

Fair Work Commission

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**Victorian Government Submission
to the Four Yearly Review of Modern Awards**

Family and Domestic Violence Leave

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Victorian Government Submission to the Four Yearly Review of Modern Awards – Family and Domestic Violence Leave

Introduction

1. The Victorian Government makes this submission to assist the Fair Work Commission (FWC) in the exercise of undertaking its first four yearly review of modern awards in accordance with section 156 of the *Fair Work Act 2009* (the FW Act).
2. The FWC is considering the Australian Council of Trade Union’s application (the Claim) for all modern awards to include the provision of paid family and domestic violence leave. The Claim:
 - defines family and domestic violence;
 - seeks 10 days per year of paid family and domestic violence leave, with the ability to access a further two days per occasion if all forms of leave are exhausted; and
 - outlines evidentiary and privacy requirements.
3. A modern award may include terms about matters including ‘the facilitation of flexible working arrangements, particularly for employees with family responsibilities’ and ‘leave and arrangements for taking leave’ (section 139 of the FW Act).

Summary of Submission

4. The Victorian Government is committed to working with victims and survivors of family violence and with the people and organisations that support them, to build a better system that will help prevent family violence and keep people safe. Family and domestic violence is an insidious social issue with far-reaching consequences for individuals and communities. This creates an economic, as well as a social imperative to support those affected by family and domestic violence.
5. The Victorian Government submits that providing family and domestic violence paid and unpaid leave entitlements in all modern awards will promote support for victims who are seeking assistance or safety from violence, with the message that their workplace is a supportive and informed environment. In this regard, the Victorian Government has developed a best practice family violence leave model clause for inclusion in all of its public sector enterprise agreements (**Attachment 1**).
6. In accordance with the recommendations of the Royal Commission into Family Violence, Victoria will also be advocating through the Council of Australian

Governments to amend the National Employment Standards in Part 2-2 of the FW Act to include an entitlement to paid family violence leave for employees (other than casual employees) and an entitlement to unpaid family violence leave for casual employees (within 12 months).¹

7. The Victorian Government submits that the provision of family and domestic violence paid and unpaid leave entitlements in all modern awards will have an overall positive impact on business costs and workplace productivity, through, for example, giving employers the opportunity to retain qualified and valuable staff, in addition to the support provided to these workers.
8. In addition, the Victorian Government encourages the use of other mechanisms, such as flexible working arrangements to support workers in these situations, for example, allowing different start and finish times, which can greatly assist workers who may need to protect information about their whereabouts.

Context – Family and domestic violence and the workplace

9. Family and domestic violence is a critical issue for Victoria. It is the leading contributor to death, disability and ill health for Victorian women aged between 15 and 44 years. It makes up 40 per cent of the work of Victoria Police on crimes against the person,² and has been estimated to cost the Victorian economy \$3.4 billion a year.³
10. Two-thirds of Australian women who report violence by a current partner are in paid employment.⁴ That is, approximately 800,000 women, or around one in six female workers. Employees experiencing family violence are particularly vulnerable when working due to the predictability of their location and working hours, whilst the

¹ Royal Commission into Family Violence: <http://www.rcfv.com.au/>.

² Victorian Government (2015) *Submission to the Royal Commission into Family Violence* citing: (1) VicHealth (2004) *The health costs of violence: Measuring the burden of disease caused by intimate partner violence* (Melbourne: Victorian Health Promotion Foundation); (2) Victoria Police (2014) *Crime Statistics 2013-14*; (3) Office of Women's Policy (2009) *A Right to Respect* (Melbourne: State Government of Victoria).

³ The National Council to Reduce Violence against Women and their Children/ KPMG (2009) *The Cost of Violence against Women and their Children* (Commonwealth of Australia, Department of Families, Housing, Community Services and Indigenous Affairs). Accessed from: https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf.

