crime never sleeps. All of our members worked tirelessly throughout 2020 to keep Australia safe and should be applauded. In addition to performing their core duties, our members provided additional assistance to the Federal and State/Territory governments through difficult circumstances and at increased risk to their health. This included:

- Members who were deployed to remote locations in the Northern Territory to assist with border security and protection of at-risk communities;
- ACT Policing members who ensured individuals and businesses complied with the ACT Government's COVID-19 restrictions;
- Members across the country who assisted state police forces with the enforcement of border restrictions; and
- Members stationed at airports who ensured domestic and returning international travellers complied with federal and state/territory requirements.

## Summary

The thrust of our submission addresses the impact of the proposed changes to enterprise bargaining under the FW Act. It is our view that the changes proposed would be detrimental to the AFP. The reason for this is two-fold:

- 1) The items proposed to be amended in s. 171 of the FW Act by the Bill are practically unachievable, in context of the AFP and the broader public service, under to the Federal Government's *Public Sector Workplace Relations Policy 2020* ("**the Bargaining Policy**"); and
- 2) The enterprise bargaining system under the FW Act fails to both adequately address or provide an appropriate mechanism to address:
  - a. the unique employment status of AFP appointees in relation to enterprise bargaining under the FW Act; and
  - b. the limited access to protected industrial action and binding arbitration for law enforcement employees, when bargaining reaches an impasse.
- 3) The submission will also briefly address our concerns regarding the potential erosion of terms and conditions contained within enterprise agreements resulting from the weakening of the requirement that any enterprise agreement must pass the better-off overall test ("**BOOT**") (noting that employees of the AFP are covered by the *Australian Federal Police Enterprise Award 2016* ("**the Award**")).

## **Recommendations**

- 1: Exempt the AFP from the Public Sector Workplace Relations Policy 2020 to allow the proposed objectives of the FW Act to be achieved for the AFP's members.**
- 2: Introduce a North American-style mandatory interest arbitration model to resolve bargaining disputes between policing organisations and their employees.**

## **1) Failure of the proposed objects of the Bill in s.171**

Schedule 3 of the Bill proposes various changes to the provisions in the FW Act dealing with enterprise agreements.

Section 171 of the FW Act currently states that the objects of Part 2-4 of the FW Act are as follows:

### **Objects of this Part**

The objects of this Part are:

- (a) to provide a simple, flexible and fair framework that enables collective bargaining in good faith, particularly at the enterprise level, for enterprise agreements that deliver productivity benefits; and
- (b) to enable the FWC to facilitate good faith bargaining and the making of enterprise agreements, including through:
  - (i) making bargaining orders; and
  - (ii) dealing with disputes where the bargaining representatives request assistance; and
  - (iii) ensuring that applications to the FWC for approval of enterprise agreements are dealt with without delay.

The Bill proposes to repeal s. 171 of the FW Act and replace it with the below:

### **Objects of this Part**

The objects of this Part are:

- (a) to provide a simple, flexible, fair and balanced framework for employers and employees to agree to terms and conditions of employment, particularly at the enterprise level; and

#### **(b) to enable collective bargaining in good faith for enterprise agreements that:**

##### **(i) deliver productivity benefits; and**

##### **(ii) enable business and employment growth; and**

##### **(iii) reflect the needs and priorities of employers and employees; and**

- (c) to enable the FWC to facilitate good faith bargaining and the making of enterprise agreements, including through:

- (i) making bargaining orders; and
- (ii) dealing with disputes where the bargaining representatives request assistance; and

(iii) ensuring that applications to the FWC for approval of enterprise agreements are dealt with in a timely, practical and transparent manner.<sup>1</sup>

**[Emphasis added]**

The AFPA is specifically concerned that the proposed objects to be contained in s. 171(b) could not be achieved in a practical sense for AFPA members under the Federal Government's Bargaining Policy.

