



## Stat Report 2021/09

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### Badly behaving health services

We continue to have to have disputes with health services over their inability or refusal to comply with the terms of enterprise agreements. In many cases we are dealing with entitlements that are clearly outlined in our agreement. It is becoming increasingly clear that health services, including many senior executive managers including IR/HR managers, think that compliance with an enterprise agreement is optional, or even qualified by funding considerations, even though neither is true.

There are too many health services that think they are not accountable under legislation and don't need to comply with our agreements. Because members have been reporting issues, we have been able to get on top of those issues very quickly and ensure that your Agreement entitlements and rights at work are protected. That's why it is absolutely vital that you continue to report your concerns to us.

Sadly, we also keep tackling the lack of supervision being given to our psychologist members. Members have been reporting that they are not receiving the supervision required under our agreement. We have reports of members either not getting any supervision and being told they won't get supervision; or they have supervision provided by other psychologists at the same grade within the same health service. None of this is acceptable and is in breach of our agreement which stipulates that supervision has to be provided by someone independent and at a higher grade than the psychologist receiving the supervision.

We have also been alerted to an alarming situation where students are being used to deliver mental health care instead of psychologists employed by the health service to deliver this care. It is a shockingly exploitative situation and is utterly unacceptable. We are following up on these reports. In the meantime, we strongly urge VPA members concerned about the supervision they are receiving (or not receiving) to contact the Union.

It seems like we only have bad news but we have some great news for members at Monash Health with respect to permanent night shift allowances. Monash Health has finally accepted what the agreement says about the night shift allowance and will be paying back the allowances they owe. If this is something that affects you, make sure you check out our piece in this STAT Report and contact Heidi.

Our team is back in the office providing advice, assistance and representation for members. If you need to contact a staff member, please contact us through our enquiry email at [enquiry@msav.org.au](mailto:enquiry@msav.org.au) or via telephone on (03) 9623 9623.

In solidarity  
Paul Elliott  
Secretary



**Positions not backfilled?** Let us know

## Union Round Up

### COVID-19 Advice

#### **Being told to get a medical certificate:**

Members have been reporting that they are being asked to provide medical certificates to prove they don't have COVID-19. There is no industrial, legal, medical or logical basis for your employer to make this demand; and they cannot direct you to have a consultation with your, or the employers', health practitioner.

If you are asked to get a medical certificate to prove you are free of COVID-19 refuse and please contact the Union as soon as possible on 9623 9623 or at [enquiry@msav.org.au](mailto:enquiry@msav.org.au)

#### **Workplace Health and Safety:**

It is first and foremost the responsibility of your health service to provide you with a safe and healthy workplace, which includes:

- properly and responsibly staffing to appropriate levels
- managing workloads when service demands surge
- providing personal protective equipment
- enforcing social distancing requirements

It is also your employer's responsibility to provide you with information about how your health service is responding and how they are going to keep your workplace safe and healthy.

Your legal right to refuse to work in unsafe or dangerous circumstances remains unchanged. We advise members to exercise this right if you are in any danger, or being asked to work in circumstances that you feel are unsafe, and contact us immediately.

#### **Annual leave rights:**

According to clause 60.3 of the public sector agreement, annual leave can only be taken by "mutual agreement". The public sector agreement does not contain a provision concerning excess annual leave and your employer cannot direct you to take annual leave.

#### **Carer's Leave and Flexible Working Arrangements**

The last year has presented several challenges, particularly for parents and carers. With temporary rosters returning in some hospitals and children returning to schools, this advice is designed to clarify members entitlements to carer's leave, and provide guidance when trying to balancing caring responsibilities and work.

#### **When can I access carer's leave?**

You are entitled to paid carer's leave to provide care or support to a member of your immediate family, or a member of your household, in certain circumstances. These circumstances include:

- When a member of your family requires care or has an illness or personal injury; or,
- Because of an unexpected emergency affecting your family member.

If you need to provide care for someone, the amount of leave you can take is only limited by the amount of paid personal/carer's leave you have accrued, noting that paid carer's leave comes out of the same balance as your sick leave.

This entitlement is found in each of our enterprise agreements, and now the National Employment Standards.

For example: If your children's school closes because of a COVID-19 outbreak, and you are unexpectedly required to provide them care, we consider you are entitled to access paid carer's leave for this time.

### **What about flexible working arrangements? What are they, and how can I request one?**

A flexible working arrangement is a temporary change to your hours, pattern of work, or location of work, which provides you increased workplace flexibility to help accommodate other challenges; such as, balancing caring responsibilities. A flexible working arrangement is temporary and does not change your substantive contract of employment.

