



COMCARE SCHEME GUIDANCE – POST TRAUMATIC STRESS DISORDER SUFFERED BY CERTAIN EMPLOYEES

PURPOSE

To provide scheme guidance about the presumptive liability provisions for first responders who suffer from post-traumatic stress disorder (PTSD) under the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act).

BACKGROUND

Changes to disease provisions of the SRC Act have been made by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*¹ and apply to claims made for PTSD with a date of injury on or after 15 December 2023.

The changes amend section 7 to insert new subsections (11), (13), (13A) and (14) and provide presumptive workers' compensation coverage for first responders who are suffering, or who have suffered from PTSD.

The new provisions simplify access to compensation and are consistent with the recommendations of the Senate Education and Employment References Committee's 2019 report, 'The people behind 000: mental health and our first responders'² and the 2021 review of the Safe Work Australia Deemed Diseases List³ that found:

- > Reversing the onus of proof from first responders to employers allows affected employees easier and more timely access to necessary assistance and compensation.
- > Research evidence is strong and consistent enough to support the finding that first responders are at higher risk of developing PTSD.

Reversing the onus of proof from first responders to employers does not introduce new entitlements to compensation payments made under the SRC Act (i.e. weekly incapacity, medical treatment, and other types of compensation payments are unchanged). Instead, it reduces the administrative burden for those making a claim for PTSD and supports timely access to compensation while still providing employers with the opportunity to provide for evidence-based rebuttal (establishing the contrary).

Attachment A – provides an extract of the new section 7 provisions.

¹ [Fair Work Legislation Amendment \(Closing Loopholes\) Act 2023](#)

² [The people behind 000: mental health of our first responders – Parliament of Australia \(aph.gov.au\)](#)

³ [Review of the 2015 Deemed Diseases in Australia Report | Safe Work Australia](#)

Application of the provisions

The new section 7 provisions apply in relation to an injury, being a disease or an aggravation of a disease, that is suffered on or after 15 December 2023.⁴

Under section 7(4) of the SRC Act, decision makers will deem the date of injury as the day when:

- > the employee first sought medical treatment for the disease or aggravation; or
- > the disease or aggravation resulted in the death of the employee or first resulted in the incapacity for work, or impairment of the employee;

whichever happens first.

Where the deemed date of injury is before 15 December 2023, SRC Act decision makers should assess the claim under the normal eligibility for workers' compensation provisions of the SRC Act.

GUIDANCE

Presumptive requirements

Section 7(11) introduces presumptive compensation for first responders, or a class of employees (certain employees who may in future be declared by the Minister⁵) who are suffering, or who have suffered, from PTSD without having to prove that their PTSD is work-related.

For the presumption to apply the following requirements must be met:

- > the employee has been diagnosed by a legally qualified medical practitioner (LQMP) or psychologist as suffering, or having suffered from, PTSD in accordance with 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 Minister⁶; and
- > before the symptoms of PTSD became apparent, the employee was employed as a first responder or was a member of a class of employees as declared by the Minister; and
- > the employee sustained PTSD, or suffered an aggravation of PTSD, on or after the commencement of the provisions on 15 December 2023.

There is no employment duration qualifying period.

If these circumstances are met the employee's employment as a first responder is taken to have contributed, to a significant degree, to the onset or aggravation of the PTSD, unless the contrary is established.

Suffered or suffering from post-traumatic stress disorder

The diagnosis of PTSD must be made by a legally qualified medical practitioner (LQMP)⁷ or psychologist⁸ in accordance with the PTSD diagnostic criteria set out in the DSM-5-TR, published by the American Psychiatric Association in 2022, or where the Minister has specified a later edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), that later edition.

The publication is accessible to practitioners required to diagnose PTSD.

The diagnostic criteria indicate symptoms that must be present (and for how long) as well as a list of other symptoms, disorders, and conditions that must first be ruled out to qualify for a particular diagnosis. While these criteria help increase diagnostic reliability (i.e., the likelihood that two doctors would come up with the same diagnosis) it is important to remember that they are intended to be applied by trained medical professionals using clinical judgment.⁹

4 Fair Work Legislation Amendment (Closing Loopholes) Act 2023 Schedule 3, Item 3

5 On commencement of the provisions the Minister has not declared any class of employees.

6 At the commences of the amendments, the DSM-V-TR is the latest version of the Manual.

7 An LQMP is a general practitioner or specialist registered to practice under the Australian Health Practitioner Regulation Agency (AHPRA).

8 Registered by AHPRA.

9 [Psychiatry.org](https://psychiatry.org) - About DSM-5-TR

SRC Act decision makers should review the diagnosis made by the LQMP or psychologist for the purpose of deciding whether this requirement has been met (i.e. that the diagnosis was made in accordance with the DSM-5-TR criteria for PTSD). If uncertain, they should seek further information from the LQMP or psychologist who provided the diagnosis, requesting that they apply or review the criteria of the DSM-5-TR to confirm or provide an alternative diagnosis.

If the circumstances set out in the DSM-5-TR (or later DSM edition if specified) criteria are not met, decision makers should continue to consider the claim under the normal eligibility for workers' compensation provisions of the SRC Act.