## **The Bargaining Policy**

The Bargaining Policy was enacted by the Government on 13 November 2020.<sup>2</sup> It is the latest iteration in a series of similar bargaining policies in place since being introduced in 2014 by the then Abbott Government. The policy was amended in 2015 and 2018 by subsequent Coalition Governments. The core aim of the policy, from the Government's point of view, is to support *"Australian Government public sector entities in creating workplace arrangements that enable sustainable, high performing public sector workplaces"*.<sup>3</sup>

Previous versions of the policy have been subject to much criticism and scrutiny<sup>4</sup>; these criticisms are still relevant in relation to the current policy and can be summarised as follows:

- 1) Setting a cap on salary increases that may be offered by a Commonwealth entity;
- 2) mandating that salary increases be funded by productivity gains; and
- 3) prohibiting the enhancement of Terms and conditions when bargaining for a new enterprise agreement.

The aggregation of these criticisms is that the policies have effectively discouraged, curtailed and fundamentally undermined enterprise bargaining.

The most significant change to the policy has been to further reduce the cap on salary increases that may be offered as part of bargaining. Prior to the implementation of the Workplace Relations Policy in November 2020, the maximum salary increase was 2% per annum. Now the maximum salary increase that may be offered is capped at the year-to-date percentage change in the Wage Price Index for the private sector from the most recently released June quarter.

Presently, that figure is 1.7%.

## **Difficulties with bargaining since the introduction of the policies**

The AFP currently has two separate enterprise agreements covering its employees. The *Australian Federal Police Enterprise Agreement 2017 – 2020* ("**the EA**"), covers non-executive

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<sup>1</sup> Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth), sch 3 item1 ("**the Bill**").

<sup>2</sup> A copy of the *Public Sector Workplace Relations Policy 2020* ("**the Bargaining Policy**") can be located: <https://www.apsc.gov.au/public-sector-workplace-relations-policy-2020>

<sup>3</sup> Bargaining Policy, para [1].

<sup>4</sup> Education and Employment References Committee, Parliament of Australia, *Siege of attrition: the Government's APS Bargaining Policy* (November 2016) ("**Siege of Attrition**").

level employees. The EA commenced on 24 May 2018 and will nominally expire on 24 May 2021. This agreement covers the majority of AFP employees.

The other agreement, the *Australian Federal Police Executive Level Enterprise Agreement 2019-2021* (“**the ELEA**”), covers executive level employees of the AFP. The ELEA commenced on 11 April 2019 and will nominally expire on 11 April 2021.

Since the introduction of the first bargaining policy in 2014, the AFPA has bargained for one non-executive level agreement, and two executive level agreements.

Bargaining for the EA was significantly impacted by the previous iteration of the bargaining policy. Bargaining for the EA commenced on 21 January 2016. This was only one and a half months out from the nominal expiry (8 March 2016) of the previous enterprise agreement. The commencement of bargaining was at the complete control of the AFP.

Throughout this period, the AFPA and other bargaining representatives experienced considerable delays, as all claims made by bargaining representatives were required to be provided to the Australian Public Service Commission (“**APSC**”). The time taken to assess these claims by the APSC was significant. Furthermore, good-faith claims that had no direct financial impact and did not enhance the monetary entitlements of employees were rejected on the basis that they were considered “enhancements” by the APSC. This was despite there being agreement between employee representatives and the AFP for the inclusion of the claims into the agreement.

An example of this was the proposal for a “sick leave bank”. This proposal would have allowed employees to donate their accrued personal/carer’s leave to assist other employees who may have suffered serious illness and exhausted their own accrued leave entitlements. The APSC rejected the claim as it was deemed an “enhancement”.

It took over 12 months of bargaining with the AFP for an agreement to be approved by the APSC as being compliant with the bargaining policy and being able to be put to a vote. The proposed agreement was considered manifestly unfair by the workforce. It sought to grossly strip away hard-earned terms and conditions of employees. Unsurprisingly, the proposed agreement was comprehensively voted down, with 87% of the workforce voting and 80% of those rejecting the proposed agreement in July 2017.

After a further six months of bargaining, a new proposed agreement was taken to a vote. Again, further roadblocks were encountered due to the bargaining policy.

