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## **ANMF (Vic Branch) Submission to Engage Victoria**

## **Psychological Health Regulations**

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# 1 Introduction

## 1.1 Background

The Australian Nursing and Midwifery Federation (Victorian Branch) is Victoria's peak professional, industrial and occupational health and safety organisation for nurses, midwives and carers, representing over 95,000 members. Our members are employed in a range of health services and clinical specialties including hospitals, aged care, community health, mental health, maternal and child health, the alcohol and other drug sector, medical clinics, prisons and Life Blood.

ANMF (Vic Branch) acts on behalf of its members, lobbying governments and other key stakeholders to ensure that nurses, midwives and carers are provided with healthy and safe workplaces, including for physical and psychological matters. ANMF (Vic Branch) supports members who make contact in relation to issues and experiences that they have faced in their workplace and represent them throughout the subsequent processes. This includes occupational violence and aggression, bullying, sexual harassment, sexual assault and fatigue related issues. The following submission is made in the interests of our members and their experiences and considers this through an occupational health and safety lens, of course acknowledging the industrial and alternate legal overlays.

The demographics and work exposures of the nursing and midwifery workforce are such that it is at particular risk of experiencing psychological injury. The current COVID-19 pandemic has highlighted some of the psychological risks that our members are faced with on a daily basis. This is not something that is new to ANMF (Vic Branch), or our members, and we have been lobbying the state government and WorkSafe for many years to improve the working lives of our members, and for their employers to provide them with a safe and psychologically healthy workplace.

ANMF (Vic Branch) welcomes the introduction of Psychological Health Regulations as a means of improving the working conditions for our members.

## 2 Psychological Health Regulations

### 2.1 General comments

ANMF (Vic Branch) supports the submission of Victorian Trades Hall Council (VTHC), and the recommendations contained therein. Of particular importance for ANMF (Vic Branch) are the following:

1. ANMF (Vic Branch) strongly supports the intent of the proposed Regulations, and is of the view that they will be a positive step towards creating a safer and healthier workplace for our members and the general community. We particularly support the provision of prevention plans for specific hazards. However, this should not be limited to the hazards identified (further explained in the relevant section below). ANMF (Vic Branch) has firsthand experience with the value of prevention plans as there is a requirement for employers covered by the Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2020-2024, and its predecessor also, to have an action plan to prevent violence and aggression. We have seen this as a positive duty which has prompted improvements, and we welcome this inclusion in the Regulations.
2. ANMF (Vic Branch) has identified that work-related fatigue is omitted from the draft Regulations. It is believed that this is a missed opportunity and strongly recommend that fatigue is identified as a stand-alone psychosocial hazard in the Regulations.

Fatigue can be physical, mental or emotional<sup>1</sup>, and each can be contributed to by various work-related factors. The current pandemic has exacerbated and highlighted the fatigue issues faced by healthcare workers and our members in particular, but these risks are present at all times, and are not only as a result of the pandemic. We have been assisting members who are required to work double shifts, excessive overtime hours (totaling up to 18 hours of straight work), work 8-10 days in a row etc. It would be a significant omission for these Regulations not to identify these risks and require employers to have systems of work to ensure that the risk associated with fatigue and working hours are addressed. It would also be of concern if there was not a requirement for employers to have a prevention plan should they identify risks to their employees associated with work-related fatigue or working hours.

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<sup>1</sup> WorkSafe Victoria, *Work-related fatigue – A guide for employers*, WorkSafe Victoria (Edition 3, August 2020), page 4.

ANMF (Vic Branch) notes that the current Western Australia Code of Practice for Psychosocial hazards in the workplace<sup>2</sup> identifies fatigue as a psychosocial hazard and it requires the same process for interventions as for bullying, occupational violence and aggression and other hazards. Further, WorkSafe Victoria has produced a separate psychosocial fact sheet<sup>3</sup> which specifically identifies fatigue as a psychosocial risk. Consequently, for fatigue to have been omitted from the examples of psychosocial hazards (in the definitions) and also from the reportable psychosocial complaints and those requiring prevention plans is inconsistent with the current application, expectations and state of knowledge around psychosocial hazards.

