

Passed by both Houses



New South Wales

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

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

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

Act No , 2001

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Industrial Relations Amendment (Leave for Victims of Crime) Act 2001*.

2 Commencement

This Act commences on the date of assent.

3 Amendment of Industrial Relations Act 1996 No 17

The *Industrial Relations Act 1996* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Section 3)

[1] Chapter 2, Part 4B

Insert before Part 5 of Chapter 2:

Part 4B Leave for victims of crime

72AA Employees to whom Part applies

This Part applies to all employees, including part-time employees and casual employees.

72AB Definitions

(1) In this Part:

court proceedings means proceedings before a court against a person charged with a violent crime, including:

- (a) committal proceedings, and
- (b) sentencing proceedings, and
- (c) proceedings on appeal, and
- (d) proceedings on a back up offence or related offence (as defined in section 35 of the *Criminal Procedure Act 1986*) in relation to the alleged violent crime, and
- (e) any other proceedings prescribed by the regulations.

harm means actual physical bodily harm, mental illness or nervous shock.

victim of crime means a person:

- (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
- (b) who is the parent, grandparent 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

- (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.

victims leave means leave under this Part.

violent crime means a serious indictable offence involving violence (including sexual or indecent assault).

Note. The *Interpretation Act 1987* 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.

- (2) A *member of the immediate family* of a person is:
 - (a) the person's spouse, or
 - (b) a person who is in a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) with the person, or
 - (c) a parent or guardian, or step-parent, of the person, or
 - (d) a grandparent or step-grandparent of the person (a step-grandparent being a step-parent of a parent of the person), or
 - (e) a child or step-child of the person or some other child of whom the person is the guardian, or
 - (f) a grandchild or step-grandchild of the person (a step-grandchild being a step-child of a child of the person), or
 - (g) a brother, sister, step-brother or step-sister of the person.

72AC Entitlement to unpaid victims leave

- (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.
- (2) This Part does not affect any other entitlement to paid or unpaid leave of the employee.

72AD Purposes for which victims leave may be taken

- (1) Victims leave may be taken:
 - (a) for the purpose of attending court proceedings scheduled in relation to the violent crime (whether or not as a witness), and
 - (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.
- (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.
- (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.

72AE Notices and documents required to be given to employer

- (1) The notices and documents to be given to the employer for the purpose of taking victims leave are as follows:
 - (a) the employee is to give at least one week's notice of the intention to take the leave,
 - (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.
- (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.

72AF Return to work after victims leave

- (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.
- (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.

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.

72AG Miscellaneous provisions relating to victims leave

- (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) 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.
- (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.
- (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.

[2] Schedule 4 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

*Industrial Relations Amendment (Leave for Victims of Crime)
Act 2001*