Following the approval by the Fair Work Commission of the EA in May 2018, members of the AFP had been without a salary increase for over 3 years. The APSC did not allow any form of back payment (prohibited by the policy), despite the significant delays being suffered by the AFP and the APSC. The EA, when compared to the previous agreement it replaced, only contained minor variations despite nearly 2 years of bargaining. These variations were almost entirely detrimental to employees.

One such change effectively resulted in a 35% pay-cut for AFP officers working in high-volume areas. These areas include Close Personal Protection (who protect domestic and foreign dignitaries), and Surveillance (who perform crucial intelligence-gathering on some of Australia's most dangerous criminals, including terrorists).

The additional layers of regulation and oversight imposed by the bargaining policy create unnecessary delays and prevent employees and employers from achieving mutually beneficial outcomes. As a result, workforce morale and trust in AFP leadership has collapsed. This is reflected in recent staff surveys which consistently show the workforce do not trust the Senior Executive.

It is our view, based on anecdotal information from our membership, that most of this is due to the inefficient and protracted bargaining for the EA throughout 2016 and 2017, rather than a true reflection of the current Senior Executive of the AFP and the job they are doing.

This collapse in morale is completely out of step with the Government's on-record rationale for the policy amendments:

*Numerous reviews have found that the agreement making and approval process can be complex, cumbersome and highly technical, resulting in process delays. This may also be a factor inhibiting effective relationships between employers and employees, in turn leading to adversarial relationships, disputes and mistrust.<sup>5</sup>*

## Erosion of bargaining

In 2020, the AFP proposed to issue a determination pursuant to s. 27 of the *Australian Federal Police Act 1979* (Cth) to extend the EA and ELEA and provide 2% salary increases over three years following the nominal expiry of both agreements. The AFP made this decision because:

- a) under the bargaining policy, no meaningful changes could be made to the EA;
- b) another protracted bargaining round would further erode faith in the Senior Executive;
- c) the Federal Government were planning to implement the most recent version of the bargaining policy, which would limit salary increases for employees to less than 2%.

This offer was made in lieu of bargaining for a new enterprise agreement. The proposal for a determination was made despite recognition from the AFPA, employees and the AFP that the EA and ELEA were no longer fit for purpose. The AFPA agree with AFP's Lead EA Negotiator, Deputy Commissioner Neil Gaughan when he stated that "*the biggest impediment to significant industrial change (in the AFP) is the Workplace Bargaining Policy... The Enterprise Agreement itself is well over 20 years old. It's probably not fit for purpose in relation to the way the organisation has evolved.*"<sup>6</sup>

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<sup>5</sup> Explanatory Memorandum, Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2020 (Cth) p. xlvii ("**Explanatory Memorandum**").

<sup>6</sup> AFPA *BlueStar Magazine* (December 2020), p. 30 (<https://www.afpa.org.au/magazine/bluestar-december-2020/>).



When you consider the changes to the criminal environment over this time (including cyber-crime, terrorism and transnational crime), it is clear why this would be a cause for concern.

In late 2020, a vote saw 94.22% of the AFP workforce vote to have a determination put in place in lieu of bargaining. On 16 December 2020, Commissioner Kershaw signed off on the determination ("**the Determination**").<sup>7</sup>

We understand that determination power has become more frequently used within the Federal public sector under the equivalent power provided to Agency Heads under s. 24 of the *Public Service Act 1999*. As indicated in the *APSC Remuneration Report* for 2019:

*"The Workplace Bargaining Policy 2018 allows agencies to adopt new workplace arrangements to suit business needs. Agencies that have been satisfied with the operation of an existing EA, and gained the support of employees, have been able to provide new wage increases through alternative instruments. Several agencies have used a PSAD as a secondary employment instrument to provide new wage increases on top of an EA that has passed its nominal expiry date. Almost 11,000 APS employees who are covered by an EA have had wages set under a PSAD. As at 31 December 2019, 29 APS agencies had used a PSAD to provide new wage increases."*<sup>8</sup>

