

VICTORIAN TRADES HALL COUNCIL
SUBMISSION TO THE VICTORIAN ROYAL
COMMISSION INTO FAMILY VIOLENCE



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INTRODUCTION

The Victorian Trades Hall Council (VTHC) represents 40 unions and more than 330,000 workers in Victoria. These workers are members of unions that reach into every industry in the state, both in the public and private sectors.

We welcome this opportunity to make a submission to the Royal Commission into Family Violence. The VTHC congratulates the Andrews Government for taking such a strong stand on family violence. The Royal Commission is very timely as at least 39 women (as of 28 May 2015) – or two a week – have died as a result of family violence so far this year across Australia.

A significant number of the 350,000 women each year who experience family violence are members of a union or are employed in a unionised workplace.

Victorian unions recognise that:

- Of the approximately 350,000 women who experience family violence each year, an estimated two-thirds of them are in paid employment. (ABS Personal Safety Survey, 2006).
- Family violence affects the capacity of a significant number of workers to attend work, and negatively affects their work performance and their safety at work (McFerran, 2011).
- Economic independence has been shown to be a key requirement to successfully end and recover from a violent relationship; to support affected workers to stay in their jobs and to safely live in their homes and in their communities. (Patton, 2003)

Consequently the VTHC has been working with unions and other stakeholders to achieve a standardised, enforceable and non-discretionary workplace right to protect the job security and safety of affected workers and their co-workers.

Since 2010, unions in Victoria have actively promoted the introduction of Family Violence Clauses (FVCs) in industrial instruments and for industrial legislative protection for workers experiencing family violence. These clauses include paid leave, confidentiality protections and workplace support for victims of family violence. As a result, 38.69% or 289 of the 747 agreements in Australia that contain FVCs were negotiated in Victoria.

The model family violence clause was designed to address the need for workplaces to receive information and support on how to best deal with this issue. Seven core principles have been established by the Australian Council of Trade Unions (ACTU) including training key personnel, providing safety planning and referrals to family violence experts. However, no standardised and systematic training or resources are currently available to support the roll out of FVCs.

SUMMARY OF RECOMMENDATIONS

The VTHC recommends:

- That the Royal Commission supports the adoption in Victorian workplaces of the model best practice family violence leave clause developed by Victorian unions to support workers experiencing family violence.
- That the Equal Opportunity Act 2010 is amended to include the personal characteristic 'status as a victim of family violence' in the list of attributes protected from discrimination, across all areas of life.
- That Victoria's OHS laws (Occupational Health and Safety Act 2005 and Regulations 2007) are amended to include the impacts of family violence at work as an OHS issue.
- That the Royal Commission consider the recommendations of the Australian Law Reform Commission (ALRC) on the matter of family violence at work as an OHS issue.
- That the Victorian government (and all its departments) supports Victorian public sector unions' claims for enforceable family violence clauses in public sector industrial instruments including paid family violence leave and protections.
- That the VTHC be assisted to monitor the roll out of family violence clauses in Victorian workplaces and in developing training and resources to support workers and workplaces in implementing family violence clauses.

RELATION TO TERMS OF REFERENCE

The VTHC submission will speak specifically to Terms of Reference (1) 'by providing practical recommendations to stop family violence' with (c) 'support for victims of family violence and measures to address the impacts on victims, particularly on women and children.'

As the background notes indicate, factors that contribute to family violence may include 'financial pressures' and 'economic exclusion.' The background notes also shows that the impacts of family violence are profound, including 'economic isolation for women.'

The VTHC, as the representative for the Victorian union movement, is acutely aware of the impact of entrenched unemployment and underemployment, low-paid and/or insecure work on Victorian families. Further, low paid and insecure work disproportionately affects women workers. The VTHC has and always will continue to campaign tirelessly for work that is secure, meaningful and dignified for all Victorian workers.

BACKGROUND

The negative impacts of domestic violence on victims' employment outcomes has broader economic ramifications.

In 2004, Access Economics estimated the total costs associated with domestic violence in Australia at \$484 million in 2002/3. At that time, modelling was based on indices related solely to lost productivity.

