



UFU Analysis of Post Traumatic Stress
Disorder (PTSD) Provisions of the
“Fair Work Legislation Amendment
(Closing Loopholes) Bill 2023”.



September 12, 2023



Introduction

The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 was introduced to the House of Representatives on 4 September 2023. At that time the UFU was not aware that the Bill would contain provisions relating to Post Traumatic Stress Disorder (PTSD). We welcome the inclusion; however we strongly believe that the provisions lack substance and require strengthening.

The provisions

The provisions pertaining to PTSD for first responders are contained in “Schedule 3 Amendment of the Safety, Rehabilitation and Compensation Act 1988”. The Bill proposes new subsections 11, 12 & 13 at the end of section 7 of the SRC Act as follows:

(11) If:

(a) an employee has suffered, or is suffering, from post-traumatic stress disorder in accordance with a legislative instrument determined under subsection (12); and

(b) at any time before symptoms of post-traumatic stress disorder became apparent, the employee was employed as a first responder in accordance with subsection (13);

the employee’s employment as a first responder is, for the purposes of this Act, taken to have contributed, to a significant degree, to the contraction of the post-traumatic stress disorder, unless the contrary is established.

(12) For the purposes of paragraph (11)(a), the Minister may, by legislative instrument, determine the circumstances in which an employee is taken to have suffered, or be suffering, from post-traumatic stress disorder.

(13) For the purposes of paragraph (11)(b), an employee was employed as a first responder at a time if, at that time, the employee:

(a) was the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or an AFP employee (all within the meaning of the Australian Federal Police Act 1979); or

(b) was employed as a firefighter; or

(c) was employed as an ambulance officer (including as a paramedic); or

(d) was employed as an emergency services communications operator; or

(e) was a member of an emergency service (within the meaning of the Emergencies Act 2004 (ACT)).

The UFU raises only a minor issue with the definition of first responders proposed by subsection (13). The classification “emergency services communications operator” should be reworded to reflect the correct title “emergency communications officer” even though those positions were abolished by the Emergency Services Agency in 2023 after the classification was created in 2021. There was only ever a maximum of 12 such persons employed in this classification.

Of great concern is that the presumption in subsection (11) is intended to be founded on the operation of a legislative instrument to be made pursuant to subsection (12), that is to:

“...determine the circumstances in which an employee is taken to have suffered, or be suffering, from post-traumatic stress disorder”.

UFU Proposal

We have a strong preference that the SRC Act itself should set out the circumstances for the presumption to operate. To do otherwise would be to leave provisions open to executive decision of a future government, and to fail to address any substantive rights in the Act itself. This would represent a lost opportunity and would create an unnecessary delay in legislating effective presumptive PTSD rights for firefighters and other emergency services personnel.

We advocate that the circumstances be set out in an amended subsection (11) (a) to section 7 of the SRC Act as follows:

“(a) an employee has been diagnosed by a medial practitioner, psychiatrist or psychologist as having suffered, or is suffering, from post-traumatic stress disorder; and”

- ***subsection (11)(b) would remain;***
- ***subsection (12) would be deleted;***
- ***subsection (13) would be renumbered as Subsection (12).***

Supporting Arguments

The proposal advanced above reflects the provisions operating in Tasmania, which was the first Australian jurisdiction to enact presumptive legislation for PTSD. The Tasmanian legislation was based on that applying in Alberta Canada and is consistent with that applying in at least 4 other Canadian provinces.

Table 1 sets out by Australian Jurisdiction features of PTSD arrangements:

- By legislation, policy or not applicable;
- Who can diagnose;
- Whether a particular diagnostic inventory is required.

Table 1: PTSD Presumptive Arrangements by Australian Jurisdiction								
Jurisdiction	Legislation / Policy	Year	Diagnosis			Inventory		
			Psychiatrist	Psychologist	Physician	DSM 5	Other	none
ACT	Policy	2021	Yes	no	no			X
NSW	N/A							
NT	RTW Regs 2020 as deemed disease	2020	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified
Qld	WC and Rehab Act Ch1, Pt 4, Div 6, sub 3BA	2021	Yes	No	No	Not specified	Not specified	Not specified
SA	N/A							
Tas	WR and Comp Act, s28A	2019	Yes	Yes	Yes		Structured Mental Health Assessment	
Vic	N/A							
WA	Regulations	2021 2022 2023	Yes	No	No	Yes	no	no

Table 2 sets out by Canadian Jurisdiction features of PTSD arrangements:

- By legislation, policy or not applicable;
- Who can diagnose;
- Whether a particular diagnostic inventory is required.

