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**SA UNIONS**

The United Trades and Labor Council of SA

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Dear members of the Independent Review team,

SA Unions is pleased to make the following submission to the Independent Review of *the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth) (Independent Review)*, and we are grateful to the members of the Independent Review team for their participation in this important process.

#### **Executive summary**

- SA Unions and its affiliated unions and organisations are strongly supportive of paid domestic and family violence leave.
- Paid domestic and family violence leave is essential, including for supporting a victim-survivor's ongoing connection with their workplace. A victim-survivor's connection with their workplace, the income from their work, and the safety that workplaces often provide, gives them a far greater chance of being able to leave an unsafe relationship.
- Paid domestic and family violence leave can be improved by ensuring greater ease of access and increasing quantity of paid leave days.

#### **Submission**

1. SA Unions was founded as the United Trades and Labour Council of South Australia in 1884 and is the peak body for Unions in South Australia. This year, SA Unions celebrates its 140-year anniversary.
2. SA Unions represents twenty-six (26) affiliated Unions and more than 160,000 union members from across a wide spectrum of industries, sectors, professions and occupations across South Australia.
3. As the South Australian peak body for Unions, SA Unions convenes a monthly Women's Standing Committee (**Standing Committee**); a forum well attended by Affiliated Unions. The Standing Committee is comprised of union officers and employees who work directly with workers and workplaces to achieve better outcomes for South Australians.
4. SA Unions makes these submissions following consultation with the Standing Committee and with organisations affiliated to SA Unions.

5. Unions have been at the forefront of political, industrial and legal battles to enshrine policies to enable the equal participation of women in the workforce and women's economic equality.
6. Unions are engaged daily in the task of making the lives of South Australians better, both inside and outside of their workplaces.

#### Background

7. Domestic and family violence is a scourge and a crime that has profound impacts on victim-survivors and their communities, as well as broader societal impacts with significant public health, economic, social and legal implications.
8. Access to paid domestic and family violence leave is essential.
9. Paid domestic and family violence leave allows victim-survivors to undertake necessary actions during work hours, including the following.
  - 9.1. Make arrangements and plan for their safety (including relocation).
  - 9.2. Attend court hearings.
  - 9.3. Access police services.
  - 9.4. Attend counselling and medical appointments.
10. That paid domestic and family violence leave is extended to casual employees – with payment at their full pay rate for the hours they were rostered to work – is significantly positive.
11. The structures that support paid domestic and family violence leave such as:
  - 11.1. the prohibitions on adverse action and discrimination,
  - 11.2. the confidentiality protections, and
  - 11.3. the constraints on the information that can be included on payslips,are fundamental to achieving the positive policy purpose of domestic and family violence leave.
12. At its core, access to paid domestic and family violence leave serves to support victim-survivors to maintain a connection with their workplace. This is essential, including because the workplace is often considered a safe (or safer) place to the victim-survivor, and because the income arising from work can support the worker's escape from violence and allow them to retain financial independence.
13. When a victim-survivor's connection with, and income from, their workplace is lost, they are left much more vulnerable to domestic and family violence.

**14. "Women who experience domestic violence should never have to choose between securing their safety and accessing the support they need, and their financial security. We know that when women experience domestic violence it is utterly critical that if they are working**

***they keep their connection to their workplace and income. Securing financial independence can be a key part of a woman's journey through healing and recovery.***<sup>1</sup>

The operation and impact of the amendments, including on small businesses, sole traders and people experiencing family and domestic violence

15. Australia is in a domestic and family violence crisis.<sup>2</sup>

16. The number of women brutally murdered at the hands of someone they know, or someone they are in a relationship with, has seen a sharp rise in 2024 as compared with recent years.<sup>3</sup>

**17. In 2024, on average, two Australian women are being violently killed every nine days.**<sup>4</sup>

18. In May 2024, experts met in the nation's capital for a national roundtable on the domestic violence crisis. One of the key policy announcements made by the Federal Government ahead of the roundtable was a commitment of \$925.2 million over five years to permanently establish the Leaving Violence Program.<sup>5</sup> From mid-2025, the Leaving Violence Program will provide eligible people with financial support of up to \$5,000.<sup>6</sup>

19. These measures acknowledge the financial difficulties experienced by victim-survivors in attempting to exit violent situations, and that financial support is essential.

