



## BULLETIN

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9 February 2024

TO ALL UFUA MEMBERS

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# Firefighters Win Commonwealth Law Changes

UFUA members will have heard today of the passage of the Commonwealth changes to the Fair Work Act. These changes follow two other amendment Bills: one late last year and another in 2022.

The 2022 package contained in the [Fair Work Legislation Amendment \(Secure Jobs, Better Pay\) Act 2022](#) included [world leading gains](#) for firefighters in presumptive cancer legislation (see [National Bulletin 015 of 2022](#)). These gains have created a springboard for UFU Branches across Australia to improve state based presumptive cancer laws.

The 2023 package contained in the [Fair Work Legislation Amendment \(Closing Loopholes\) Act 2023](#) included new provisions extending presumptive post-traumatic stress coverage to firefighters employed in the ACT and Aviation.

The 2024 package, passed by the Senate yesterday, contained in the [Fair Work Legislation Amendment \(Closing Loopholes No. 2\) Bill 2023](#) include new provisions concerning the powers of the Fair Work Commission in Intractable Bargaining disputes. These changes are of immediate critical importance to Victorian UFU members who are in a prolonged dispute with the Victorian Government. They also benefit Ventia firefighters and provide safeguards for ACT and Aviation firefighters.

### **Post Traumatic Stress: An easier pathway to compensation**

The [legal changes which came into effect for ACT and Aviation firefighters](#) on January 1 2024 mean that post traumatic stress suffered by firefighters will be taken to have occurred in their employment, unless the contrary can be proven. The conditions which must be satisfied to obtain compensation are:

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- The employee has been diagnosed by a legally qualified medical practitioner (LQMP) or psychologist as suffering or having suffered from PTSD, following the diagnostic criteria in the Diagnostic and Statistical Manual of Mental Disorders, fifth edition text revision (DSM-5-TR), or a later edition of the Manual if specified by the Minister.
- Before the symptoms of PTSD became apparent, the employee was employed as a first responder or was a member of a class of employees declared by the Minister.
- The employee sustained PTSD on or after the commencement provisions on December 15, 2023.

Of greatest significance in these changes is the inclusion of psychologists and medical practitioners other than psychiatrists among those who can provide a diagnosis: Some Australian jurisdictions only accept diagnosis from a psychiatrist. This has created significant hardship for some UFUA members: we know of cases of members exhausting all of their leave and literally going broke while waiting for an appointment for a psychiatrist to provide a diagnosis. This situation adds significantly to the stress already being suffered by firefighters. [Our submission to the Senate Inquiry](#) provides further detail of post traumatic stress coverage in Australia and overseas.

These changes follow many years of campaigning and numerous submissions to inquiries by the UFUA. They will now provide a basis for the UFUA to continue to campaign to obtain harmonised post traumatic stress coverage for firefighters across Australia.

### **Intractable Bargaining Disputes (IBD): UFUA secures major changes to Commonwealth Law**

The long running bargaining dispute in Victoria has shown that an employer can “surface bargain” – go through the motions of bargaining, pretend that they intend to reach agreement, and not agree to anything at all.

Changes were made to close this loophole in 2023, but deficiencies in those changes were identified by our Victorian Branch. Our [Victorian Secretary Peter Marshall on behalf of the UFUA skilfully described these deficiencies to the Senate Inquiry in 2023](#).

In the Fire and Rescue Victoria (FRV) Dispute, extensive negotiations and dispute resolution took place over 3 years:

- At least 76 face-to-face bargaining meetings;
- 16 Fair Work Commission (FWC) appearances (section 240)
- 2 Fair Work Commission Statements.

Despite this, the employer (FRV) employed a tactic that attempts to place all current entitlements and conditions into a process of arbitration, by stating that no matters were agreed. This tactic created an expensive and time-consuming game of snakes and ladders that placed the UFU and its lawyers in the position of having to potentially seek arbitration of each and every condition of employment.

Worse still, this tactic had been identified by lawyers as a way to waste union time and resources, as detailed in the [UFUA Supplementary Submission to the Senate Inquiry](#). Concerningly, an employer could knowingly game the system, drag out bargaining, and once an application was made for the Fair Work Commission to deal with an intractable bargaining dispute (and arbitrate non-agreed matters) the employer could say that nothing was agreed at all! Another opportunity to un-agree previously agreed matters then arose in the “post declaration negotiation period” ordered by the Fair Work Commission.

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The legal changes approved by the Senate yesterday will, when proclaimed, dramatically improve this area of law. The changes mean that:

- any term of an intractable bargaining determination made by the Fair Work Commission shall be no less favourable than a term of the preceding enterprise agreement dealing with the same subject matter;, and
- “Agreed terms” between the parties are assessed at the time the IBD application is made, and any further agreement reached after that point.

This will be of immediate benefit to FRV firefighters because the changes will apply from the date that the current Intractable Bargaining dispute application was made by the UFU Victoria. They will also benefit Federal system firefighters employed by Ventia (who are already in a long running bargaining dispute) Aviation and the ACT (who are both bargaining this year).

As National Secretary, I extend our thanks and congratulations to the Victorian Branch, and Secretary Peter Marshall in particular, for securing this important improvement to Commonwealth Law. While I was unwell and undergoing major surgery in recent months, Peter and the Victorian Branch undertook this critical work on behalf of the UFUA. Ultimately, every firefighter and indeed worker covered by Commonwealth industrial law will benefit from this improvement to our bargaining system that has been a problem since enterprise bargaining was first introduced.

Finally, these changes are part of a raft of improvements to industrial laws committed to and delivered by the Albanese Government and have wide reaching effect. The changes critically won the support of the Greens, Senator Thorpe and Senator Pocock. [A summary of all of the recent changes shows how wide reaching these changes are](#). The UFUA’s efforts were part of a huge lobbying program and campaign undertaken by many unions in conjunction with the ACTU, and show what we can achieve through strong, united and committed work.

*Strength in Unity*  
*Authorised by National Secretary Greg McConville*