Additionally, given the significant impact of fatigue on the psychological health and safety of members of ANMF (Vic Branch), and the poor implementation of fatigue risk management strategies, it is critical that this is acknowledged in these Regulations.

It is therefore ANMF's strong recommendation that the Regulations specifically call out risks that lead to work-related fatigue.

In the alternative, if the rationale behind this omission is because fatigue is seen as an outcome of other poor systems of work, then it is vital that the individual hazards causing fatigue are called out in the regulations (i.e. excessive hours of work, poor rostering, work intensification etc.).

3. The Regulations use the word 'complaint' throughout, and it is defined in the phrase 'reportable psychosocial complaint'. ANMF (Vic Branch) is of the view that the word 'complaint' should be changed with the word 'report', and the term 'reportable psychosocial complaint' should be re-worded as 'specified psychosocial report'.

This indicates that there is a requirement for the employee to file a 'complaint' to ensure that the issue is dealt with. In the healthcare industry, there is a considerable difference between a 'complaint' and a 'report'. Complaints are required to be completed and submitted to HR Departments, and they are done sparingly due to the serious nature of them, and the response to them. Alternately, a report is completed by submitting an incident report, which many employees do more regularly. The outcome is that many incidents will be missed as the wording in the proposed Regulations is not suitable for the employees in the industries.

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<sup>2</sup> Commission for Occupational Safety and Health, *Code of Practice Psychosocial hazards in the workplace*, Department of Mines, Industry Regulation and Safety (2022), pages iv, 2, 3, 8.

<sup>3</sup> WorkSafe Victoria, *Psychosocial hazard fact sheet – Work-related fatigue*, WorkSafe Victoria (Edition 1 – August 2021).

'Report' is also more consistent with the OHS framework – whereby OHS incidents are 'reported', rather than 'complaints' being made. Complaint has a negative connotation, and does not have an association with the preventative focus intended within the risk management context.

4. The proposed Regulations do not consider amendments to notifiable incidents identified in section 37 of the *Occupational Health and Safety Act 2004 (Vic)* ('the Act') nor do they add a section on notifiable incidents.

Psychological injuries are the fastest growing types of injuries in Victoria. The Regulatory Impact Statement (RIS)<sup>4</sup> identifies that workers with psychological injuries take considerably more time off work compared to workers with physical injuries (15.3 weeks to 5.5 weeks<sup>5</sup>). In addition, the RIS identifies that the average cost of a mental injury in 2021 was approximately \$220,000, which has more than doubled over the last decade<sup>6</sup>. Considering this, the Regulations must include notification requirements to WorkSafe to ensure that the most severe incidents and risks are notified and addressed, as they would be for physical injuries. Whilst we understand that there are proposed reporting requirements contained within the draft, these are collated, combined reports (which will also be time-delayed), and it is not believed that these will result in WorkSafe Inspectors attending the workplace to ensure that appropriate systems of work are implemented, or other contemporaneous prevention, compliance or enforcement activity. ANMF (Vic Branch) supports the recommendation of VTHC to add the wording of a requirement for notifiable incidents as follows:

*A psychological illness or injury of a person that is related to work processes (supported by a medical certificate) that results in the person being unfit, for a continuous period of at least 5 days, to attend the person's usual place of work*

In addition, we also recommend a risk-based notification requirement where there is a serious risk to psychological health, e.g. a person attends an emergency department and threatens a triage nurse with a knife. This is currently not notifiable under any incident notification provisions, but presents a serious risk to the psychological health of this nurse (and likely others in the area), but as it currently stands, there is no requirement for this to be reported. Such a risk-based notification would mirror the existing risk-based notification provisions contained within s37 of *the Act*.

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<sup>4</sup> Deloitte Access Economics, *Occupational Health and Safety (Psychological Health) Regulations Amendment 2022 – Regulatory Impact Statement*, WorkSafe Victoria (January 2022).

<sup>5</sup> Ibid, page 4.

<sup>6</sup> Ibid.