⁴ Australian Bureau of Statistics (2005) Catalogue No 4906.0: *Personal Safety Survey, Australia* (Reissue).

strain of dealing with the abuse may affect their productivity, performance and well-being.⁵

11. Research conducted in 2011 revealed that 19 per cent of Australian workers who experienced domestic and family violence reported their harassment continued at their workplace.⁶ The same study found that the primary form of abuse at work involved receiving threatening phone calls, text message and emails, while 11 per cent of respondents who had experienced domestic and family violence reported that the perpetrator had physically visited them at work.⁷
12. A consequence of family and domestic violence on individual workers is that victims have been found to:

*have a more disrupted work history and are consequently on lower personal incomes, have had to change jobs more often and are employed at higher levels in casual and part-time work.*⁸
13. As economic factors are the most significant predictor of whether a woman experiencing family and domestic violence remains, escapes or returns to an abusive relationship, workplaces are a key setting for both primary prevention and responses to family violence. Workplace environments that are safe, inclusive of women, and receptive to the burden and hardship of family and domestic violence are critical to reinforcing desirable social norms of respect, non-violence and equity.
14. Research shows there are significant benefits of employment for victims and survivors of family and domestic violence including:
 - financial independence;
 - social support networks;
 - a sense of belonging and self-confidence; and
 - access to additional practical supports (e.g. counselling services).

⁵ Special Taskforce on Domestic and Family Violence (2015) *Not Now, Not Ever- Putting an End to Domestic and Family Violence in Queensland*. Accessed from: <https://www.qld.gov.au/community/documents/getting-support-health-social-issue/dfv-report-vol-one.pdf>.

⁶ McFerran, L. (2011) *Key Findings – Safe at Home, Safe at Work? National Domestic Violence and the Workplace Survey*, Sydney: University of New South Wales. Accessed from: https://www.arts.unsw.edu.au/media/FASSFile/Key_Findings_National_Domestic_Violence_and_the_Workplace_Survey_2011.pdf.

⁷ McFerran, L. (2011).

⁸ Franzway, S., Zufferey, C., and Chung, D. (2007) *Domestic Violence and Women's Employment* presented to 'Our Work, Our Lives 2007: National Conference on Women and Industrial Relations' 20-21 September 2007.

15. Financial security is a key component for enabling victims to leave violent relationships, and paid employment plays a crucial role in promoting women's independence and wellbeing.

Royal Commission into Family Violence – The Workplace

16. On 22 February 2015, the Victorian Government established a Royal Commission into Family Violence (Royal Commission), which examined the most effective ways to prevent family violence, improve early interventions, support victims, make perpetrators accountable and better integrate and coordinate efforts. The Royal Commission report was tabled in the Victorian Parliament on 30 March 2016.⁹

17. In its final report, the Royal Commission engaged with the role of workplaces in addressing family (and domestic) violence, stating that:

*Workplaces can play an important role in preventing and responding to family violence. They reflect the breadth and diversity of the community and offer a key opportunity to reach people who are affected by family violence, to provide support for them and to help them take steps to secure their safety. Workplaces are also important sites for dealing with family violence because the effects of violence reach into them in a variety of ways and because attitudes and cultures that prevail in them can influence the level to which violent behaviour is supported or condoned.*¹⁰

18. The final report considered the relationship between family violence and workplaces, presenting case material and evidence on how family and domestic violence had affected women's employment and how workplaces had supported them in seeking help and regaining financial independence.¹¹

19. The Victorian Government has committed to implementing all 227 recommendations stemming from the Royal Commission, which includes three directed to the workplace as follows:

⁹ Royal Commission into Family Violence: <http://www.rcfv.com.au/>.

¹⁰ *The Royal Commission into Family Violence: Summary and Recommendations* (March 2016) Chapter 37 – The Workplace. Accessed from: http://files.rcfv.com.au/Reports/RCFV_Full_Report_Interactive.pdf.