Table 2: Presumptive PTSD Arrangements, Canadian Provinces							
Jurisdiction	Legislation / Policy	Diagnosis			Inventory		
		Psychiatrist	Psychologist	Physician	DSM 5	Other	none
Alberta	Legislation	Yes	yes	yes	yes		
British Columbia	WC Amendment Act 2017	Yes	yes	yes	yes		
Ontario	Workplace Safety and Insurance Act (amended 2016)	Yes	yes	yes	yes		
Manitoba	Workers Compensation Act 2016	Yes	yes	yes	yes		
Saskatchewan	Workers Compensation Act 2016	Yes	yes	yes	yes		

If enacted, the amendment proposed by the UFU would:

- Extend PTSD presumption to Aviation firefighters, who do not currently have presumptive PTSD rights;
- Enhance PTSD compensation arrangements applying through an administrative arrangement in the Australian Capital Territory, by:
 - Making those arrangements enforceable at law;

- Streamlining access to diagnosis by expanding the range of practitioners who can provide a diagnosis. The current arrangements have resulted in at least one case where a firefighter exhausted all accrued leave and had to borrow money while waiting for a psychiatrist appointment.
- Reflect the approach taken in Canadian provinces since 2016 and Tasmania since 2019.

Previous Inquiries conducted by the Commonwealth.

The 2018 Senate Inquiry

In 2018 the Senate Education and Employment References Committee conducted an Inquiry into “The people behind 000: mental health of our first responders”¹ (“The 2018 Senate Inquiry”).

The 2018 Senate Inquiry found:

“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.”²

Accordingly, the 2018 Senate Inquiry recommended:

“4.80 The committee recommends that the Commonwealth Government establish a national stakeholder working group, reporting to the COAG Council of Attorneys General, to assess the benefits of a coordinated, national approach to presumptive legislation covering PTSD and other psychological injuries in first responder and emergency service 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 Government Response to the 2018 Senate Inquiry took the issue no further. It supported in principle Recommendation 8 (above), and it observed:

“The Government 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

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https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/MentalHealth/Report

² Ibid. Recommendation 4.76 p. 90

need to take into account the different characteristics and circumstances of the various schemes.”³

2022 DEWR Inquiry

In October 2022 the Department of Employment and Workplace Relations (DEWR) released “Presumptive Workers’ Compensation Provisions for First Responders - Stakeholder Consultation Issues Paper” (“2022 DEWR Consultation Paper”). The UFU was not provided with a copy of this paper or otherwise informed of its release until 8 November 2022. The UFU ultimately provided a submission on 6 December 2022 (**Attachment One**).

A copy of the 2022 DEWR Consultation Issues Paper 2022 is attached (**Attachment Two**). A search of the DEWR website conducted by the UFU on 11 September 2023 yielded only a one-page information sheet dated 4 September 2023, titled “Closing Loopholes - Presumptive provisions for first responders in the Safety, Rehabilitation and Compensation Act 1988” (**Attachment Three**). The DEWR website appears to no longer contain any information at all concerning the 2022 DEWR review. The 4 September 2023 information sheet does not reference the 2022 Review.

Conclusion

The Parliament now has an opportunity to make concrete legislative change in favour of firefighters and other first responders. The proposal currently contained in Schedule 3 of the Closing Loopholes Bill fails to grasp the opportunity. Simple amendments as described in this submission can create clear and unambiguous substantive improvements for firefighters and other emergency services personnel who require streamlined access to workers compensation entitlements when diagnosed with PTSD.

Greg McConville
National and ACT Branch Secretary
United Firefighters Union of Australia
12 September 2023

³https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/MentalHealth/Government_Response p. 9



Presumptive Workers' Compensation Provisions for First Responders

Stakeholder Consultation Issues Paper

October 2022

Overview

Objective

This issues paper provides an overview of the proposal to introduce a presumption that if an employee suffers post-traumatic stress disorder (PTSD) after working as a first responder under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act), the employee's PTSD will be taken to have been caused by their employment.