20. We reiterate our earlier submission that paid domestic and family violence leave is essential to helping victim-survivors maintain paid employment. We respectfully agree with the statement that "...job security and economic security are often deciding factors when a woman contemplates leaving a violent relationship."<sup>7</sup>

**21. To escape violence, victim-survivors need money.**

<sup>1</sup> The Hon. K.A. HILDYARD (Reynell—Minister for Child Protection, Minister for Women and the Prevention of Domestic and Family Violence, Minister for Recreation, Sport and Racing), *Hansard: Introduction and First reading speech for the Fair Work (Family and Domestic Violence Leave) Amendment Bill 2022* (SA), South Australian Parliament House of Assembly, November 16, 2022, <https://hansardsearch.parliament.sa.gov.au/daily/lh/2022-11-16/40?sid=510db0be61a34a5883>

<sup>2</sup> Tingle, Laura (4 May 2024) *There is so much to be done on violence against women* <https://www.afr.com/politics/federal/there-is-so-much-to-be-done-on-violence-against-women-20240430-p5fnkk>

Tingle, Laura (4 May 2024) *The national crisis of violence against women is the culmination of many issues — and some of them the government can fix* <https://www.abc.net.au/news/2024-05-04/domestic-violence-funding-albanese-national-crisis/103800746>

Roberts, Georgia (7 May 2024) *First Nations women at forefront of talks on gendered violence crisis* <https://www.abc.net.au/news/2024-05-07/roundtable-talks-on-gendered-violence-crisis/103813322>

<sup>3</sup> Davey, Melissa (4 May 2024) *Eight years ago Australia had a wake-up call on family violence. So how did we end up here again?* <https://www.theguardian.com/australia-news/article/2024/may/04/australia-family-violence-against-women-law-changes-reforms>

<sup>4</sup> Roberts, Georgia (24 April 2024) *Eleven more women have died violently in 2024 compared to the same time last year* <https://www.abc.net.au/news/2024-04-24/eleven-more-women-have-died-violently-compared-to-last-year/103759450>

<sup>5</sup> The Hon Amanda Rishworth MP (1 May 2024) *Media Releases: Helping women leave a violent partner payment* <https://ministers.dss.gov.au/media-releases/14541>

<sup>6</sup> The \$5,000 financial support package is comprised of up to \$1,500 in cash and up to \$3,500 in goods and services.

<sup>7</sup> The Hon. K.A. HILDYARD (Reynell—Minister for Child Protection, Minister for Women and the Prevention of Domestic and Family Violence, Minister for Recreation, Sport and Racing), *Hansard: Introduction and First reading speech for the Fair Work (Family and Domestic Violence Leave) Amendment Bill 2022* (SA), South Australian Parliament House of Assembly, November 16, 2022, <https://hansardsearch.parliament.sa.gov.au/daily/lh/2022-11-16/40?sid=510db0be61a34a5883>

22. The current cost-of-living crisis brings into sharp focus the connection between paid domestic and family violence leave, and the challenges faced by vulnerable people who need to leave unsafe relationships and find alternative housing.
23. The housing situation in South Australia is dire, and the circumstances facing a person seeking to leave an unsafe relationship and secure housing are compelling. This broader context, which includes the current cost-of-living crisis, is worthy of the Independent Review's consideration. We make the following submissions.
- 23.1. Rental properties are unavailable. "Adelaide, according to property data firm CoreLogic, has the lowest vacancy rates in Australia – both for standalone houses (0.5 per cent) and units (0.3 per cent)."<sup>8</sup>
- 23.2. Securing a rental property is time consuming; a huge problem for those who do not have time to spare. Prospective tenants report unsuccessfully applying for hundreds of rentals over many many months.<sup>9</sup>
- 23.3. The cost of rent is high. Adelaide's median rent is \$565 per week.<sup>10</sup>
- 23.4. The cost of rental bonds are high. In South Australia, where the rent does not exceed \$800 per week, a landlord may require a maximum bond of the equivalent of four (4) weeks rent. That's \$2,260.00 that a tenant would need to find, based on Adelaide's median rent.<sup>11</sup>
- 23.5. The cost of rent is increasing, and some landlords are price gouging.<sup>12</sup> Adelaide had the nation's second highest rent increase – up 12.9%<sup>13</sup> – with SACOSS chief executive Ross Womersley saying that median rent rises in Adelaide were "vastly bigger" than

