

## VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

### Summary of Submission

- Job security for women experiencing family violence is crucial to their livelihood and to their capacity to make choices
- Family violence has consequences that affect the workplace.
- Workplace policy should assist women to retain employment, enhance their career options, and maintain their family's normal participation in school and associated community activities.
- Industrial entitlements are a necessary part of workplace policy, in order for women to feel secure in reporting family violence to their employers and taking appropriate actions.
- Paid leave is a crucial entitlement to protect women's employment and security.
- The Safe at Home, Safe at Work (UNSW) project developed, in conjunction with the ASU(SACS) Vic Branch a model Clause for unions and employers to address in their negotiations on workplace conditions and industrial entitlements. The Clause has been recognised internationally as establishing a benchmark for conditions that will enable many women workers to retain employment while addressing the consequences of workplace violence.
- Most recent figures indicate that 747 agreements nationally encompassing both public and private sector workplaces contain a Family Violence clause (Department of Employment ). Of these, 38 per cent were based in Victorian or affected Victorian workplaces.
- An independent unit should be established to provide training and advisory services to assist the implementation of family violence clauses.
- The unit could: continue to develop information resources; assist mainstream agencies; create a specialised webpage of resources, good practice and developments; conduct research; and provide seminars and training.
- Workplace legislative change is essential for the protection of victim/survivors

# VICTORIAN ROYAL COMMISSION INTO FAMILY VIOLENCE

## A Submission by Robyn Dale and Ludo Mc Ferran

### Introduction

This submission draws on the Workplace Rights and Entitlements Project (later known as Safe at Home, Safe at Work), a project funded by the Australian Labor Government in 2010 for a period of 12 months. The project was extended subsequently for another two years. This project, the first of its kind in the world, was initiated by UNSW's Australian Family and Family Violence Clearinghouse (ADFVC) under the leadership of the Centre for Gender Related Violence Studies.

The goal of the project was to support workers experiencing family/family violence through the introduction of workplace rights, most commonly through the Enterprise Bargaining process. This was prompted by the growing recognition of the impact of family violence on workplace life, and the importance of enabling women experiencing violence to remain in their employment. While some employers had initiated family violence policies there is no evidence to indicate that employer led, voluntary policy was effective. In fact calling HR departments in these organisations led us to believe that very few people in the organisations were aware of the policy and even fewer accessed it.

It is our view that standardised, enforceable and non-discretionary workplace rights are essential in order to protect the job security and safety of affected workers and their co-workers.

Inclusion in Enterprise Agreements and hopefully, shortly, in Modern Awards will ensure this.

There is substantial research available on most of the Terms of Reference of the Royal Commission. However, this submission does not set out to deal with each issue. This is partly because the scale of material available, but also because we have chosen to highlight key areas where we have specific expertise. The detailed evidence underlying this Submission can be provided when required.

### Underpinning Axioms to Inform Policy Development

1. Job security for women experiencing family violence is crucial to their livelihood. Women, their families and their employers can benefit from industrial provisions which enable women to retain employment while addressing their circumstances.

*Encourage all employers to include paid leave for women experiencing family violence in their Enterprise Agreements.*

2. Family violence has consequences that affect the workplace. Direct and indirect actions affect both productivity and workplace climate.  
*Adopt policy that takes a comprehensive approach to supporting women in addressing violent behavior.*
3. Industrial entitlements are necessary for women to feel secure in reporting family violence to their employers and taking appropriate actions. HR policy alone is not sufficient for women to be confident about their rights.  
*The Best Practice clause developed in the Safe at Home, Safe at Work project should be used as the benchmark in establishing appropriate entitlements for women to act.*
4. An independent unit should be established to provide training and advisory services to assist the implementation of family violence clauses. Effective implementation involves cultural and organisational change, as well as an understanding of industrial rights and OH&S legislation.  
*Employers and Unions should be supported in enhancing understanding amongst managers and staff about the importance of employment continuity for women. (This is crucial for small business.)*
5. Paid leave is a crucial entitlement to protect women's employment and security. The financial security enables women to engage properly with formal institutions such as courts.  
*Provide for paid leave so that women can be confident about employment security.*
6. Legal protections across the range of activities that victims/survivors undertake as part of living their lives need to be coordinated and complementary.  
*Legislate for protections for victim/survivors under anti-discrimination law, OH&S law, industrial law and criminal law*