Data from years prior to 2019 is not publicly available and data for 2020 will not be published until later in 2021. However, a preliminary open-source search suggests this trend likely increased in 2020 and is likely to continue to increase in use for the foreseeable future.<sup>9</sup>

We believe this is a deliberate consequence of the position adopted over time under the various iterations of the bargaining policy. This worrying trend flies in the face of the reasoning relied on in this Bill for large and systemic changes to the FW Act. In the explanatory memorandum to the Bill, proposed amendments are driven by:

*"The bargaining system requires reform to re-enliven it, to encourage employers and employees to bargain and make new agreements, and provide incentives for productive and innovative ways of working."*<sup>10</sup>

The Bargaining Policy has unfortunately achieved only one outcome; to kill fair bargaining in the public sector.

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<sup>7</sup> Annexure A – *Determination 2 of 2020: Determination of AFP (Non-SES Employment) Increases to Salary and Specified Allowances*, 16 December 2020.

<sup>8</sup> Australian Public Service Commission, *APS Remuneration Report 2019* (September 2020) p. 25.

<sup>9</sup> The AFPA was able to easily locate s.24(1) determinations being made in 2020 for the Australian War Memorial, National Library of Australia, Office of the Official Secretary to the Governor-General, Department of Prime Minister & Cabinet, the Productivity Commission, Commonwealth Director of Public Prosecutions, and the National Archives of Australia.

<sup>10</sup> Explanatory Memorandum, p. liv.

Likewise, enterprise agreements must evolve to reflect the operational requirements of an organisation. This is clearly recognised in the explanatory memorandum to the Bill:

*“The enterprise bargaining system aims to support businesses and employees to tailor their working arrangements to their unique circumstances... This bargaining system, governed by the Fair Work Act 2009 (Fair Work Act), is no longer working effectively and is in decline—fewer businesses are making new enterprise agreements or renegotiating them<sup>11</sup> ...enterprise agreements are not intended to operate forever...”<sup>12</sup>*

However, the extreme reluctance of both employers and employees to negotiate new enterprise agreements under the Bargaining Policy will have the effect of doing this very thing.

### **Why the objects proposed cannot be achieved under the Bargaining Policy**

The bargaining experience of the AFPA is not unique and is demonstrative of the experience(s) of the wider public sector.<sup>13</sup> However, as will be explained below, the peculiarities of policing and the functions performed by the AFP mean that industrial action potentially available to break the loggerheads during bargaining are not practicably available to our members.

When comparing the proposed objects to be include in the FW Act by the Bill and the realities of bargaining under the Bargaining Policy, these cannot and will not be achieved for the AFP.

#### *(i) Deliver productivity benefits – s. 171(b)(i)*

Productivity is a purportedly a central element of the Bargaining Policy. However, the productivity benefits identified by the AFP during previous rounds of bargaining focus on:

- Reducing in existing terms and conditions, such as reduction of annual leave or removal of allowances;
- Undermining the enforceability and certainty of existing terms and conditions by their removal from an enterprise agreement and instead being included within policy, which can easily and unilaterally be changed by the employer;
- Removing of an Additional Remuneration provision;
- Slowing of progression for Forensics and Legal officers; and
- Reducing staffing overall.

What the Bargaining Policy fails to consider is the impact on productivity through enshrining outdated enterprise agreements which impact both employers and employees; our members frequently complain about how the current EA impacts on their ability to perform their duties.

As the Bargaining Policy has driven the AFP (and many other APS and non-APS agencies) to continue with existing agreements and providing salary increase through determinations, this presents a significant challenge for enterprise agreements to deliver productivity benefits

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<sup>11</sup> Explanatory Memorandum, p. xlii.

<sup>12</sup> Explanatory Memorandum, p. liii,

<sup>13</sup> See generally *Siege of Attrition*.

through terms and conditions which are fit for purpose for a modern policing organisation (reflecting the operational priorities of the AFP of today, not 20 years ago).

