

## **SUBMISSION OF THE VICTORIAN HOSPITALS' INDUSTRIAL ASSOCIATION**

### **Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018**

#### **Background**

1. The Victorian Hospitals' Industrial Association (**VHIA**) is a registered organisation of employers, representing public health services and stand-alone community health centres in Victoria.

#### **Overview of Family and Domestic Violence Leave applying to VHIA members**

2. VHIA members are, broadly speaking, covered by enterprise agreements within the meaning of the *Fair Work Act 2009* (**Act**).
3. Since 2016, family violence leave and associated entitlements have been introduced into enterprise agreements applying to VHIA members as expired agreements have been replaced.
4. The inclusion of provisions regarding family violence leave and associated entitlements was the result of claims made by VHIA and relevant unions. That is, all parties sought the inclusion of such provisions in enterprise agreements.
5. The entitlements applying to VHIA members can be summarised as follows:
  - (a) The term 'family violence' is defined in a manner consistent with the *Family Violence Protection Act 2008* (Vic).
  - (b) Paid leave of up to 20 days per year for full time employees, pro rata for part time employees. Such leave does not accrue.
  - (c) Leave without pay for casual employees.
  - (d) Individual support such as a requirement to approve reasonable requests for workplace adjustments to provide a safe workplace.
  - (e) Requirements with respect to confidentiality.

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6. The paid leave entitlement does not accrue from year to year and may be accessed to undertake activities arising from or related to family violence including:

- (a) Counselling appointments,
- (b) Medical appointments,
- (c) Legal proceedings, and
- (d) Appointments with a legal practitioner.

7. In making a claim to include family violence leave provisions in its agreements, VHIA was mindful of considerations including:

**(i) Existing provisions regarding paid personal leave contain a gap in terms of family violence.**

Personal leave entitlements prescribe an entitlement to absent on pay due to illness or injury of an employee or illness, injury or unexpected emergency affecting a member of the employee's immediate family or household where they require care or support.

Some (though not all) circumstances involving family violence will be an 'unexpected emergency'.

Accordingly, an employee can access personal leave for an unexpected emergency affecting a member of the employee's immediate family or household, but not one affecting the employee themselves.

This results in a 'gap' where the employee has a greater right to take paid leave to support someone else experiencing family violence than if they're experiencing an unexpected emergency arising from family violence themselves.

**(ii) The role that secure employment has for those experiencing family violence.**

Specifically, the role income and security of employment have in terms of giving those experiencing family violence a greater ability to make choices with respect to safety than they may otherwise have.

**(iii) The need for a safe work environment.**

Health services and community health centres are workplaces where a significant proportion of the worksite may be accessed by members of the public.

**(iv) The desire for a consistent, minimum entitlement across employers.**

That is, addressing family violence would no longer be a matter of employer discretion but a prescribed entitlement. Further, that the minimum entitlement would be the same, no matter the size or location of the health service or community health service.

8. The implementation of family violence provisions has been supported by a range of materials including 'Family Violence Leave User Notes' which were developed in consultation with relevant unions and a number of podcasts.
9. In developing family violence leave terms and materials, VHIA has been assisted significantly by its members who have undertaken significant work in this area as part of the 'Strengthening Hospital Responses to Family Violence' project.

Materials regarding the 'Strengthening Hospital Response to Family Violence' project are available from the Royal Women's Hospital website at:

<https://haveyoursay.thewomens.org.au/shrfv-project>

**The Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018**

10. VHIA welcomes to proposal to include Family and Domestic Violence Leave as part of the National Employment Standards of the *Fair Work Act 2009* (**Act**) by the *Fair Work Amendment (Family and Domestic Violence Leave) Bill 2018* (**Bill**).

Please find below our comments regarding specific provisions of the Bill.

*Unpaid nature of the leave*

11. We note the leave is proposed to be unpaid. Whilst the inclusion of Family and Domestic Leave supports security of employment, it is our view that financial detriment should be avoided. That is, income will likely be a critical matter for those experiencing family and domestic violence.

Further, unpaid leave will mean the current 'gap' referred to at paragraph 7(i) of our submissions remains unaddressed. It will still be easier for an employee to access paid leave to support someone else experiencing family violence in the case of an unexpected emergency than if the employee is experiencing family violence themselves.

However, if the leave is to be unpaid:

- (i) Consideration should be given as to how this entitlement may interact with paid leave entitlements. For example, in the case of parental leave it is common for paid and unpaid leave to be taken concurrently. Section 88 of the Act provides an entitlement to take paid annual leave for a period agreed between an employee and his or her employer and that an employer must not unreasonably refuse to agree.
- (ii) It may assist if an entitlement to unpaid family and domestic violence leave was identified as a circumstance where an employer must agree to the accessing of paid annual leave where requested.

#### Definition of 'family and domestic violence' and 'close relative'

12. We note the definitions of 'family and domestic violence' and 'close relative' at 106(2) and (3) respectively. We anticipate these terms may not be defined consistently across States and Territories.

Having regard for the role of the National Employment Standards as a consistent minimum standard, we suggest consideration be given to a more expansive definition that, in addition to 'violent, threatening or other abusive behaviour', expressly refers to other examples of family and domestic violence such as emotional / psychological and economic abuse.

#### Taking unpaid family and domestic violence leave

13. At Note 1, there is a reference to 'urgent' court hearings. In our view, court hearings – whether urgent or not – will satisfy the requirements of s. 106B(1) including that it is impractical for the employee to do that thing outside the employee's ordinary hours of work.

We also suggest that consideration be given to including more examples at Note 1, including accessing family violence and legal support services.

#### Confidentiality

14. We welcome the inclusion of provisions regarding confidentiality. However, we suggest consideration be given to broadening the confidentiality requirements to include items such as:

- (i) Rosters,
- (ii) Payslips.

Support services

15. We are mindful of the commitments made by all governments regarding various family violence services. The current amendments do not require any action to inform the employee about family violence support services.

We are mindful that the Act currently requires employers to give various notices containing prescribed information, such as the Fair Work Information Statement and Notice of Employee Representational Rights.

For consideration is whether a notice detailing available services should be provided to an employee accessing family and domestic violence leave.

We thank the Committee for the opportunity to make a submission with respect to this matter.

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**Stuart McCullough**  
**CEO**  
**VICTORIAN HOSPITALS' INDUSTRIAL ASSOCIATION**