The proposal is intended to help improve physical and mental health outcomes for first responders by facilitating earlier access to treatment through presumptive workers' compensation provisions. A faster, more streamlined claims process could reduce the stress and trauma for first responders often associated with submitting claims and assist with reducing the stigma associated with mental health conditions.

The Department of Employment and Workplace Relations (the department) is seeking stakeholder feedback on the proposal to finalise policy parameters of the measures.

Process

Stakeholders are invited to provide feedback on the proposal, with comments due **no later than 8 November 2022**. All comments should be provided to WorkersCompensationPolicy@dewr.gov.au.

Following consultation, the proposal will be finalised for Government consideration.

Presumptive workers' compensation provisions for first responders

The Government intends to introduce a presumption that if an employee contracts PTSD after working as a first responder under the SRC Act, that the employee's PTSD will be taken to have been caused by their employment for the purpose of a workers' compensation claim. This means the employee will not require further evidence to establish that the PTSD was caused by their employment.

Background

A Senate Education and Employment References Committee 2018 inquiry examined the role of the Commonwealth, State and Territory governments in addressing the high rates of psychological illness and injury experienced by first responders, emergency service workers and volunteers and released its findings: [The people behind 000: mental health of our first responders](#). The inquiry found that first responders diagnosed with PTSD can have considerable difficulty accessing workers' compensation due to the claims process. The claims process can have a detrimental impact on first responders by requiring them to relive traumatic events to prove the PTSD was sustained during the course of their employment, which can exacerbate the severity of their psychological illness or injury.

The inquiry recommended that the benefits of a national approach to presumptive legislation for first responders with PTSD be assessed. The department led a cross-jurisdictional First Responder Mental Health Working Group to explore this matter. The Working Group has explored what administrative and legislative arrangements are required to ensure that all first responders with PTSD are able to access appropriate support through workers' compensation arrangements.

Further, in December 2021, Safe Work Australia (SWA) published the [Revised List of Deemed Diseases in Australia](#), which recommends the inclusion of PTSD as a deemed disease for occupations such as police officers, ambulance officers including paramedics, and firefighters.

An overview of existing approaches to presumptive provisions for first responders by state and territory jurisdictions is at **Attachment A** for reference.

Proposal

The proposal seeks to introduce a rebuttable legal presumption that, if an employee suffers PTSD after working as a first responder under the SRC Act, the employee's PTSD will be taken to have been caused by their employment.

Psychological injuries affect first responders disproportionately compared with other professions due to the prevalence of trauma associated with first responder roles. The introduction of presumptive provisions in the SRC Act would provide a more streamlined claims process. It would help first responders avoid additional stress and trauma when submitting claims for PTSD and may reduce stigma associated with lodging such claims. It is anticipated that the presumptive provisions would result in better return to work outcomes by facilitating earlier access to treatment, which may offset any increase in workers' compensation costs as a result of the provisions.

The proposed presumptive provisions would apply to all first responders covered by the SRC Act who are involved in emergency situations. For example, this would cover employees in organisations such

as the Australian Federal Police, ACT Emergency Services Agency (including Ambulance, Fire and Rescue, the State Emergency Service and the Rural Fire Service) and Airservices Australia.

The department is considering whether the changes could be structured in a way to allow additional organisations that provide emergency response to be included where evidence becomes available.

The presumption would be rebuttable on the basis of contrary evidence that the PTSD was not sustained during the course of employment, consistent with other presumptive provisions in the SRC Act.

Key issues

1. The department is seeking stakeholder views on the proposed presumptive provisions, specifically on the scope of the proposal and any potential implementation issues.
2. The department is also particularly interested in better understanding stakeholder experience with PTSD in the workplace to make sure the proposed provisions are fit for purpose.
3. The definition of first responders would include paramedics, ambulance officers, police officers, and firefighters who attend the scene of an emergency. The department is seeking stakeholder views on the scope and definition of 'first responder', particularly whether this definition should be expanded to include additional roles including emergency services workers (such as the State Emergency Service) and officers not on the front line (such as investigators or triple zero operators).