<sup>8</sup> David Taylor (2023) ABC News, *Experts fear Adelaide's housing crisis is only going to get worse*, <https://www.abc.net.au/news/2023-09-28/drum-south-australia-housing-crisis-accommodation-adelaide/102912904>

Craig Francis (2022) *Rental crisis deepens as available properties halve*, <https://www.apimagazine.com.au/news/article/rental-crisis-deepens-as-available-properties-halve#:~:text=%E2%80%9CAdelaide%20has%20had%20a%20rental,even%20worse%20in%20this%20regard.%E2%80%9D>

<sup>9</sup> Ashleigh Barraclough (2023) ABC News, *As the rental crisis worsens, people are applying for homes they have not seen, offering more than the asking price*, <https://www.abc.net.au/news/2023-01-30/rental-crisis-worsens-australia-melbourne-bidding-homes/101858172>

<sup>10</sup> Owen, Eliza (2024) CoreLogic, *Australia's median rent hits new record, surpasses \$600 per week. Rental Market Update, for release Tuesday 23 January, 2024*, [https://www.corelogic.com.au/\\_data/assets/pdf\\_file/0004/21010/240122\\_CoreLogic-Pulse-Rents-Final-Updated.pdf](https://www.corelogic.com.au/_data/assets/pdf_file/0004/21010/240122_CoreLogic-Pulse-Rents-Final-Updated.pdf)

Daniel Ziffer and David Chau (2023) ABC News, *Rents rising at slower pace despite 'record high' 10pc surge last year*, CoreLogic says, <https://www.abc.net.au/news/2023-01-11/rents-increase-record-cost-of-living/101840454>

<sup>11</sup> Legal Services Commission, Law Handbook, *Bonds*, accessed 1 December 2023 <https://www.lawhandbook.sa.gov.au/ch23s01s05s01.php>

<sup>12</sup> David Taylor (2023) ABC News, *Experts fear Adelaide's housing crisis is only going to get worse*, accessed 1 December 2023 <https://www.abc.net.au/news/2023-09-28/drum-south-australia-housing-crisis-accommodation-adelaide/102912904>

<sup>13</sup> Daniel Ziffer and David Chau (2023) ABC News, *Rents rising at slower pace despite 'record high' 10pc surge last year*, CoreLogic says, accessed 1 December 2023 <https://www.abc.net.au/news/2023-01-11/rents-increase-record-cost-of-living/101840454>

any increase in costs for landlords associated with interest rate rises. Mr Womersley said that "*We think there is no excuse for rent prices to be increasing at this rate.*"<sup>14</sup>

23.6. The cost of buying a home is prohibitively high for most people, and prices are increasing. The prices for units, apartments and houses in South Australia is high, and climbing. For example, the two (2) bedroom unit at 3/23 Emerald Street, Edwardstown, SA 5039 sold for \$200,000 on 30 August 2021.<sup>15</sup> On 4 March 2024, without renovation, it sold for \$305,000.<sup>16</sup>

23.7. The cost of moving house can be high. "*The average cost [of moving intrastate] tends to fall between \$300 to \$3,500, depending on the specific circumstances*".<sup>17</sup>

24. The ability to meet an unexpected expense – such as seeking to leave an unsafe relationship – is low. Disposable incomes are low.<sup>18</sup>

25. The Australian Council of Trade Unions (ACTU) has gathered concrete data about a working person's ability to meet an unexpected expense. The ACTU's Attitudes, Sentiments and Knowledge (ASK) survey, which provides key insights into attitudes around financial wellbeing and cost of living, and has revealed the following.

25.1. 22% of working respondents to the survey stated that they would be completely unable to raise \$3,000 in an emergency.

25.2. 22% of working respondents said that they could raise \$3,000, but would need more than 1 week to do so and/or additional support.

25.3. The proportion of working respondents who were completely unable to raise this amount was comprised of:

25.3.1. 28% casual employees,

25.3.2. 38% workers earning less than \$52,000 per year, and

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<sup>14</sup> Stacey Pestrin (2023) ABC News, *Fierce competition for Adelaide rental homes amid tight market, prompting calls for rental price caps*, accessed 1 December 2023 <https://www.abc.net.au/news/2023-03-17/price-hikes-and-tough-competition-in-tight-sa-rental-market/102110094>

<sup>15</sup> <https://www.realestate.com.au/sold/property-unit-sa-edwardstown-136148638>

<sup>16</sup> <https://www.domain.com.au/property-profile/3-23-emerald-street-edwardstown-sa-5039> and <https://www.realestate.com.au/property/unit-3-23-emerald-st-edwardstown-sa-5039/>

<sup>17</sup> HiPages (2023) *Removal costs: The cost of moving house in Australia in 2023*, accessed 1 December 2023 [https://hipages.com.au/article/cost\\_of\\_moving\\_house\\_in\\_australia#:~:text=The%20average%20cost%20tends%20to,move%20all%20your%20belongings%20yourself.](https://hipages.com.au/article/cost_of_moving_house_in_australia#:~:text=The%20average%20cost%20tends%20to,move%20all%20your%20belongings%20yourself.)