### **Implications of Family Violence for Workplace Productivity**

There has been considerable research on family violence and its implications for victims/survivors. However, until relatively recently little research has considered the implications of family violence for workplaces, or how victim/survivors of family violence can be assisted to continue productively in employment. There is growing evidence that family violence, perpetrated outside the workplace yet with ramifications on employees, has greater impact on workplace climate and productivity than that perpetrated in the workplace itself. The study (unpublished) conducted by the Safe at Home, Safe at Work

team monitoring workplaces after the Clauses were introduced, would indicate that workers felt the consequences of family violence when one of their co-workers was the victim/survivor.

Family violence has indirect consequences as well as the direct spill-over of family violence into workplace life (through the perpetrator pursuing the victim/survivor usually by email or phone but also coming in to the workplace). Absenteeism and poor performance related to their efforts to deal with the violence without the appropriate support, or sabotage by the perpetrator, have resulted in women being dismissed, a cost not only to the women themselves, but a substantial cost to employers.

The Safe at Home, Safe at Work project conducted a survey of more than 3,600 employees conducted through select Australian unions. Eighty one per cent of the respondents in this survey were women. Thirty per cent of the respondents had experienced family violence at some point, and of these, half had experienced difficulty in getting to work. The two primary reasons were physical injury and restraint, followed by having keys hidden, and the refusal of partners to act on their childcare responsibilities (ADFVC 2011). The reported effects of family violence on workers was experienced as profound. One sixth reported that it affected their performance through being tired, unwell or distracted. Ten per cent had to take time off, and seven per cent were late for work. Four fifths of the sample thought that more recognition of family violence in the workplace, together with formal industrial entitlements, would enable better management of the consequences, and reduce possible impacts.

Most research makes no analysis of broader social, economic and political structures and the way in which these shape work and workplaces. In other words, the environment within which workplace life is formed is neglected. Thus most research implicitly assumes that an equal social structure exists in the workplace and ignores the implications of power relations which are shaped by ownership and managerial prerogative, and by external context.

### **Women Need Paid Work**

Economic independence for women is fundamental to enable women to deal with family violence. Many women stay in violent relationships because they have not alternative means of gaining a livelihood. Evidence indicates that women who experience family violence are more likely to experience disruption, have casualised employment and lower wages.

Over two thirds of women experiencing family/family violence are in paid employment, but scant attention has been paid historically to interventions to support women through

workplace policy. In the absence of appropriate entitlements and support in the workplace, women are extremely vulnerable.

Workplace policy should assist women to retain employment, enhance their career options, and maintain their family's normal participation in school and associated community activities.

### **Protecting Employment through Industrial Rights**

An appropriate workplace strategy to address family violence will require industrial entitlements to enable women to act effectively to end their and their family's experience of violence. Such provisions are appropriately included in the established framework for recognising and protecting industrial rights.

One of the crucial achievements of the Safe at Home, Safe at Work project, in conjunction with the ASU(SACS) Vic Branch, was the development of model Clauses for unions and employers to address in their negotiations on workplace conditions and industrial entitlements. The ASU Clause has been recognised internationally as establishing a benchmark for conditions that will enable many women workers to retain employment while addressing the consequences of workplace violence.

Paid family violence leave is a key entitlement to enable women to sustain employment. Without paid leave, women are less likely to be able to report violent circumstances, and to manage the necessary interactions with courts, medical services and schools. At the same time, there are other key elements to a workplace provision aside from paid leave. These are encapsulated by the ACTU seven principles or criteria for a Family Violence Workplace provision:

- 1. The leave must be additional and dedicated paid leave;*
- 2. Processes and procedures to ensure confidentiality for employees disclosing domestic violence, including employee record must be clear*
- 3. Workplace safety planning strategies to ensure protection of employees should be developed and clearly understood by the parties concerned;*
- 4. The clause must include anti-discrimination protections for employees disclosing domestic violence; and*
- 5. Nominated / contact person(s), including union delegates or occupational health and safety representatives if appropriate, must be provided with appropriate training and paid time off work to facilitate their role;*
- 6. The clause should provide for referral of employees to appropriate domestic violence support services;*
- 7. Employees must be protected against adverse action or discrimination on the basis of their disclosure of, or experience of, family and domestic violence;*

The right to request flexible work arrangements for workers experiencing family violence is now included in the Fair Work Act. What is problematic however as the law stands, is while a worker may request flexible work arrangements as a result of experiencing family violence, this request requires a disclosure. There is no explicit protection for this worker under anti-discrimination legislation once a disclosure is made relating to family violence.

