

First print



New South Wales

Industrial Relations Amendment (Leave for Victims of Crime) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to give employees who are the victims of violent crime an entitlement to unpaid leave to attend court proceedings in connection with the offence concerned.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Industrial Relations Act 1996* set out in Schedule 1.

Schedule 1 [1] inserts Part 4B into Chapter 2 of the Act to make provision for leave for the victims of crime.

Proposed section 72AA provides that the Part applies to all employees (including part-time employees and casual employees).

Proposed section 72AB defines expressions used in the proposed Part. The definitions include the following:

- (a) court proceedings (which is defined as criminal proceedings before a court, including committal proceedings, sentencing proceedings and appeal proceedings),
- (b) victim of crime (which is defined as a person who suffers harm as a direct result of an alleged violent crime, a parent or guardian of a child who suffers such harm or a member of the immediate family of a person who dies as a direct result of an alleged violent crime),
- (c) violent crime (which is defined as an indictable offence involving violence, including sexual or indecent assault, that is punishable by imprisonment for life or for 5 years or more).

Proposed section 72AC gives an employee who is the victim of crime an entitlement to unpaid victims leave in connection with court proceedings relating to the violent crime.

Proposed section 72AD sets out the purposes for which victims leave may be granted, namely:

- (a) to attend court proceedings that are scheduled in relation to the violent crime,
- (b) to travel for the purpose of attending any such proceedings (limited to one working day).

Proposed section 72AE requires employees to give the employer at least one week's notice of the intention to take victims leave and enables the employer to request an official certificate confirming that the employee is a victim of crime and the date of the relevant court proceedings.

Explanatory note

Proposed section 72AF gives employees a right to return to their work after a period of victims leave (similar to the right conferred on employees returning to work after a period of parental leave).

Proposed section 72AG contains miscellaneous provisions relating to victims leave, including preserving continuity of employment, the right to take paid leave in conjunction with or instead of victims leave and ensuring that the Part confers minimum entitlements on employees.

Schedule 1 [2] enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act.

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New South Wales

Industrial Relations Amendment (Leave for Victims of Crime) Bill 2001

No. , 2001

A Bill for

An Act to amend the *Industrial Relations Act 1996* with respect to leave to attend court proceedings by employees who are the victims of crime.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Industrial Relations Amendment (Leave for Victims of Crime) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on the date of assent.	6
3 Amendment of Industrial Relations Act 1996 No 17	7
The <i>Industrial Relations Act 1996</i> is amended as set out in Schedule 1.	8

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Chapter 2, Part 4B	3
	Insert before Part 5 of Chapter 2:	4
	Part 4B Leave for victims of crime	5
72AA	Employees to whom Part applies	6
	This Part applies to all employees, including part-time employees and casual employees.	7 8
72AB	Definitions	9
	(1) In this Part:	10
	<i>court proceedings</i> means proceedings before a court against a person charged with a violent crime, including:	11 12
	(a) committal proceedings, and	13
	(b) sentencing proceedings, and	14
	(c) proceedings on appeal, and	15
	(d) proceedings on a back up offence or related offence (as defined in section 35 of the <i>Criminal Procedure Act 1986</i>) in relation to the alleged violent crime, and	16 17 18
	(e) any other proceedings prescribed by the regulations.	19
	<i>harm</i> means actual physical bodily harm, mental illness or nervous shock.	20 21
	<i>victim of crime</i> means a person:	22
	(a) who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of an alleged violent crime, or	23 24 25
	(b) who is the parent or guardian of a child who suffers such harm (but only if the child is under the age of 18 years at the time victims leave is taken), or	26 27 28