Attachment A – Existing approaches to presumptive provisions for first responders by jurisdiction

Jurisdiction	Presumptive provisions
New South Wales (NSW)	No. NSW provides provisional liability to all employees.
Victoria (VIC)	No. VIC provides provisional liability and uses a number of administrative processes that can provide presumptive coverage.
Queensland (QLD)	<p>Yes. Queensland has presumptive provisions for first responders with PTSD.</p> <p>QLD has a broader definition of first responders than other jurisdictions. This includes police officers, paramedics, firefighters, corrective service workers, authorised officers in child safety, mine workers who perform rescues and nurses and doctors in certain areas, and includes those working in the private sector.</p> <p>PTSD provisions also apply to eligible employees in certain first responder departments who experience repeat or extreme exposure to graphic details, this can be through attending traumatic incidents, experiencing an incident as it happens to others, and investigating, reviewing or assessing traumatic incidents.</p>
South Australia (SA)	No.
Western Australia (WA)	Yes. WA provides presumptive to provisions to ambulance workers with PTSD.
Tasmania (TAS)	Yes. TAS currently has presumptive coverage for PTSD for all public sector workers.
Northern territory (NT)	Yes. NT has presumptive provisions for first responders with PTSD, including: paramedics, police officers, fire-fighters, and other emergency personnel.
Australian Capital Territory (ACT)	No. ACT first responders are covered by the Commonwealth's workers' compensation scheme. However, the ACT Government provides presumptive administrative arrangements for first responders in the ACT Public Sector through its workers' compensation self-insurer.



United Firefighters Union of Australia

**Response to the Department of Employment and Workplace Relations Stakeholder
Consultation Issues Paper: Presumptive Workers' Compensation Provisions for First
Responders**

Introductory Remarks

1. The United Firefighters Union of Australia (**UFUA**) is the federal representative of career firefighters and workers employed in fire services throughout Australia.
2. The UFUA represents approximately 10,000 members across the states and territories of Australia and in aviation.
3. The Department of Employment and Workplace Relations (**Department**) is seeking stakeholder views on a proposed amendment to the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**) to introduce presumptive provisions in relation to Post-Traumatic Stress Injuries (**PTSI**)¹ obtained in the course of work by first responders, including firefighters.
4. The UFUA became aware that the Department was seeking feedback from relevant stakeholders including firefighters and their representative union by email on the afternoon of 8 November 2022.
5. A consequence of the UFUA's late notification of the Department's call for feedback was that this call came at a time when important changes were being proposed to the SRC Act with respect to the presumptive liability provisions for members of the ACT Fire and Rescue Service for certain types of cancer. This meant that the UFUA twice had to request a two-week extension of time to provide its feedback.
6. This also meant that the UFUA considers itself well informed on the issues arising out of presumptive legislation for firefighters.
7. With respect to the amendments proposed by the Department, the UFUA made submissions on 20 June 2018 to Senate Standing Committee on Education and Employment: Inquiry into the Role of Commonwealth, State and Territory Governments in Addressing the High Rates of Mental Conditions Experienced by First Responders, Emergency Service Workers and Volunteers (**2018 Inquiry**). The UFUA repeats and relies upon those submissions in full, which are annexed to this position paper.

Executive Summary

8. Following one of the recommendations of the 2018 Inquiry the Department is presently seeking stakeholder views on a proposal to amend the SRC Act to introduce presumptive provisions in relation to PTSI.
9. In particular, the Department is seeking comment on the scope of the proposal and any potential implementation issues (**Scope and Definition Question**).
10. The Department is also particularly interested in better understanding stakeholder experience with PTSI in the workplace to make sure the proposed provisions are fit for purpose (**Fit for Purpose Question**).
11. The UFUA's primary position with respect to presumptive legislation, both in the case of first-responder mental health and cancer-causing workplaces, is that the integrity of any legislative scheme that seeks to streamline claims processing and reduce litigated outcomes by introducing a legal presumption, requires that the relevant legal presumption is supported by the evidence (including scientific research and findings).
12. The UFUA also notes that presumptive legislation is but one part of a multi-faceted approach to improving first-responder mental health.

¹ We note that the Department's consultation paper refers to "Post Traumatic Stress Disorder" and uses the abbreviation "PTSD". The UFUA considers that this type of mental-health condition is best described as an "injury" rather than a "disorder" (especially in the context of our members) and so prefer the terms "Post Traumatic Stress Injury" and "PTSI" respectively.