The ADFVC in its 2012 Discussion Paper to the Consolidation of Anti-Discrimination Laws Senate Committee advocated that: the personal characteristic '*status as a victim of domestic violence*' should be included in the list of attributes protected from discrimination, across all areas of life.

In addition, the Australian Law Reform Commission's Report Family Violence and Commonwealth Laws-Improving Legal Frameworks (ALRC February 2012) makes the following comment as well as specific recommendations:

- *Family violence clauses in enterprise agreements—the ALRC concludes the Australian Government should support the inclusion of family violence clauses and recommends that the FWO should develop a guide to negotiating such clauses;*
- *individual flexibility arrangements in enterprise agreements—the ALRC considers the appropriateness of individual flexibility arrangements (IFAs) in circumstances where an employee is experiencing family violence and recommends that the FWO should include information on negotiating an IFA in such circumstances in existing guidance material;*
- *modern awards—the ALRC considers ways in which modern awards might incorporate family violence-related terms and suggests this should be considered in the course of the modern award reviews to be conducted by FWA in 2012 and 2014;*
- *the general protections provisions under the Fair Work Act—the ALRC recommends that prior to the Australian Government considering inclusion of a family violence-related ground under the general protections provisions, the Australian Human Rights Commission (AHRC) should examine the possible inclusion of a family violence-related protected attribute under Commonwealth*

The Safe at Home, Safe at Work project not only developed and promoted the Family Violence clause in Agreements, but also prepared workplaces for their implementation and for monitoring improving practice. To this end, the project conducted a national survey to examine the impact of family violence on the attendance, performance and safety of employees at work, and developed a range of resources and training packages able to assist workplaces to implement their Family Violence clauses effectively.

The most recent figures indicate that there are 609,100 workers covered by Family Violence provisions in industrial agreements, namely some 747 Enterprise Agreements. Of these thirty eight per cent were in Victorian workplaces, the largest percentage of any State or Territory (Department of Employment). In addition to this number, many public servants are covered through changes to special leave directives, making a total of in excess of 1.6 million workers covered by some form of entitlement. It would be wrong however to assume that all of these entitlements are what might be described as optimum Agreements.

It is important to note that the Victorian Government, aside from the Western Australian Government is the only state not to have family violence entitlements (in some form) for their public servants more generally.

### **Implementation of Industrial Entitlements**

The experience from 2010-2013 was that implementation of family violence industrial entitlements requires a specialised unit, combining industrial and family violence knowledge and able to develop innovative practice. Victoria has been the lead state in the number of agreements that include family violence clauses and in the resourcing and training of workplaces. Specific reference needs to be made to Victorian Local Government who have been leading the world.

### **Recommendations:**

1. The Equal Opportunity Act 2010 is amended to the personal characteristic 'status as a victim of domestic violence' should be included in the list of attributes protected from discrimination, across all areas of life.
2. Victoria's OH&S laws (Occupational Health and Safety Act (2004) and Regulations (2007) are amended to include the impacts of family violence at work as an OH&S issue.
3. That a model unit for Victoria based at DVVIC be established based on the work of Safe at Home, Safe at Work Project. The proposed unit will:
  - Continue to develop information resources for individual workers and workplaces to assist introduction and implementation
  - Develop materials and training for employers and unions
  - Monitor the implementation of family violence clauses in Enterprise Agreements
  - Assist employers, particularly small business to develop strategies/entitlements tailored to their business
  - Assist mainstream agencies such as WorkSafe Victoria and Fair Work to assist individual workers and workplaces with resources and information

- Create a specialised webpage of resources, good practice and developments to assist individual workers and workplaces
  - Conduct research on emerging issues such as the impact of attending work, performance and safety risks of the abusive worker
  - Provide seminars and training focused on the industrial implementation of family violence clauses
4. The Victorian Government become a world leader in the provision of workplace entitlements for its staff.