

Legislative Council—No 74A

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 21 March 2023

South Australia

**Fair Work (Family and Domestic Violence Leave)
Amendment Bill 2022**

A BILL FOR

An Act to amend the *Fair Work Act 1994*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Fair Work (Family and Domestic Violence Leave) Amendment Act 2022*.

2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

Part 2—Amendment of *Fair Work Act 1994*

3—Amendment of section 3—Objects of Act

- 10 Section 3(1)—after paragraph (m) insert:
 - (ma) to promote and facilitate gender equity; and

4—Insertion of section 70B

After section 70A insert:

70B—Family and domestic violence leave

- 15 (1) A contract of employment is to be construed as if it provided for family and domestic violence leave in terms of the minimum standard for family and domestic violence leave in force under this section unless the provisions of the contract are more favourable to the employee.

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- (2) The minimum standard for family and domestic violence leave in force under this section is—
- (a) the standard set out in Schedule 3B; or
 - (b) a standard substituted for that standard on review by SAET under subsection (3).
- (3) SAET may, on application by a peak entity—
- (a) review the minimum standard for family and domestic violence leave in force under this section; and
 - (b) if satisfied that a variation of the minimum standard is necessary or desirable to give effect to the objects of this Act—substitute a fresh minimum standard.
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- (4) An application under subsection (3) must not be made—
- (a) within 2 years after the commencement of this section; or
 - (b) within 2 years after the completion of a previous review of the standard by SAET under this section.
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5—Insertion of Schedule 3B

After Schedule 3A insert:

Schedule 3B—Family and domestic violence leave

1—Definitions

20 In this Schedule—

family and domestic violence means domestic abuse within the meaning of the *Intervention Orders (Prevention of Abuse) Act 2009*.

2—Entitlement to family and domestic violence leave

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- (1) An employee is entitled to 15 days family and domestic violence leave from the beginning of each year of their employment.
 - (2) Family and domestic violence leave that has not been taken by an employee will not accrue into a subsequent year of their employment.

3—Taking family and domestic violence leave

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- (1) An employee is entitled to take family and domestic violence leave for any of the following purposes arising from or in relation to family and domestic violence experienced by the employee:
 - (a) to attend medical appointments of any kind, including appointments relating to mental and emotional health;
 - (b) to seek and receive legal advice or assistance in relation to proceedings or potential proceedings of any kind;
 - (c) to attend or otherwise make arrangements for proceedings of any kind;
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- (d) to relocate residences or make other safety arrangements of any kind;
- (e) for any other purpose relating to the employee dealing with the impact of family and domestic violence;
- (f) for any other purpose prescribed by the regulations.

(2) The employee must, if practicable before taking leave under this section, give the employer notice of—

- (a) the employee's intention to take the leave; and
- (b) the purpose for which the employee intends to take the leave; and
- (c) the time the employee expects to be absent,

but if it is not possible to give the notice before commencing the leave, the employee must give the notice as soon as practicable in the circumstances.

(3) The employee must, at the request of the employer, provide evidence that would satisfy a reasonable person that the leave is for 1 of the purposes listed in subclause (1).

(4) In relation to the provision of evidence under subclause (3), the employer must not request, and the employee is not required to provide, information relating to the details, nature or extent of the family and domestic violence experienced by the employee.

(5) An employee may take family and domestic violence leave for a part of a day in a block of 1 or more hours.

(6) The following provisions apply in connection with subclause (5):

- (a) if a period of family and domestic violence leave exceeds 1 hour but does not equal a whole number of hours, the fraction of an hour will be taken to be a whole hour;
- (b) when the number of hours taken as family and domestic violence leave under subclause (5) equals the number of hours usually worked by the employee in a day, then the employee will be taken to have taken 1 day's family and domestic violence leave.

4—Family and domestic violence leave to be at full rate of pay

(1) If an employee takes a period of family and domestic violence leave in accordance with this Schedule, the employee is entitled to the following in relation to that period:

- (a) for an employee other than a casual employee—the employee's full rate of pay (including overtime, allowances, loadings or any other separately identifiable amount), worked out as if the employee had not taken the period of leave;

(b) for a casual employee—the employee's full rate of pay (including overtime, allowances, loadings or any other separately identifiable amount), worked out as if the employee had worked the hours in the period for which the employee was rostered.

(2) Without limiting subclause (1)(b), an employee is taken to have been rostered to work hours in a period if the employee has accepted an offer by the employer of work for those hours.

(3) Subclause (1)(b) does not prevent a casual employee from taking a period of family and domestic violence leave that does not include hours for which the employee is rostered to work, however the employer is not required to pay the employee in relation to such a period.

5—Confidentiality

(1) Information obtained under this Schedule in relation to an employee's experience of family and domestic violence must not be disclosed, except—

(a) with the consent of the person to whom the information relates; or

(b) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of a child; or

(c) if the disclosure is reasonably necessary for the protection of the lawful interests of the person disclosing the information.

Maximum penalty: \$10 000.

(2) Subclause (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

(3) Information that has been disclosed under subclause (1) for a particular purpose must not be used for any other purpose by—

(a) the person to whom the information was disclosed; or

(b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.

Maximum penalty: \$10 000.

(4) A pay slip provided by an employer to an employee must not include any of the following information:

(a) information indicating that leave taken by the employee was family and domestic violence leave;

(b) information indicating that an amount paid to the employee was payment in respect of family and domestic violence leave;

- (c) information relating to the balance of the employee's entitlement to family and domestic violence leave.

Note—

For example, a pay slip may, in respect of an amount paid to an employee for any family and domestic violence leave taken, describe the leave taken as "special leave", "miscellaneous leave" or "other leave".

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