13. This position informs the UFUA's position with respect to both the Scope and Definition Question as well as the Fit for Purpose Question.
14. For this reason the UFUA considers that any definition of first responder for the purpose of the presumptive provisions must be supported by the evidence, as a category of worker repeatedly exposed to trauma such that they have a heightened risk of PTSD and related or similar mental-health injuries.
15. The UFUA also considers that the legislation must be harmonious with other workplace mental-health wellness programs.
16. In this context the UFUA welcomes a proposal which will make the claims process more streamlined and less adversarial but expresses caution about introducing a financial-incentive for any one particular type of mental-health diagnosis over any other.

2018 Inquiry

17. The UFUA provided detailed submissions to the 2018 Inquiry, a copy of which is annexed to this position paper and marked "**Annexure A**".
18. The UFUA also invited recognised international experts from the International Association of Firefighters and the Canadian Association of Fire Chiefs to provide submissions to the 2018 Inquiry. These submissions were made by Alex Forrest and Ken Block, which are annexed and marked **Annexures "B" and "C"** respectively.
19. The UFUA submissions to the 2018 Inquiry were supported by five supporting documents included as attachments to that submission. Those attachments included a scientific research paper and two relevant reports germane to the issue of mental health amongst our members:
 - a. Samuel B Harvey et al, 'The mental health of fire-fighters: An examination of the impact of repeated trauma exposure', (2016) 50(7) *Australian & New Zealand Journal of Psychiatry* 649;
 - b. The University of Adelaide Centre for Traumatic Stress Studies, *MFS Health & Wellbeing Study* (Report, 3 July 2017); and
 - c. Beth Cook and William Mitchell, Centre of Full Employment and Equity, *Occupational health effects for firefighters: The extent and implications of physical and psychological injuries* (Report prepared for the United Firefighters Union of Australia, Victorian Branch, January 2013).
20. Those attachments have been annexed to this position paper and marked **Annexures "D", "E" and "F"** respectively.

Relevant Principles

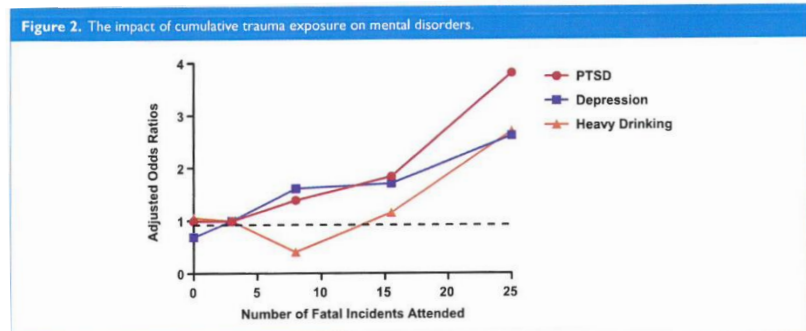
21. The UFUA considers that best practice in the field of the management of mental health for firefighters and other first responders is an approach that is **voluntary, confidential and non-punitive**.
22. This is supported by the experience of successful mental health approaches in Canada² and the United States.³

² Ken G Block, Submission No 49 to the Senate Standing Committee on Education and Employment *Inquiry into the Role of Commonwealth, State and Territory Governments in Addressing the High Rates of Mental Conditions Experienced by First Responders, Emergency Service Workers and Volunteers* (2018) 6.

³ Alex Forrest, Submission No 50 to the Senate Standing Committee on Education and Employment *Inquiry into the Role of Commonwealth, State and Territory Governments in Addressing the High Rates of Mental Conditions Experienced by First Responders, Emergency Service Workers and Volunteers* (15 June 2018) 5–6.

23. Presumptive legislation for the purposes of accessing workers compensation is an important aspect of any mental health approach that seeks to apply voluntary, confidential and non-punitive principles. This is because:
- it removes a barrier to accessing treatment in the form of the need to identify a particular incident that was the single cause of a mental health injury;
 - it removes any fault-based arguments and/or processes that are harmful to the treatment of a PTSD that a workers' compensation claim may otherwise involve;
 - it lessens the likelihood of protracted litigation arising from making a claim for workers compensation; and
 - it may assist in removing any stigma that may attach to making a claim for workers compensation.
24. In particular, presumptive legislation addresses a real hardship experienced by firefighters which is the requirement to identify and prove a single incident that gave rise to the psychological injury.
25. This is because the evidence establishes that PTSD and other mental health injuries often arise from repeated trauma exposure. As one study concluded: "Cumulative trauma exposure

appears to be a key risk factor for mental disorder among [firefighters] with increasing rates of PTSD, depression and heavy drinking with each additional traumatic exposure"⁴ (see eg Figure 2



opposite, taken from Harvey et al, at 655).