¹¹ In the final report of the Royal Commission into Family Violence, the first section of the chapter dealing with *The Workplace* considers the factors that make workplaces, and workplace culture, important in preventing or countering family violence, and the impact family violence has in the workplace for workers experiencing family violence, their co-workers and employers. It then outlines initiatives that have been developed and implemented in workplaces in Victoria with the aim of preventing and responding to family violence, and some of the main findings that have emerged about what is required for effective implementation of these initiatives. The second section of the chapter discusses the concept of paid family violence leave, which emerged in evidence to the Commission as an issue, and considers recent moves to expand its availability to a greater number of employees who might be affected by family violence. The section discusses evidence from employers about how they have responded to the practical challenges of implementing family violence leave.

Recommendation 190

The Victorian Government ensure that the inclusion of family violence leave in all public sector enterprise agreements is accompanied by access to suitable support services and referrals, as well as adequate planning, training and resources to equip managers and human resources staff to communicate and implement the leave entitlements.

Recommendation 191

The Victorian Government, through the Council of Australian Governments, encourage the Commonwealth Government to amend the National Employment Standards in Part 2-2 of the FW Act to include an entitlement to paid family violence leave for employees (other than casual employees) and an entitlement to unpaid family violence leave for casual employees (within 12 months).

Recommendation 192

On receipt of Our Watch's¹² Workplace Equality and Respect Project final report, the Victorian Government should:

- *Begin implementing best-practice workplace programs in all public sector workplaces in order to:
 - *enable them to build respectful and gender equitable cultures;*
 - *ensure that they have suitable policies for family violence victims;*
 - *provide adequate responses to and not allow for collusion with family violence perpetrators; and*
 - *build skills and support staff in taking bystander action.**
- *Support the maintenance of the project's proposed web-based portal or database of program models, tool kits, training resources and packages for application and use in all workplaces.*
- *Review and report on options for using existing regulatory frameworks and government procurement policies to support all Victorian employers in implementing best-practice family violence policies (within 12 months of receipt of the final report).*

¹² Based in Melbourne, *Our Watch* was established 'to drive nation-wide change in the culture, behaviours and attitudes that lead to violence against women and children' (www.ourwatch.org.au).

Victorian public sector model clause

20. As Victoria's largest employer, the Victorian Government is committed to ensuring its workplaces operate with a culture of gender equality and non-violence. The inclusion of family and domestic violence leave provisions into public sector enterprise agreements is one way of facilitating such a culture.
21. The Victorian Government has developed a best practice family violence leave model clause for inclusion in all of its enterprise agreements (**Attachment 1**).
22. The family violence model clause, developed by Industrial Relations Victoria, Department of Economic Development, Jobs, Transport and Resources, in consultation with the Victorian Trades Hall Council, the Community and Public Sector Union (CPSU) and the Australian Services Union, is expected to be used as guidance for Victorian Government agencies seeking to include a family violence provision.
23. The Victorian Government and the CPSU reached in-principle agreement for a new VPS Enterprise Agreement in December 2015 that includes a family violence leave provision, providing access to up to 20 days paid leave each year.
24. The introduction of a family violence leave provision in public sector enterprise agreements gives recognition to family violence as a critical issue with a significant impact on the economy. It recognises that both Government and workplaces have a role in, and responsibility for, responding to family violence. This proposal builds on work already undertaken in the *National Plan to Reduce Violence against Women and their Children 2010-2022*.
25. In addition to the inclusion of family violence leave provision in all public sector enterprise agreements, the Victorian Government has recently launched a Consultation Paper for Victoria's first ever *Gender Equality Strategy* to highlight the link between violence and attitudes towards women. The consultation paper, which seeks input from business, community groups and the public, addresses the fundamental connection between gender inequality and violence against women. The Strategy will guide the state's actions and priorities for achieving equal social, civic and economic participation for women in Victoria.¹³

¹³ Victorian Government (2015) *A Victorian Gender Equality Strategy: Consultation Paper*. Accessed from: <http://www.dpc.vic.gov.au/index.php/news-publications/gender-equality-have-your-say>.