If you have worked for your employer for at least 12 months, you have the right to request a flexible working arrangement if you fall into one of the below categories, including:

- A parent, or, has responsibility for the care of a child who is of school age or younger (including grandparents).
- A carer.
- An employee with a disability.
- An employee who is 55 or older.
- You are experiencing family and domestic violence or supporting someone experiencing family and domestic violence.

If you make a request (which needs to be in writing), your employer must genuinely consider the request and can only refuse it on reasonable business grounds. This means they must genuinely explore your proposal, and evidence how the business has tried to accommodate what you've asked for.

If your request is refused, the employer must respond to you within 21 days providing reasons for the refusal.

If you require support accessing carer's leave or a flexible working arrangement, please contact the Union at [enquiry@msav.org.au](mailto:enquiry@msav.org.au)

### **Statutory Declarations and Leave**

If you are experiencing problems with getting your statutory declaration signed with regard to sick leave, the Union advises you to submit your unsigned declaration and sort out the issue of a signature at a later point.

### **Caring for children, working from home and workplace discrimination**

We know many of our members are facing challenges balancing work and caring for children. Over the last several months, we have received numerous calls for support negotiating working from home requests and carer's leave applicants. As a union, we have already put a number of organisations including community health, public hospitals and private pathology on notice for discriminating against members, including taking applications to the Fair Work Commission and VCAT for breaches of employee rights.

#### **Q: Can I be discriminated against because I am a parent or carer?**

No. Your employer has a duty not to discriminate against employees in the workplace. Implementing a requirement, condition or practice which discriminates against parents or carer's is in contravention of s 18 of the *Equal Opportunity Act 2010* (Vic). It is also discrimination not to accommodate responsibilities of a parent or carer, which employers must not unreasonably refuse in accordance with s 19 of the EO Act.

For example, one employer advised workers that all staff who are providing care to children at home were not eligible to negotiate a working from home arrangement during the next round of COVID restrictions. This is an example of direct discrimination against parents/carers in contravention of the EO Act.

**Q: My position is one which can be performed at home. Is my employer required to support me working from home?**

Yes. The current Workplace Directions effective 5 August 2020 from the Victorian Government, requires that: *'An employer must not permit a worker to perform work at the Work Premises where it is reasonably practicable for the worker to work at the worker's place of residence or another suitable premises which is not the Work Premises.'*

We recognise many of our members will not be able to perform their positions from home. However, if you can work from home, your employer must support you to do so. For our working parents, the Department's employment guidance note helpfully encourages workplaces to explore opportunities to work from home where available.

Separately, s 65 of the *Fair Work Act 2009* (Cth) provides parents and carers the right to request a flexible working arrangement, such as working from home, in order to balance care responsibilities and work commitments. Request can only be refused on *reasonable* business grounds. And there are similar entitlements in many of our enterprise agreements negotiated by the union.

**Q: My position cannot be performed at home. Can I access carer's leave to support my children?**

Carer's leave is available to all part-time and full-time workers required to provide care to a member of their immediate family, or a member of their household, who is unwell or in an unexpected emergency.

We understand the majority of our members will be able to access school or kinder as permitted workers. However, if your child has special or particular needs and as a result it is not appropriate from them to attend school at this time, we consider that the pandemic is an unexpected emergency, and you are entitled to access carer's leave to provide care to your children if required.

## **Annual Leave Entitlements**

Over the last several weeks, we have received an increase in inquiries from members in the public sector about annual leave, and reports that members are feeling pressured to plan leave in advance. Here's a couple of quick facts about public sector annual leave:

- Under our Agreement, annual leave needs to be taken at a time "determined by mutual agreement". If you don't agree to take your leave, you can't be forced to take it: cl 60.3
- There is no provision in our Agreement, about excess annual leave. And there is also no clause in our Agreement, which enables an employer to direct a worker to take annual leave;
- If more than 2 weeks annual leave is taken, this leave must be backfilled: cl 34.1

Having said that, employers can have respectful conversations with workers about annual leave planning. And, the Union does encourage workers to take their annual leave to generally recharge and to be happy and safe at work when they're there!

If you do feel pressured to submit leave requests, here's some advice:

- Think about when you actually want to take your leave and try not to feel pressured by arbitrary dates presented by management (such as, needing to submit a plan to use X amount of leave before the end of the financial year);
- Put this plan to your employer and have a conversation about that proposal;
- Then, when that proposal is agreed, advise your employer that you do not intend to discuss leave planning further; and,
- If you're ever in doubt, the Union is always here for support.

If you have any queries about your annual leave entitlements, please contact the Union at [enquiry@msav.org.au](mailto:enquiry@msav.org.au)

## **Monash Health Permanent Night Shift Allowance**

Currently Monash Health employees only receive the permanent night shift allowance where they have been working only night shifts for a period of more than four weeks. This is wrong.