(c)	who is a member of the immediate family of a person who dies as a direct result of an act committed, or apparently committed, by another person in the course of an alleged violent crime.	1 2 3 4
	<i>victims leave</i> means leave under this Part.	5
	<i>violent crime</i> means a serious indictable offence involving violence (including sexual or indecent assault).	6 7
	Note. The <i>Interpretation Act 1987</i> defines a serious indictable offence as an indictable offence that is punishable by imprisonment for life or for a term of 5 years or more.	8 9 10
(2)	A <i>member of the immediate family</i> of a person is:	11
(a)	the person's spouse, or	12
(b)	a person who is in a de facto relationship (within the meaning of the <i>Property (Relationships) Act 1984</i>) with the person, or	13 14 15
(c)	a parent or guardian, or step-parent, of the person, or	16
(d)	a child or step-child of the person or some other child of whom the person is the guardian, or	17 18
(e)	a brother, sister, step-brother or step-sister of the person.	19
72AC	Entitlement to unpaid victims leave	20
(1)	An employee who is a victim of crime is entitled to unpaid victims leave in connection with court proceedings relating to the violent crime, as provided by this Part.	21 22 23
(2)	This Part does not affect any other entitlement to paid or unpaid leave of the employee.	24 25
72AD	Purposes for which victims leave may be taken	26
(1)	Victims leave may be taken:	27
(a)	for the purpose of attending court proceedings scheduled in relation to the violent crime (whether or not as a witness), and	28 29 30
(b)	for the purpose of travelling to attend those court proceedings if the victim usually resides more than 100 kilometres from the place where the proceedings are scheduled to be held.	31 32 33 34

(2) Victims leave may be taken for a full working day for the purpose of attending court proceedings even if the proceedings are only scheduled for a part of the day or, without prior notice to the employee, the proceedings do not proceed on the day on which they were scheduled.	1 2 3 4 5
(3) Victims leave for the purpose of travel to attend court proceedings is not to exceed one working day for the duration of any stage of the court proceedings.	6 7 8
72AE Notices and documents required to be given to employer	9
(1) The notices and documents to be given to the employer for the purpose of taking victims leave are as follows:	10 11
(a) the employee is to give at least one week's notice of the intention to take the leave,	12 13
(b) if requested by the employer, the employee is to provide to the employer a certificate from a police officer, prosecutor or other relevant official confirming that the employee is a victim of crime (within the meaning of this Part) and the date or dates on which the court proceedings will be held.	14 15 16 17 18 19
(2) An employee is not required to comply with this section if the employee is not notified of the court proceedings in sufficient time to give the required period of notice or if it was not otherwise reasonably practicable to comply in the circumstances.	20 21 22 23 24
72AF Return to work after victims leave	25
(1) An employee returning to work after a period of victims leave is entitled to be employed in the position held by the employee immediately before proceeding on leave.	26 27 28
(2) If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position as nearly as possible comparable in status and pay to that of the employee's former position.	29 30 31 32 33
Note. See Part 6 of this Chapter and Part 1 of Chapter 5 for remedies available to an employee who is dismissed or otherwise victimised for claiming the benefit of victims leave.	34 35 36

72AG	Miscellaneous provisions relating to victims leave	1
(1)	Victims leave does not break an employee's continuity of service, but any period of leave that exceeds 3 months is not to be taken into account in calculating the employee's period of service for any purpose.	2 3 4 5
(2)	An employee may take any annual, long service or other leave to which the employee is entitled instead of or in conjunction with victims leave.	6 7 8
(3)	This Part sets out the minimum entitlements of employees to victims leave. The provisions of an industrial instrument, contract of employment or other agreement (whether made or entered into before or after the commencement of this Part) do not have effect to the extent that they provide an employee with a benefit that is less favourable to the employee than the benefit to which the employee is entitled under this Part.	9 10 11 12 13 14 15
(4)	This Part extends to persons employed on or after the commencement of this Part and to violent crimes committed before or after that commencement.	16 17 18
[2]	Schedule 4 Savings, transitional and other provisions	19
	Insert at the end of clause 2 (1):	20
	<i>Industrial Relations Amendment (Leave for Victims of Crime) Act 2001</i>	21 22