Existing Australian workplace provisions

26. The first Australian family violence clause was negotiated in Victoria between the Surf Coast Shire Council and the Australian Services Union in 2010. The clause was subsequently rolled out across other enterprise agreements between the Australian Services Union and Victorian local governments.
27. Other Australian organisations that offer family and domestic violence provisions in enterprise agreements or company policies include the Australian Capital Territory public sector, the South Australian public sector, the Queensland public sector, CSL Limited, Dulux, Freedom Furniture, IKEA, Kmart, McDonalds, National Australia Bank, Priceline, QBE Insurance, Telstra, Vodafone and Virgin Australia.
28. Provisions vary across organisations and generally include arrangements such as counselling, changes to an employee's hours of work, changes to contact details to avoid harassment, extension of provisions for family friendly or flexible work arrangements, access to unpaid leave or existing forms of leave such as personal, annual and long service leave, and, in some cases, paid leave, ranging from two to 20 days per annum, non-accruing.

Benefits to employers

29. In the 2008-2009 financial year, the cost of intimate partner violence to the Australian economy overall was estimated to be \$13.6 billion annually, based on methods originally estimated by Access Economics.¹⁴ If no preventative action is taken, this cost is projected to rise to \$15.6 billion annually by 2021-2022.¹⁵ It is estimated that \$456 million of this \$15.6 billion will be borne by employers and \$609 million will be borne in productivity losses.¹⁶
30. Deloitte Access Economics (DAE) (2015) has outlined the workforce and workplace related costs associated with family and domestic violence in respect to victim-survivors as follows:
 - reduced productivity of the victim-survivor due to reduced workforce participation and/or presenteeism;

¹⁴ Deloitte Access Economics, 2015, *Change for a better future: Addressing domestic and family violence together – The role of business*. Accessed from: <http://www2.deloitte.com/au/en/pages/economics/articles/domestic-family-violence-business-responsibility.html>.

¹⁵ National Council to Reduce Violence against Women and their Children (2009) *The Cost of Violence Against Women and their Children*. Accessed from: https://www.dss.gov.au/sites/default/filesdocuments/05_2012/vawc_economic_report.pdf.

¹⁶ National Council to Reduce Violence against Women and their Children (2009).

- absenteeism of the victim-survivor's and family members;
 - costs of replacing lost output through overtime by other workers;
 - reduced productivity of the victim-survivor's and friends and family;
 - additional administrative costs of employers; and
 - loss of unpaid household and voluntary work by the victim-survivor and family and friends.¹⁷
31. Increased staff turnover can lead to loss of organisational knowledge, reduction in productivity, and recruitment and retraining expenses.¹⁸ Conversely, paid family and domestic violence leave can offer productivity incentives and other benefits.
32. In its 2015 report, DAE endorses dealing with family and domestic violence as a workplace issue, recognises that *economic factors are a significant predictor of whether a women experiencing DFV (domestic and family violence) stays, leaves or goes back to an abusive relationship* and recommends that businesses develop and commit to a plan to address the issue, which includes, *inter alia*, establishment of work arrangements that allow leave for women experiencing family and domestic violence.¹⁹
33. In its Inquiry Report into the Workplace Relations Framework, the Productivity Commission (PC) acknowledged family and domestic violence as a 'significant social issue' that affects employment and the workplace. While noting that paid family and domestic violence leave imposed additional costs, the PC noted that the issue of family violence leave could be considered as a candidate for the National Employment Standards (NES) and could be considered for implementation through a common clause in all modern awards. The PC also noted the best way to advance any proposals was to engage and educate employer groups about the need for such a scheme (i.e. family and domestic leave).²⁰
34. The Victorian Government recognises that there is likely to be an initial cost impost for employers, particularly small business, with the introduction of a new category of

¹⁷ Deloitte Access Economics (2015) *Change for a better future – Addressing domestic and family violence: The role of business*. p. 2. Accessed from: <http://www2.deloitte.com/au/en/pages/economics/articles/domestic-family-violence-business-responsibility.html>.

¹⁸ Productivity Commission (2015) *Workplace Relations Framework Inquiry Report – Volume 1. No. 76, 30 November 2016*. pp. 21, 547-552. Accessed from: <http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume1.pdf>.