<sup>18</sup> Michael Read, *The Financial Review* (2023), *Australia records biggest income decline in the developed world*, accessed 1 December 2023 <https://www.afr.com/policy/economy/australia-records-biggest-income-decline-in-the-developed-world-20231108-p5eiij>

25.3.3. 25% workers in award reliant industries.<sup>19</sup>

26. Paid domestic and family violence leave represents an essential mechanism to keeping victim-survivors in employment. A victim-survivor's connection with, and income from, their workplace gives them a far greater chance of being able to leave an unsafe relationship.
27. SA Unions submits, in the strongest possible terms, that the entitlement to paid domestic and family violence leave must, at the very least, be maintained. Ideally, it would be expanded and improved for the benefit of workers.
28. Affiliates to SA Unions have raised the following four (4) considerations and improvements.

28.1. Evidence requirements

Affiliates to SA Unions have noted some difficulties with managerial personnel asking for too much information from the victim-survivor.

This issue suggests a need for education/training for employers, and/or better guidance with respect of the type and scope of evidence that can be reasonably required.

Employers should be discouraged from making onerous evidential requests; it's not necessary and it's not helpful.

28.2. Preservation of confidentiality

Affiliates to SA Unions have noted some difficulties with employers not maintaining confidentiality.

This issue is particularly distressing for victim-survivors, and suggests a need for stronger and easier enforcement of the confidentiality obligations and a need for education/training for employers.

28.3. Expansion of reasons for access

Affiliates to SA Unions have expressed a desire to see an expansion of the reasons for access, including to explicitly include time for recovery.

While the legislation provides access to paid leave to enable a victim-survivor to "*...do something to deal with the impact of the family and domestic violence...*",<sup>20</sup> the examples that accompany that description generally relate to active participation in

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<sup>19</sup> ACTU, *Submission to the Annual Wage Review 2022-23*, page 156, accessed 1 December 2023, <https://www.actu.org.au/wp-content/uploads/2023/06/media1450294d13-actu-submission-to-the-awr-2022-23.pdf>

<sup>20</sup> Section 106B(1) of the *Fair Work Act 2009* (Cth).

processes. Guidance from the Fair Work Ombudsman, for instance, provides the following descriptions of the basis for access.<sup>21</sup>

*For example, this could include:*

- *making arrangements for their safety, or safety of a close relative (including relocation)*
- *attending court hearings*
- *accessing police services.*

These examples and descriptions provide an unhelpfully narrow and limited interpretation of the circumstances that give rise to access of the paid leave.

A Union affiliated to SA Unions has described the issue as follows:

*We would like to see it being available for the recovery component of FDV – for example, getting over the shock of financial abuse, if your spouse just up and left you with the children and took the savings. Yes, there are practical things that need doing which would fall under the legislation of ‘dealing’ with it, but just the shock which goes with it should also be included – time for recovery.*

Paid domestic and family violence leave is needed to support a victim-survivor across the entirety of their journey – including their recovery. Indeed, the legislation itself tends to support this proposition. However, the examples and descriptions provided to assist victim-survivors with the interpretation of the legislation are far too narrow and confined. The Fair Work Ombudsman and other organisations purporting to provide information about paid domestic and family violence leave ought be strongly encouraged to modify their examples to better reflect the breadth of the legislative provision.