26. Having regard to the observed correlation between accumulated trauma exposure and risk of mental-health injury, presumptive legislation for first responders is welcomed by the UFUA.

Scope and Definition Question

Definition of 'first responder'

27. The Department has sought stakeholder views on the appropriate definition of "first responder".
28. We understand that the view ultimately taken by the Department on this question will determine the scope of coverage of the presumptive provisions which the Department will recommend be inserted into the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (**SRC Act**).
29. The view of the UFUA is that as such, "first responder", should be confined to those persons who are exposed to repeated instances of evident trauma such that there is a robust argument for a legal presumption.
30. The UFUA knows from the instructions it has received from its members and from countless relevant studies that that is the case for professional firefighters. Moreover, there already exists ample evidence—including the material annexed to this position paper—to support such a presumption for professional firefighters.

⁴ Harvey et al, at 657.

31. From the evidence that we have around professional firefighters, we believe a similar robust argument for a legal presumption could also be made with respect to:
 - a. ambulance officers;
 - b. paramedics; and
 - c. certain police officers (those who repeatedly attend the scene of an emergency or similar types of traumatic incident).
32. For which reason we support the inclusion of career firefighters, ambulance officers, paramedics and front-line police officers into the definition of first responders.
33. With respect to any further expansion of the definition of first responder, we do not oppose a further expansion of the definition of first responder per se. But we would strongly oppose any expansion of the definition that was not supported by robust evidence.
34. We have not seen evidence that volunteer emergency service workers and volunteer firefighters are exposed to the same repeated trauma that career firefighters are exposed to, nor evidence that volunteers experience elevated levels of mental-health injury as a result of their volunteer work.
35. With respect to Emergency Communications Officers employed within ACT Fire and Rescue command, reliable data is not yet available concerning exposure to traumatic events. This is attributable to:
 - a. the positions having only been recently created, with the first cohort of 6 commencing employment in April 2021;
 - b. significant turnover of staff; and
 - c. the size of the cohort, with no more than 12 having been employed at any time.
36. It is understood that the ACT Government presently applies a presumptive approach to PTSI claims for this cohort through an administrative arrangement. Pending further analysis of this cohort, we recommend that the arrangement continue, and that the employing authority (Emergency Services Agency) provide details of how it monitors exposure to traumatic incidents for this cohort as well as for ambulance call-takers and dispatchers.

Qualifying period

37. Having regard to:
 - a. the observed linear correlation between the cumulative number of traumatic incidents attended by first responders across all years of service and rising risk of mental-health injury;⁵ and
 - b. the significantly greater odds of suffering from probable PTSI and depression by firefighters who had attended more than 21 fatal incidents compared to those who had attended 1–5 fatal incidents,⁶we consider that the introduction of a qualifying period into the proposed legislative changes may be appropriate.
38. The length of that qualifying period would have to be determined with reference to the evidence.
39. Such an appropriate qualifying period would not unfairly prejudice first responders who suffered a mental-health injury after attending a single traumatic incident or a few traumatic incidents as the evidentiary burden to prove that that specific incident or those specific incidents were the cause would not be any greater than for any other profession.

⁵ Harvey et al, 652.

⁶ Ibid.

40. This can be contrasted with the career firefighter who, over many years, has accumulated significant “emotional luggage”⁷ and where the proverbial straw that broke the camel’s back might be an incident that was relatively minor in comparison with other incidents they had attended over the course of their career.
41. We also note that the proposed legislative amendment appears to be limited in scope to PTSI. We consider that PTSI is but one of many mental-health injuries that arise in the context of repeated trauma exposure. This is an issue we will address in the next question.

Fit for Purpose Question

42. The 2018 Inquiry produced a report, that recommended, amongst other things:

“the Commonwealth Government establish a national stakeholder working group, reporting to the COAG Council of Attorneys General, to assess the benefits of a coordinated, national approach to presumptive legislation covering PTSD **and other psychological injuries** in first responder and emergency service agencies.”