¹⁹ Deloitte Access Economics (2015) p. 7.

²⁰ Productivity Commission (2015) *Workplace Relations Framework Inquiry Report – Volume 1. No. 76, 30 November 2016*. pp. 21, 547-552. Accessed from: <http://www.pc.gov.au/inquiries/completed/workplace-relations/report/workplace-relations-volume1.pdf>.

leave in modern awards. In addition, small business employers may need guidance and assistance in managing the relative complexity of family and domestic violence leave in their workplace. The Victorian Government therefore submits that if this form of leave is introduced into modern awards, it should be accompanied with an education campaign and guidance material tailored to the needs of employers, including small business.

Conclusion

35. The Victorian Government supports the introduction of family and domestic violence leave in all modern awards. Tackling the serious social issue of family and domestic violence in the workplace setting, will contribute to increasing women's economic independence and ultimately their capacity to leave abusive relationships. The introduction of leave in all modern awards will also contribute to the maintenance of workplace productivity.

Victorian Government – Best practice family violence model clause: enterprise agreements

1. Family Violence Leave

1.1 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.
- (b) Leave for family violence purposes is available to employees who are experiencing family violence to allow them to be absent from the workplace to attend counselling appointments, legal proceedings and other activities related to, and as a consequence of, family violence.

1.2 Definition of Family Violence

Family violence includes physical, sexual, financial, verbal or emotional abuse by a family member as defined by the *Family Violence Protection Act 2008* (Vic).

1.3 Eligibility

- (a) Leave for family violence purposes is available to all employees with the exception of casual employees.
- (b) Casual employees are entitled to access leave without pay for family violence purposes.

1.4 General Measures

- (a) Evidence of family violence may be required and can be in the form an agreed document issued by the Police Service, a Court, a registered health practitioner, a Family Violence Support Service, district nurse, maternal and health care nurse or Lawyer. A signed statutory declaration can also be offered as evidence.
- (b) All personal information concerning family violence will be kept confidential in line with the Employer's policies and relevant legislation. No information will be kept on an Employee's personnel file without their express written permission.
- (c) No adverse action will be taken against an Employee if their attendance or performance at work suffers as a result of experiencing family violence.

- (d) The Employer will identify contact/s within the workplace who will be trained in family violence and associated privacy issues. The Employer will advertise the name of any Family Violence contacts within the workplace.
- (e) An Employee experiencing family violence may raise the issue with their immediate supervisor, Family Violence contacts, union delegate or nominated Human Resources contact. The immediate supervisor may seek advice from Human Resources if the Employee chooses not to see the Human Resources or Family Violence contact.
- (f) Where requested by an employee, the Human Resources contact will liaise with the Employee's manager on the Employee's behalf, and will make a recommendation on the most appropriate form of support to provide in accordance with **clause AAA** and **clause BBB (a)**. 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.

1.5 Leave

- (a) An employee experiencing family violence will have access to 20 days per year of paid special leave for medical appointments, legal proceedings and other activities related to family violence (this leave is not cumulative but if the leave is exhausted consideration will be given to providing additional leave). 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 utilise their personal/carer's leave entitlement to accompany them to court, to hospital, or to care for children. The Employer may require evidence consistent with **clause CCC (b)** from an Employee seeking to utilise their personal/carer's leave entitlement.

1.6 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) temporary or ongoing changes to their span of hours or pattern or hours and/or shift patterns;
 - (ii) temporary or ongoing job redesign or changes to duties;
 - (iii) temporary or ongoing relocation to suitable employment;
 - (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 arrangements.

- (b) Any changes to an employee's role should be reviewed at agreed periods. When an employee is no longer experiencing family violence, the terms and conditions of employment may revert back to the terms and conditions applicable to the Employee's substantive position.
- (c) An employee experiencing family violence will be offered access to the Employee Assistance Program (EAP) and/or other available local employee support resources. The EAP shall include professionals trained specifically in family violence.
- (d) An Employee that discloses that they are experiencing family violence will be given information regarding current support services.