In 2009, the 'National Council to Reduce Violence Against Women and Their Children' estimated that violence against women and children more generally cost the Victorian economy \$3.4 billion. The 'Cost of Violence Against Women Report' (KPMG, May 2013) estimated the cost in Australia of violence against women even higher at \$19.3 billion annually. This included costs associated with both victims and perpetrators' absenteeism, misuse of work resources by perpetrators and retraining and rehiring costs due to staff turnover as well as the cost of resources to prevent family violence, to help women and their children impacted by family violence and to prosecute perpetrators.

The 'Personal Safety Survey' (ABS 2006) found that nearly two thirds of women who reported family violence from their current partner were in paid employment.

It is clear that women who are subjected to family violence have a more disrupted work history, are on lower personal incomes, have had to change jobs more frequently and are more likely to be employed in casual and part time work than women with no experience of family violence. (Raphael 2001, cited by Franzway, Zufferey & Chung, 2007)

The 'Safe at Home, Safe at Work - National Domestic Violence and the Workplace Survey' (McFerran, 2011) found that of the 3600 respondents who were employed:

- Nearly a third had personally experienced family violence
- Nearly half of those who had experienced family violence reported that the violence affected their capacity to attend work
- Nearly one in five (19%) who had experienced family violence in the previous twelve months reported that the violence continued in their workplace (abusive phone calls and texts and the abusive person physically coming to the workplace)

COLLECTIVE BARGAINING AND FAMILY VIOLENCE CLAUSES

Over the past twenty years, there have been a series of family violence programs to engage employers such as 'Businesses against domestic violence,' where the expectation was that employers would introduce supportive measures concentrating on attitudinal change. The first draft of the federal Labor government's plan to reduce violence against women and their children in 2009 foresaw a role for employers in workplace responses with unions relegated with scouts, cubs and spiritual groups as possible conductors of attitudinal change for male members of their organisations.

However, a 2008 paper for the Australian Domestic and Family Violence Clearinghouse (ADFVC) by Suellen Murray and Anastasia Powell found that the results of an employer-led, voluntary and policy-based response had not been widespread or sustainable.

The subsequent creation of a partnership between the ADFVC and a number of unions to develop a model family violence clause to be used in collective bargaining sought to establish a standard, non-discretionary and enforceable right to support from the workplace for workers experiencing family violence, and firmly bring the Australian workplace into the integrated response required.

The first Australian family violence clause was negotiated in Victoria in September 2010 by the Australian Services Union Victoria Tasmania Branch with the Surf Coast Shire Council. Other local government workplaces followed and the clause was adopted by other unions in broader industry sectors.

In 2012, the ACTU Congress adopted a family violence policy which has become the minimum standard for unions to include a family violence clause in their log of claims during collective bargaining.

The ACTU model paid family violence leave clause includes 'seven star' key criteria:

1. The leave must be additional and dedicated paid leave;
2. There must be clear processes and procedures to ensure confidentiality for employees disclosing domestic violence;
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;
5. Appropriate training and paid time to facilitate their role must be provided for nominated / contact person(s) including union delegates and/or occupational health and safety representatives;
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.

Additionally the ACTU recommends that the clause must address mandatory reporting and Privacy Act 1998 (Cth) requirements, if relevant.

The paid family violence leave measure has attracted the most attention and is designed to assist victims of family violence to remain in paid employment, support them through the process of escaping violence and to promote safe and secure workplaces for them and their work colleagues. The leave is based on an employee's need to attend to critical matters during standard working hours such as court appearances to secure a family violence intervention order to protect themselves, their children and their workplace from perpetrators. However, all criteria assist the informed introduction and implementation of a clause, and best practice is the adoption of all seven principles.

To date, 747 Australian agreements contain a family violence clause. These are spread across both private and public sectors such as retail, public transport, banking, education, manufacturing, airline, local government, university and maritime sectors. These agreements protect over 600,000 workers. According to UNSW Gender Violence Research Network, award and directive protections for Commonwealth and State and Territory public services (except Victoria and Western Australia) increase the numbers of protected employees to over 1.6 million.