The Bargaining Policy itself causes the bargaining process to be unproductive. The explanatory memorandum to the Bill makes clear that many of the changes to the enterprise agreement processes proposed by the Bill are aimed to improve productivity.<sup>14</sup> The unproductivity of enterprise bargaining under the Bargaining Policy has also been recognised by the Productivity Commission.<sup>15</sup>

*(ii) Enable business and employment growth – s. 171(b)(ii)*

The AFP's key competitor for staff are the state police forces. The bargaining frameworks applicable to the state police forces are not as restrictive as that which applies to the AFP. As a result, salaries, terms and conditions are becoming less competitive with the states. If this trend continues, it may make recruitment and attraction more difficult for the AFP.

*(iii) Reflect the needs and priorities of employers and employees – s. 171(b)(iii)*

As indicated above, it is our strong contention that, under the Bargaining Policy, the proposed objects to be included in s. 171(b) cannot be achieved for AFPA members during enterprise agreement bargaining. In particular, the Bargaining Policy clearly inhibits the AFPA from bargaining on behalf of our members with the AFP. Recently, the overwhelming majority voted not to bargain and, instead, have the Commissioner of the AFP make a determination pursuant to s. 27 of the *Australian Federal Police Act 1979* (Cth) regarding their terms and conditions.<sup>16</sup>

The effect of the Determination was to provide salary increases following the nominal expiry of the *Australian Federal Police Enterprise Agreement 2017 – 2020* ("**the EA**") on 24 May 2021 and the *Australian Federal Police Executive Level Enterprise Agreement 2019-2021* ("**the ELEA**") on 11 April 2021.

Furthermore, as previously discussed, the bargaining policy prohibits the AFP from creating an industrial agreement which reflects the modern law enforcement environment, as recognised by DC Gaughan.

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<sup>14</sup> See Explanatory Memorandum, pp. ii, xlv, & liv.

<sup>15</sup> Productivity Commission, *Workplace Relations Framework* (Report No. 76, 30 November 2015) p. 786 – 787.

<sup>16</sup> See Annexure A.

## 2) Bargaining under the FW Act as a law enforcement organisation

Police officers and law enforcement are unique with respect to their rights and status under employment law. Under common law, police officers have not traditionally been regarded as “employees”.<sup>17</sup> However, by operation of the AFP Act, the Commissioner of the AFP is afforded all the rights, duties and powers of an employer,<sup>18</sup> as well as being able to engage persons as employees.<sup>19</sup>

The peculiar employment status of police officers limits their access to rights otherwise available to members of the public and public servants for their employment. For instance, under the AFP Act there is an express limitation of the applicability of rights of review and protections afforded under the FW Act for AFP employees.<sup>20</sup> This express limitation was introduced into the AFP Act in the *Australian Federal Police Legislation Amendment Bill 2000* (“**the AFP Amendment Bill**”), which also made a clear distinction between the AFP Commissioner’s command powers and the Commissioner’s employment powers. The explanatory memorandum to the AFP Amendment Bill provided:

*“Part IV of the Act contains the Commissioner’s command powers. The High Court in *Police Service Board v Morris* (1984) 58 ALR 1 and the Federal Court in *Anderson v Sullivan* (1997) 148 ALR 633 have held that in order to maintain the community’s confidence in the integrity of a police force, **the police force must accept a curtailment of freedoms which other public sector employees enjoy.***

*The need for a disciplined force brings with it, therefore, the need for the Commissioner as commander of a disciplined force to have certain command powers. These powers do not derive from the employer / employee relationship. They are, therefore, not subject to the WR Act.*

*Although most of the Commissioner’s command powers are not subject to the WR Act, where the exercise of a command power amounts to a decision made under an enactment, they are subject to administrative review.”<sup>21</sup>*

### **[Emphasis added]**

While nothing in the FW Act specifically excludes police officers or members of the AFP from other entitlements or protections afforded to both public and private sector employees, there are obvious practical limitations on the accessibility of other rights and protections under the FW Act due to the status of our members. The most pronounced is relation to industrial action. Whilst the Bill does not seek to amend the provisions of the FW Act dealing with industrial

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<sup>17</sup> See Giuseppe Carabetta, ‘Employment Status of the Police in Australia’ (2003) 27(1) *Melbourne Law Review* 1.