Employed as a first responder

Section 7(13) defines first responders as:

- > the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police or Australian Federal Police (AFP) employee, all within the meaning of the *Australian Federal Police Act 1979*¹⁰; or
- > a firefighter; or
- > an ambulance officer (including as a paramedic); or
- > an emergency services communications operator; or
- > a member of an emergency service, within the meaning of the *Emergencies Act 2004* (ACT)¹¹; or
- > the Australian Border Force Commissioner; or
- > an Australian Public Service (APS) employee in the Australian Border Force.

SRC Act decision makers should establish that the employee is a first responder by reference to the information provided or obtained from the employer. If the employee is not a first responder (or a member of a particular class of employees declared by the Minister), they should consider the claim under the normal eligibility for workers' compensation provisions of the SRC Act.

Establishing the contrary (rebuttal)

If the presumption applies, the employee's employment as a first responder is taken to have contributed, to a significant degree, to the onset or aggravation of PTSD, unless the contrary is established.

The standard of proof which applies in determining whether the contrary has been established is the balance of probabilities (more likely than not).¹²

Establishing the contrary is based on the determining authority having relevant evidence or information, usually but not always provided by the employer, that contradicts or nullifies the requirements of the provisions. Where the contrary is established, the employee's employment as a first responder will not be taken to have contributed, to a significant degree, to the onset or aggravation of the PTSD.

Exclusionary provisions

Where the presumption applies, determining authorities should still consider the operation of the exclusionary provisions of the SRC Act.

Attachment B – provides a PTSD claims process chart.

¹⁰ *Australian Federal Police Act 1979* (legislation.gov.au)

¹¹ *Emergencies Act 2004* | Acts

¹² *Freeman and MRCC* [2016] AATA 741 at [98]

Legislative instrument

Section 7(13A) provides the Minister with the discretion to make a legislative instrument to specify a member of a class of employees to be covered by the presumption and/or declare a later edition of the DSM as the one to be used for the purpose of diagnosis (as described above).

To make a declaration the Minister must be satisfied that the incidence of PTSD among a class of employees is significantly greater than the incidence of PTSD in the general population. This, along with introduction of section 7(11)(a)(ii) that allows the Minister to specify a later version of the DSM by legislative instrument for the purpose of PTSD diagnosis, ensures the provisions remain fit for purpose.

At the commencement of the provisions no legislative instrument has been made.

Other avenues of assessing compensation for claims where the presumption does not apply

Where it is established that the presumption does not apply, because the employee is not a first responder or does not suffer from PTSD or suffers from PTSD before 15 December 2023, the claim must still be assessed under the normal eligibility for workers' compensation provisions of the SRC Act to determine whether liability to pay compensation exists.

FURTHER INFORMATION

For more information about the operation of the new presumptive provisions, please contact Comcare's Scheme Policy team on 1300 366 979 or email: SchemePolicyandDesign@comcare.gov.au

MENTAL HEALTH RESOURCES

Comcare works in partnership with employers and industry to undertake activities and promote best practice mental health outcomes. The following list of mental health resources, although not specific to the operation of the new provisions, provide useful mental health resources:

- > [Phoenix Australia – Disaster Mental Health Hub Resources](#)
- > [Beyond Blue – Resource Library](#)
- > [Black Dog Institute – Resources and Support](#)

In addition, two Comcare-related resources are available:

- > [Comcare and MHPN Webinar – Supporting clients/patients with PTSD to participate in good work](#)
- > [Mental Notes – Everyday wellbeing at work](#)

ATTACHMENTS

- > Attachment A – Extract of the new section 7 provisions.
- > Attachment B – PTSD claims process chart.

ATTACHMENT A – EXTRACT OF THE NEW SECTION 7 PROVISIONS

Post-traumatic stress disorder suffered by certain employees

7(11) If:

- (a) an employee has been diagnosed by a legally qualified medical practitioner or psychologist as suffering, or having suffered, from post-traumatic stress disorder in accordance with the diagnostic criteria in:
 - (i) the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition text revision (DSM-5-TR), published by the American psychiatric Association in 2022; or
 - (ii) if a later edition of the *Diagnostic and Statistical Manual of Mental Disorders* is specified by the Minister by legislative instrument – that later edition of the Manual; and
- (b) at any time before symptoms of post-traumatic stress disorder became apparent, the employee:
 - (i) was employed as a first responder in accordance with subsection (13); or
 - (ii) was a member of a class of employees declared by the Minister, by legislative instrument made under subsection 13(A), to be a class to which this subparagraph applies;

the employee's employment as a first responder or as a member of the class of employees declared under subsection 13(A) 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.

7(13) For the purposes of paragraph 11(b)(i), 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)); or
- (f) was the Australian Border Force Commissioner; or
- (g) was an APS employee in the Australian Border Force.

7(13A) If the Minister is satisfied that the incidence of post-traumatic stress disorder among a class of employees is significantly greater than the incidence of post-traumatic stress disorder among the general public, the Minister may, by legislative instrument declare that class of employees to be a class of employees to which subparagraph (11)(b)(ii) applies.

7(14) Subsection (11) does not limit, and is not limited by, subsections (1) and (2).

ATTACHMENT B – PTSD CLAIM PROCESS