Family violence leave clause – VTHC sample**1. General Principle**

- (a) *The employer recognises that employees sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the employer is committed to providing support to staff that experience family violence.*

2. Definition of Family Violence

- (a) *The employer accepts the definition of family violence as stipulated in the Family Violence Protection Act 2008 (Vic). And the definition of family violence includes physical, sexual, financial, verbal or emotional abuse by a family member.*

3. General Measures

- (a) *Proof of family violence may be required and can be in the form an agreed document issued by the Police Service, a Court, a Doctor, District Nurse, Maternal Health Care Nurse, a Family Violence Support Service or Lawyer.*
- (b) *All personal information concerning family violence will be kept confidential. Information will not be kept on an employee's personnel file without their express written permission.*
- (c) *Understanding the traumatic nature of family violence the employer will support their employee if they have difficulties performing their tasks at work. No adverse action will be taken against an employee if their attendance or performance at work suffers as a result of experiencing family violence.*
- (e) *The employer will identify a contact in human resources, union Shop Steward or go to person who will be trained in family violence and privacy issues, for example, training in family violence risk assessment and risk management. The employer will advertise the name of the contact.*
- (f) *An employee experiencing family violence may raise the issue with their immediate supervisor, their union delegate/shop steward or Human Resources.*
- (g) *Where requested by an employee, the contact person will liaise with the employee's supervisor on the employee's behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with sub clauses 4 and 5.*
- (h) *The employer will develop guidelines to supplement this clause and which details the appropriate action to be taken in the event that an employee reports family violence.*

4. Leave

- (a) *An employee experiencing family violence will have access to 20 days per year (non-accumulative) of paid special leave for medical appointments, legal proceedings and other activities related to family violence. This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval.*
- (b) *An employee who supports a person experiencing family violence may take carer's leave to accompany them to court, to hospital, or to mind children.*

5. Individual Support

- (a) *In order to provide support to an employee experiencing family violence and to provide a safe work environment to all employees, the employer will approve any reasonable request from an employee experiencing family violence for:*
- (i) *changes to their span of hours or pattern or hours and/or shift patterns;*
- (ii) *Job redesign or changes to duties;*
- (iii) *Relocation to suitable employment elsewhere;*
- (iv) *A change to their telephone number or email address to avoid harassing contact;*
- (v) *Any other appropriate measure including those available under existing provisions for family friendly and flexible work arrangement*

- (b) *An employee experiencing family violence will be referred to the appropriate support services/agencies and/or other local resource*
- (c) *An employee that discloses to the human resources or their supervisor that they are experiencing family violence will be given a resource pack of information of current support services.*

Australian innovation in enterprise bargaining family violence protections has been recognised globally by the United Nations. The Report of the UN Secretary for the Commission on the Status of Women 57 (CSW57) on 'Multi-sectoral services and responses for women and girls subjected to violence' highlighted the Australian achievement of 'domestic violence entitlements in industrial awards and agreements, including access to paid family violence leave of up to twenty days a year.' (2013, p.11)

The agreed conclusions at CSW57 included a commitment to full employment and decent work, named the role of both employers and trade unions and included collective agreements in the measures to address violence against women and girls.

The VTHC expects to see a steady increase in the number of agreements containing a family violence clause. The number of agreements has been growing exponentially with each quarter. Further, the ACTU has included ten days paid family violence leave for permanent and casual workers in its claim to the Fair Work Commission as part of the Modern Award Review process.

The VTHC applauds employers and businesses supporting the introduction of family violence clauses. However, there are serious questions about their ongoing robustness in circumstances where there is no systematic scrutiny of their scope and application.

In addition, the VTHC believe that it is critical that training and resources be developed that can assist employers to properly implement the clause and provide the required support to affected workers.

RECOMMENDATIONS

THAT THE ROYAL COMMISSION RECOMMEND THE ADOPTION OF THE MODEL FAMILY VIOLENCE CLAUSE DEVELOPED BY VICTORIAN UNIONS TO SUPPORT WORKERS EXPERIENCING FAMILY VIOLENCE.

THAT THE VICTORIAN GOVERNMENT (AND ALL ITS DEPARTMENTS) SUPPORTS VICTORIAN PUBLIC SECTOR UNIONS' CLAIMS FOR ENFORCEABLE FAMILY VIOLENCE CLAUSES IN PUBLIC SECTOR INDUSTRIAL INSTRUMENTS INCLUDING PAID FAMILY VIOLENCE LEAVE AND PROTECTIONS.