5. The use of similar terms psychosocial hazard and psychological health has the potential to cause confusion amongst workers who use this Regulation (i.e. HSR's). Whilst we understand that the intended difference is to highlight the impact on the individual's psychological health, caused by poor systems of work resulting in psychosocial hazards in the workplace, this is not widely understood by workers who are not experts in this area. It is therefore recommended that the difference between the two terms is defined more directly. If not felt to be appropriate for an explanatory note in the Regulations, it may take place in the Code.

## 2.2 Objectives:

ANMF (Vic Branch) recommends that the current objectives be amended to include 'elimination or risk' as per the objects under section 2 of *the Act*. In the current draft of the Regulation, the objective is to require employers to identify and control risks associated with psychosocial hazards. This is not in line with the hierarchy of control, as the highest order control is to eliminate risks associated with a psychological hazard.

In order to address this, ANMF (Vic Branch) recommends that a new point is introduced at 1(b) to eliminate any risk associated with a psychosocial hazard, with the current point 1 (b) to become 1 (c). This will then also be in line with the proposed r 448B Control of risk.

## 2.3 Authorised provision:

ANMF (Vic Branch) does not raise any concerns regarding this provision.

## 2.4 Commencement:

ANMF (Vic Branch) is supportive of the proposed Regulations commencement date.

## 2.5 Principle Regulations:

ANMF (Vic Branch) does not raise any concerns regarding this provision.

## 2.6 Definitions:

**Applicable employer:** ANMF (Vic Branch) supports the submission of VTHC on the definition of applicable employer.

**Bullying:** ANMF (Vic Branch) recommends that the definition of bullying be consistent with the definition which is in the current WorkSafe Victoria guidance material<sup>7</sup> - *Workplace bullying is repeated, unreasonable behaviour directed at an employee or group of employees that creates a risk to health and safety.*

Whilst it is understood that the proposed definition is very similar and potentially could be deemed to have the same effect, the current definition in the guidelines is very well known to the Victorian workforce and there does not appear to be a reason for this to be changed.

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<sup>7</sup> WorkSafe Victoria, *Workplace bullying – A guide for employers*, WorkSafe Victoria (March 2020), page 1.

**High job demand:** ANMF (Vic Branch) recommends that high job demands be defined as: *means sustained or repeated physical, mental or emotional effort which is unreasonable.* The inclusion of “*or frequently exceeds the employee’s skills or capacity*” confuses the definition because it is difficult to fathom a situation that is reasonable but that at the same time is not within the employees skills or capacity. Therefore, it is not felt that this adds to the definition.

**Psychosocial hazard:** ANMF (Vic Branch) highly recommends that work-related fatigue is included in this definition, and the factors that cause it. This can be picked up in the example area and could include: work-related fatigue, excessive working hours, poor rostering practices etc.

We also recommend changing the wording of ‘health and safety’ to ‘health or safety’. The impact could be on health or safety of an individual and not necessarily on both health and safety.

**Reportable psychosocial complaint:** please note the above recommendation in the general section on the use of the word ‘complaint’. In addition, it is believed that this is too narrow and should be expanded to include work-related fatigue, or alternately the hazards that contribute to work-related fatigue.

## 2.7 Part 5A.1 Duties of employers

- In r 448B(2)(a)(ii), add the words ‘or substance’ after the word ‘plant’
- Add work-related fatigue or fatigue related hazards under r448D (1)
- Add timeframes in which an employer must develop prevention plans under r448D. This should include an initial timeframe of when the regulations commence. In addition, there should be a requirement for the employer to periodically review their prevention plans on a yearly basis.
- In r448D (5) add that ARREO should have the right to access prevention plans as this related to their power under s89(1)(a) of the OHS Act *to inspect any plant, substance or other thing at the place of work.*

## 2.8 Part 5A.2 – Reporting

ANMF (Vic Branch) supports the reporting requirements in their current form – subject to our recommendations on the word complaint and also the expansion of what is considered a reportable psychosocial complaint.

## 2.9 Part 5A.3 – Enforcement Amendments

ANMF (Vic Branch) supports the VTHC submission on Enforcement Amendments.

In addition, we are of the view that enforcement of the Regulations is coming in too late. It is believed that a date of 12 months from when the Regulations come in force is a more

reasonable date for enforcement activity to commence as that is an ample amount of time for employers to ensure compliance with the Regulations.