#### 28.4. Increased quantum of leave

While the National Employment Standards of the *Fair Work Act 2009* (Cth) provide ten (10) paid days of family and domestic violence leave, the original consideration and proposal was to provide victim-survivors with twenty (20) days paid leave per year.<sup>22</sup>

In 2009, a collaboration between NSW unions, the Australian Domestic & Family Violence Clearinghouse and academics from the University of NSW with expertise in FDV and its impact on women’s workforce participation, safety and economic security, resulted in the development of a “model” enterprise bargaining clause which provided

<sup>21</sup> <https://www.fairwork.gov.au/leave/family-and-domestic-violence-leave/taking-family-domestic-violence-leave#when>

<sup>22</sup> Ismail, Sophie (2022) "Paid family and domestic violence leave: The origins and significance of the ACTU's modern award case" [2022] PrecedentAULA 28; (2022) 170 Precedent 15 <https://classic.austlii.edu.au/au/journals/PrecedentAULA/2022/28.html>

(inter alia) twenty (20) days paid leave.<sup>23</sup> The number of paid leave days was based on extensive research and evidence.

In 2010, the first family and domestic violence leave clause to appear in an Australian enterprise agreement – the *Surf Coast Shire Council Enterprise Agreement (No 7) 2010-2013* – included twenty (20) days paid leave per year.

Family violence leave has been included in all Victorian public sector enterprise agreements since 2015, meaning public sector employees including nurses and teachers have access to twenty (20) days of paid family violence leave, or unpaid family violence leave for casual employees, per year.<sup>24</sup> For example, clause 52 of the *Victorian Public Service Enterprise Agreement 2020* provides for twenty (20) days paid leave per year.<sup>25</sup>

Effective from 1 January 2023, NSW Government Sector employees, including casual employees, are to have access to twenty (20) days paid domestic and family violence leave per calendar year.<sup>26</sup>

In late 2022, the South Australian Government introduced a Bill to enshrine fifteen (15) days of paid family and domestic violence leave for permanent and casual employees within the South Australian public sector and local government. The South Australian Government made a deliberate decision to enshrine an entitlement which is significantly higher than that contained within the National Employment Standards. In support of the Bill, Labor MP The Hon Rhiannon Pearce stated:<sup>27</sup>

*...I am proud because we are setting the benchmark for paid domestic violence leave for the rest of the country, going even further than those rights enshrined in the NES.*

*Setting the benchmarks around the nation, this bill will ensure that all workers covered under the South Australian industrial relations system are entitled to 15 days of family and domestic violence leave, ensuring that workers can leave to attend medical appointments, seek legal advice or assistance, attend or make arrangements for proceedings, relocate residence or for any other purpose relating to a worker who is dealing with the impact of family and domestic violence.*

<sup>23</sup> M Baird, L McFerran and I Wright, 'An equality bargaining breakthrough: Paid domestic violence leave', *Journal of Industrial Relations*, Vol. 56, No. 2, 2014, 190–207.

<sup>24</sup> <https://www.premier.vic.gov.au/victoria-leads-way-paid-family-violence-leave>

<sup>25</sup> <https://www.standby.vic.gov.au/sites/default/files/2023-04/family-violence-leave.pdf>

<sup>26</sup> [https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/IB2022\\_047.pdf](https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/IB2022_047.pdf)

<sup>27</sup> The Hon. R PEARCE (King) *Hansard: Second Reading speech for the Fair Work (Family and Domestic Violence Leave) Amendment Bill 2022 (SA)*, South Australian Parliament House of Assembly, 9 February 2023, <https://hansardsearch.parliament.sa.gov.au/daily/lh/2023-02-09/53?sid=510db0be61a34a5883>



*Fifteen days of leave for people impacted by family and domestic violence will mean that workers are better placed to take the necessary steps to better ensure their safety whilst retaining the job security needed to make important decisions instead of having to choose between being safe and secure, and being employed.*

The current quantum of paid domestic and family violence leave within the National Employment Standards is well below that which is provided by many of the states.

An increase to the quantum of paid leave contained within the National Employment Standards would provide invaluable additional support to victim-survivors, as well as improving consistency with the state jurisdictions.

29. Family and domestic violence negatively impacts on gender equality, equal workforce participation and it has immense societal, health and economic consequences.
30. The recognition that paid leave is essential to limit the financial disadvantage suffered by victim-survivors, and to assist victim-survivors to maintain a connection with their workplace for both safety and economic reasons, has saved lives.
31. SA Unions is strongly supportive of paid family and domestic violence leave, and would be favourable to improving the ease of access and quantity.
32. SA Unions is grateful of the opportunity to make a submission to this important Independent Review, and we would be very pleased to send representatives to appear before the Independent Review and expand upon the content of this submission or other such issues at the request of the Independent Review.

Yours sincerely,



Dale Beasley  
Secretary, SA Unions