THAT THE VTHC BE ASSISTED TO MONITOR THE ROLL OUT OF FAMILY VIOLENCE CLAUSES IN VICTORIAN WORKPLACES AND IN DEVELOPING TRAINING AND RESOURCES TO SUPPORT WORKERS AND WORKPLACES IN IMPLEMENTING FAMILY VIOLENCE CLAUSES.

ANTI-DISCRIMINATION

Victims of domestic violence experience both direct and indirect forms of discrimination in the workplace.

The following case studies collected from Queensland Working Women's Service and Working Women's Centre SA exemplify situations where victims of family violence have been sacked or bullied out of their jobs due to negative assumptions and prejudice, or in one example, as punishment for divorcing the perpetrator. All identifying information has been removed.

Mary

Mary had worked for 2 months and in that time had been promoted to Manager. Her husband had come in to the workplace one day and caused problems. After another incident at home she rang her boss to say she would be in a bit late as she was at the police station reporting a family violence incident and had been delayed. He sacked her as he said she was just 'too difficult.'

Anna

Anna had worked for her sister in law for 15 years. Anna divorced her husband following family violence. When she spoke about the family violence to her sister in law (who was also her boss) she was sacked.

Donna

Donna disclosed to her boss that she was experiencing family violence. Donna had been head hunted for her position but once she revealed the family violence she was systematically bullied out of her position.

Jessica

Jessica received a threatening call from her ex-partner and had to pack up and leave her workplace at short notice. Her employer sacked her and claimed she'd abandoned her employment, refusing to pay her notice period, even after she explained the reason why she had left at short notice.

Josephine

Josephine was a 52 year old female station assistant. She was killed by her partner in November 2011 while on holidays with her family. Although Josephine had raised this issue with her co-workers there was no support in place at the workplace at that time to assist either Josephine or her co-workers in addressing it.

Her death sent a shock wave through her union, the RTBU and was the key impetus for the RTBU to negotiate their first Family Violence clause in June 2012. Despite the circumstances, the RTBU Women's Committee, its Women's Officer Luba Grigorovitch and the union as a whole spent considerable time and resources in convincing the employer to take action.

The RTBU has now negotiated the inclusion of the FVC in 16 of its EBAs and it has become a core issue for the union and its members.

Specific negative assumptions and stereotyping about victims of family violence include that victims are unreliable, likely to underperform or bring danger or disruption into the workplace. These assumptions are likely to reflect community attitudes towards family violence and specifically, stigma attributed to victims.

An extensive 2009 survey found very low levels of understanding around the issue of why women remain in violent relationships, with 80% of respondents agreeing with the statement: 'it's hard to understand why women stay in violent relationships' and almost 50% of community respondents believed that a woman can leave a violent relationship if she wants to. (VicHealth, 2009)

Unfortunately, many workers are unwilling or unable to ask for support at work even when desperately needed due to fear, shame and embarrassment about disclosing their experience of family violence and the perception they will be judged negatively, disbelieved and/or blamed for the situation. Further, victims may fear they will not receive assistance, or in a worst case scenario, be disciplined or fired. (VicHealth, 2009)

Specific protection from discrimination as a victim of family violence would improve the likelihood that victims will disclose family violence where it is adversely impacting on them in the workplace, allowing them to get help and stay safely in their jobs. It would serve an important normative function, signalling that family violence is unacceptable and acknowledging the harm experienced by victims can be exacerbated by negative attitudes and inflexible policies.

Protection on this specific ground would make the Victorian anti-discrimination act clearer and more consistent, assisting duty holders to comply and enhance social inclusion for victims of family violence who experience social and financial disadvantage in addition to violence and harassment.