<sup>18</sup> *Australian Federal Police Act 1979* (Cth) s. 23(1).

<sup>19</sup> *ibid*, s. 24(1).

<sup>20</sup> *ibid*, s.69B.

<sup>21</sup> Explanatory Memorandum, *Australian Federal Police Amendment Bill 2000* (Cth) p. 13.

action, it would be narrow sighted to not consider how the Bill's proposed changes to enterprise agreements without considering other provisions which have significant interaction.

The FW Act only permits "protected industrial action" to be taken.<sup>22</sup> Such action may only be taken following the nominal expiry of an enterprise agreement, and on the proviso that the party is bargaining in good faith for a new enterprise agreement. Industrial action may be suspended or terminated by the Fair Work Commission if industrial action that is being engaged in or is threatened, impending or probable, has threatened, is threatening or would threaten to endanger the life, the personal safety or health, or the welfare, of the population or a part of it.<sup>23</sup> The practical effect of this is that, by the very nature of the work undertaken by the AFP and its employees, the access to industrial action is significantly restricted in both the form that action takes and the length of such action due to the high likelihood that meaningful industrial action would likely fall foul of this prohibition. In the Productivity Commission's *Workplace Relations Framework* report, this limitation was acutely recognised:

*"The FW Act stipulates that the FWC may make an order to suspend proposed industrial action where it is likely to endanger a person's health, safety or welfare, or cause significant harm to a third party or to the economy (chapter 27). Because of this, the parts of the public sector that are focused on service delivery to the vulnerable or in maintaining public safety (such as police officers, firefighters, prison officers and child protection workers) may find it difficult to take industrial action and, as a result, cannot so easily countervail the Government's bargaining power."*<sup>24</sup>

As a consequence of this, the enterprise bargaining system (as proposed to be amended in this Bill) fails to adequately address the significant limitations placed on AFP employees to bargain utilising the full range of mechanisms available to public and private sector workers of the FW Act. These mechanisms are vitally important when bargaining becomes protracted or reaches a stalemate (which occurred during the last round of bargaining with the AFP, largely due to the Bargaining Policy).

Consideration should be given in this Bill to providing an appropriate mechanism to allow intervention by the Fair Work Commission sooner than is presently the case for those industries, professions and types of work likely to fall foul of the limitations on taking industrial action - notably law enforcement and other first responder organisations.

To address this issue and protect the industrial interest of AFP employees and community interests, the AFPA recommend that consideration be given to the introduction of a North American-style mandatory interest arbitration model, as proposed by the University of Sydney's Dr Giuseppe Carabetta.<sup>25</sup>

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<sup>22</sup> See *Fair Work Act 2009* (Cth) part 3-3, div 2, sub-d A.

<sup>23</sup> *Fair Work Act 2009* (Cth) sub-s. 424(1)(c)

<sup>24</sup> Productivity Commission, *Workplace Relations Framework* (Report No. 76, 30 November 2015) p. 780.

<sup>25</sup> Giuseppe Carabetta, 'Fair Work Bargaining for Police: A Proposal for Reform' (2020) 48(3) *Australian Business Law Review*, p253-271.

### 3) The **BOOT**

Employees of the AFP are covered by the *Australian Federal Police Enterprise Award 2016* (“**the AFP Award**”) but it does not apply due to the operation of the EA and the ELEA.

The AFPA is concerned by the proposal to dilute the requirements that those covered by a proposed enterprise agreement must be better off overall (“**the BOOT**”) compared to an underlying award. This is contained in the proposed inclusion of s. 189(1A). While it is unlikely that the AFP will be seeking to have an agreement approved by the Fair Work Commission prior to the sunset clause taking effect, the AFPA stands opposed to any potential action to unfairly erode the terms and conditions of our members.

### Conclusion

We again thank the Committee for the opportunity to make a submission regarding the Bill and would welcome any further opportunity to provide information relevant to the impact of this Bill on the work undertaken by our members. Likewise, we would be happy to appear before the inquiry should this be required.