Monash Health has reached an agreement with the Union about the interpretation of this allowance. It has been accepted that the permanent night shift allowance will be paid where any number of night shifts are permanently rostered consecutively each week for more than four weeks. The night shifts do not need to be rostered on the same days and can be performed as part of a roster with other shifts such as day and afternoon shifts.

What is going to happen next:

1. Monash Health has agreed the permanent night shift allowance will be back paid up to four years from the date of this memo. If you think you may be eligible for back pay of the permanent night shift allowance, please contact your manager in writing by Friday, 14 May 2021 with details of the shift pattern you consider should be eligible for back pay and the relevant period(s) of time that pattern was worked.

Your manager will then review your shift patterns and if it is determined that you are eligible for back pay, we will ask you to sign a Deed of Release in relation to the back pay before payment is made. Managers will receive a further email next week with additional information in relation to setting out the information and organising the back pay with Payroll.

2. Managers are directed to apply the permanent night shift allowance consistently with the agreed interpretation.

Members at Monash Health need to come forward within 1 month to be part of the settlement the Union negotiated. Contact Heidi to ensure that you are part of the settlement at [heidib@msav.org.au](mailto:heidib@msav.org.au)

## Test Isolation Payment

The Test Isolation Payment announced by the Premier remains available to those members to make sure that no one is forced to choose between providing for their family and doing the right thing in getting tested and staying home.

<https://www.dhhs.vic.gov.au/employee-isolation-payment-covid-19>

This information is accessible along with other important information in a number of languages.

- <https://www.dhhs.vic.gov.au/coronavirus/arabic>
- <https://www.dhhs.vic.gov.au/coronavirus/chinese>
- <https://www.dhhs.vic.gov.au/coronavirus/dari>
- <https://www.dhhs.vic.gov.au/coronavirus/farsi>
- <https://www.dhhs.vic.gov.au/coronavirus/hindi>
- <https://www.dhhs.vic.gov.au/coronavirus/khmer>
- <https://www.dhhs.vic.gov.au/coronavirus/punjabi>
- <https://www.dhhs.vic.gov.au/coronavirus/vietnamese>

## Membership Issues – Experiencing hardship?

### Non-Members

For non-Union members who work in workplaces across our coverage; **we will give advice immediately over the phone if they join.**

In the spirit of supporting health workers through this unprecedented time we hope you might have a quiet word to colleagues who are not members, and suggest that there has never been a more important time to join a Union. Let them know that it is as simple as going to our website and [clicking on the 'JOIN' link](#).

### Members

If you are in the unfortunate position of being stood down or forced on to unpaid leave, [contact us to move your membership payments to a 'non-working' subscription rate of \\$8.26 per month](#).

## Psychologists: If you need help at work you need the VPA Inc.

If you are a psychologist and not in the VPA, you are taking unnecessary risks with your reputation and career. [Download an application form and join today.](#)

**Common beaches of employment entitlements and negotiation of enterprise agreements**

The VPA routinely assists members over issues such as harassment and bullying, under classification, organisational re-structuring, incorrect calculation of leave entitlements and health and safety. In addition, it negotiates enterprise agreements for psychologists in the public and private sectors to ensure that rates of pay and conditions remain up to date.

## Support the Healthy Futures campaign



The Union strongly believes that climate change is union business. We know that climate change threatens our health by increasing the risks of heatwaves, bushfires, droughts and storms, displacing people and straining our health systems.

And right now HESTA and First State Super (FSS), Australia's biggest health industry super funds, are investing our money in fossil fuels - coal, oil and gas.

Join us in asking HESTA and FSS to divest from fossil fuels at [www.healthyfutures.net.au/divest](http://www.healthyfutures.net.au/divest).

## Stopping Gendered Violence at Work

Far too often women are attacked, harassed and threatened in their workplaces. And it needs to stop. That's why the Union is fighting back against gendered violence in the workplace – it's a very serious occupational health and safety issue.

Gendered violence is like a disease in our workplaces. Working women's experience of violence at work indicates that the problem of gendered violence is endemic in our workplaces.

Sign up to support the campaign at: <http://www.unionwomen.org.au/stopgv>

## Do you need access to Domestic Violence services?

If you're experiencing domestic violence and need help, here is a list of Victorian services which may be able to assist you.