The inclusion of this ground is also consistent with Australia's national framework for addressing the issue of domestic violence, as set out in the Commonwealth's 'National Plan to Address Violence Against Women and Their Children 2012-22' and the Australian Labor Party's resolution to 'ensure that Fair Work and anti-discrimination frameworks provide appropriate protection to victims of domestic violence in the workplace'. (Aveling, 2011)

Protection from discrimination under the Equal Opportunity Act 2010 would also reinforce access to flexible work arrangements under the Fair Work Act. In June 2013, the right to request flexible work arrangements because the employee is experiencing family violence or supporting a family member experiencing family violence was included in the Fair Work Act (Part 3. 17. Subsection 65 (1) (1A) (e) & (f)). However, without express protection for victims of family violence from discrimination in the Fair Work Act, vulnerable workers may be exposed to discrimination or adverse action such as dismissal when disclosing family violence.

RECOMMENDATION

THAT THE VICTORIAN EQUAL OPPORTUNITY ACT 2010 IS AMENDED TO THE PERSONAL CHARACTERISTIC 'STATUS AS A VICTIM OF FAMILY VIOLENCE' SHOULD BE INCLUDED IN THE LIST OF ATTRIBUTES PROTECTED FROM DISCRIMINATION, ACROSS ALL AREAS OF LIFE.

OCCUPATIONAL HEALTH AND SAFETY

The national domestic violence and work survey (McFerran, 2011) found that 19% of workers who had experienced family violence reported that violence and harassment followed them into the workplace. Co-workers also reported being affected by the intrusion of family violence into their workplace. These findings suggest that family violence at work needs to be addressed as an occupational health and safety issue.

This was also recommended by the Australian Law Reform Commission (ALRC) review of Family Violence and Commonwealth Laws (Improving Legal Frameworks 2011). This review found that: *'Family violence may, in some cases, pose a risk to the physical and psychological health and safety, not only of employees who are victims of the violence, but also of co-workers and other third parties.'* (18.27)

The ALRC cited the following examples as 'a clear OHS issue or risk' (18.39):

- *Physical or verbal abuse between partners employed at the same workplace;*
- *Threats to a partner or the partner's co-workers at the workplace;*
- *Harassment or attacks on a partner or a partner's co-workers at their workplace, either in person or through phone calls and emails;*
- *Stalking a partner at the partner's workplace - for example, 29% of victims who were stalked by their previous partner reported that the person using family violence loitered outside their workplace; and*
- *In the most extreme cases, family violence-related homicide at the workplace.*

The ALRC recommended that:

'Recommendation 18—1: Safe Work Australia should, in developing or reviewing its Research and Data Strategy or other relevant strategies:

- *Identify family violence and work health and safety as a research priority;*
- *Examine the effect of the harmonised legislative and regulatory OHS scheme on duties and obligations owed in relation to family violence as a possible work health and safety issue; and*
- *Consider ways to extend and improve data coverage, collection and analysis in relation to family violence and its impact as a work health and safety issue.*

'Recommendation 18—2: As part of the national education and awareness campaign in Recommendation 15—1, Safe Work Australia should work with the Australian Domestic and Family Violence Clearinghouse, unions, employer organisations, State and Territory OHS regulators and other relevant bodies to:

- *Raise awareness about family violence and its impact as a possible work health and safety issue; and*
- *Develop and provide education and training in relation to family violence as a possible work health and safety issue.*

‘Recommendation 18—3: Safe Work Australia should consider including information on family violence as a possible work health and safety issue in relevant Model Codes of Practice, for example:

- *‘How to Manage Work Health and Safety Risks’;*
- *‘Managing the Work Environment and Facilities’;*
- *‘How to Consult on Work Health and Safety’;*
- *‘Preventing and Responding to Workplace Bullying’; and*
- *Any other code that Safe Work Australia may develop in relation to other relevant topics, such as workplace violence and psychosocial hazards*

RECOMMENDATION

THAT VICTORIA’S OHS LAWS (OCCUPATIONAL HEALTH AND SAFETY ACT [2004] AND REGULATIONS [2007]) ARE AMENDED TO INCLUDE THE IMPACTS OF FAMILY VIOLENCE AT WORK AS AN OHS SAFETY ISSUE.

THAT THE ROYAL COMMISSION SHOULD CONSIDER THE RECOMMENDATIONS OF THE ALRC ON THE MATTER OF FAMILY VIOLENCE AT WORK AS AN OHS ISSUE.

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