(our emphasis)

43. Noting the principle of best practice approaches to mental health are “voluntary, confidential and non-punitive” the UFUA considers that presumptive legislation for PTSI benefits an early intervention approach that is voluntary and non-punitive.
44. However, the UFUA notes that the evidence suggests that, in addition to PTSI, repeat trauma also give rise to increased risk of depression and hazardous alcohol consumption,⁸ amongst other types of psychological injury.⁹
45. Where the evidence supports it, the UFUA considers that other mental-health injuries that arise in cases of repeat exposure to trauma should be included in the presumptive legislation.
46. We consider that such an approach should be harmonious with mental-health wellness programs implemented in each jurisdiction and by each employer that might include other early intervention approaches such as firefighter training in peer-support programs and access to psychologists and professional counselling.
47. In the context of such a best-practice wellness approach we note with caution and concern the possibility that a legislative scheme that introduces a financial incentive favouring one type of mental-health injury diagnosis (PTSI) over another (depression, alcohol disorder, etc) may produce harmful outcomes for the welfare of our members.

Conclusion

48. The UFUA welcomes the proposed introduction of presumptive legislation for first responders suffering PTSI in the line of their work.
49. The UFUA considers that maintaining the integrity of any such presumptive regime is important to its effective functioning and this means that the legal presumption must find support in the evidence available to the legislature.
50. If a legal presumption has no basis in fact, then this will simply incentivise insurers to arm themselves with efficient systems and information-gathering processes to deny claims.

⁷ Forrest, 6.

⁸ Harvey et al, 651.

⁹ Beth Cook and William Mitchell, 36.

51. For this reason the UFUA considers that at present the definition of first responder should be confined to those presently identified:
- a. firefighters;
 - b. ambulance officers;
 - c. paramedics; and
 - d. police officers,
- who attend the scene of an emergency.
52. If, for policy reasons (including recruitment and retention concerns), employers wished to extend the scope of the workers compensation cover available to volunteers or broader categories of employees, we say they could do so using various policy tools without requiring a legislative amendment. For example, the internal administrative arrangements such as the ACT Emergency Services Agency currently use in their workers compensation scheme to allow emergency services workers to make PTSI claims on a *de facto* presumptive basis.
53. The UFUA says such policy reasons, which may well be sound, should not be conflated with the evidentiary underpinnings of presumptive legislation and do not provide a reason to expand the definition of 'first responder' to persons such as volunteers or officers not on the front line (such as investigators or triple-zero operators).
54. The UFUA wishes to emphasis the importance of maintaining integrity of the scheme. We recognise that there may be a temptation amongst policy-makers to be generous in extending scope of the presumption, but the (unseen) risk from such an approach is that a legal presumption that is not supported by evidence will be more likely to be subject to a rebuttal and increased litigation, to the detriment of all.
55. The UFUA also reiterates that the way that workers compensation claims are processed can only be but one part of the approach to mental-health wellness and it must be consistent with other early intervention approaches that may be applied by workplaces.

Greg McConville

National Secretary, United Firefighters Union of Australia

6 December 2022



Presumptive provisions for first responders in the *Safety, Rehabilitation and Compensation Act 1988*

These proposed amendments would streamline the workers' compensation claims process for first responders covered by the *Safety, Rehabilitation and Compensation Act 1988* (the Act) who sustain post-traumatic stress disorder.

What is proposed?

This proposal would amend the Act to introduce a rebuttable presumption, so that if a first responder covered by the Act sustains post-traumatic stress disorder (PTSD), they will not be required to prove that their employment significantly contributed to their condition when making a workers' compensation claim.

Australian Federal Police employees, ambulance officers (including paramedics), firefighters, emergency service communications operators, and any other members of an emergency service within the meaning of that term in the *Emergencies Act 2004* will be eligible for the presumption.

What will it mean?

This proposed amendment is intended to provide a faster, streamlined claims process which may reduce stress and trauma for first responders when submitting workers' compensation claims in relation to PTSD.

Employees not eligible for the presumption will still be able to access workers' compensation under existing arrangements subject to meeting other requirements.

When will it come into effect?

The proposal is subject to the passage of legislation.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>