[Safe Steps \(formerly Women's Domestic Violence Crisis Service of Victoria\)](#)

[Aboriginal Family Violence Prevention and Legal Service Victoria \(FVPLS\)](#)

[Centre Against Sexual Assault \(CASA\) Forum](#)

[Community Legal Centres](#)

[Court Network](#)

[Domestic Violence Victoria](#)

[Elder Rights Advocacy \(ERA\)](#)

[Elizabeth Morgan House Aboriginal Women's Service](#)

[inTouch Multicultural Centre Against Family Violence](#)

[Men's Referral Service](#)

[No To Violence](#)

[QLife Australia](#)

[Seniors Rights Victoria \(SRV\)](#)

[The Jewish Taskforce Against Family Violence](#)

[Victoria Legal Aid \(VLA\)](#)

[Victorian Aboriginal Child Care Agency](#)

[Women with Disabilities Victoria \(WDV\)](#)

[Women's Housing Ltd](#)

[Women's Information Referral Exchange \(WIRE\)](#)

[Women's Legal Service](#)

[Women's refuges](#)

## Worth Reading: Fully, partly, in principle — or not at all?

"It was the tail end of a sitting week in early March last year, just before the world collapsed. Attorney-general Christian Porter tabled Respect@Work in parliament, finally making public a report that had been with the government since January. To mark the milestone, the Australian Human Rights Commission held a short press conference in a nearby committee room.

Despite the lack of fanfare, the message could not have been plainer. "Urgent" action was needed to deal with workplace sexual harassment. A national survey in 2018 had found 23 per cent of women and 16 per cent of men had been sexually harassed at work in the past twelve months.

"It occurs in every industry and at every level across Australia," sex discrimination commissioner Kate Jenkins warned. "This is not simply the story of 'a few bad apples.'" Having spent eighteen months looking at the issue, she had fifty-five recommendations ready to fix it, including changing the Sex Discrimination Act, simplifying the complaints system and putting more onus on employers to eliminate harassment.

Porter and women's minister Marise Payne said they would "carefully consider" the report. And then thirteen months went by. Granted, things have been happening elsewhere for the government (and, more lately, for Porter). But this excuse only travels so far. Most of Australia has been out of lockdown since mid 2020 and parliament has been back since August. And the pandemic hasn't stopped the government pursuing non-Covid issues like industrial relations and university fee reforms."

Read the entire article by Judith Ireland in Inside Story at: <https://insidestory.org.au/fully-partly-in-principle-or-not-at-all/>

## Worth Reading: Indigenous deaths in custody: inquests can be sites of justice or administrative violence

"Five Aboriginal people have died in custody in the last month in Australia.

It's been 30 years since the 1991 Royal Commission into Aboriginal Deaths in Custody examined 99 deaths between 1980 and 1989 and made over 30 recommendations into how deaths in custody should be investigated.

A government-commissioned review of the royal commission's recommendations declared many had been implemented — but critics reject that characterisation as "misleadingly positive".

On the ground, little has changed — 474 Indigenous people have died in custody since the report was handed down.

Wayne Fella Morrison and Danny Whitton were babies when the royal commission conferred its report. Cherdeena Wynne was not yet born. All died in custody and have inquests that are expected to sit later this year."

Read the entire article by Alison Whittaker in The Conversation at: <https://theconversation.com/indigenous-deaths-in-custody-inquests-can-be-sites-of-justice-or-administrative-violence-158126>

## Worth Reading: How safe are your data when you book a COVID vaccine?

"The Australian government has appointed the commercial company HealthEngine to establish a national booking system for COVID-19 vaccinations.

Selected through a Department of Health limited select tender process, the platform is being used by vaccine providers who don't have their own booking system.

However, HealthEngine has a track record of mishandling confidential patient information."

Read the entire article by Joan Henderson and Kerin Robinson in The Conversation at:  
<https://theconversation.com/how-safe-are-your-data-when-you-book-a-covid-vaccine-157869>

## Join the Union

**Are your workloads increasing? Are your stress levels increasing? [Join the Union today!](#)**

To protect our professions, we must strengthen our collective voice by increasing our membership. You can help by sharing the image below on Facebook, Twitter, Instagram, Reddit or your favourite social media platform.

## Your Union is on Facebook

Keep up to date with what's happening by liking us on Facebook

[Medical Scientists Association of Victoria](#) | [Victorian Psychologists Association Inc](#) | [Association of Hospital Pharmacists](#)

## Australian Unions Member Benefits app

As a Union member you get access to exclusive Member Benefits. The program has expanded to include:

- Discounted movie tickets for Village, Hoyts, Palace and Event cinemas.
- Discounted electronic gift cards including major theme parks, zoos and aquariums.
- A discounted accommodation booking site.
- A new secure member only website and smart phone app.

All this is free to all members of affiliated unions – that means you! If you have not got a login and would like join in [register for Member Benefits now.](#)



## Share STAT Report

Is there a copy of STAT Report on your Union noticeboard or in your staff room?

If not print out a copy and leave it on the noticeboard or in the staff room for your colleagues.