

Carer Leave Inquiry
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne VIC 8003

Lodged online only

28 March 2023

Dear Productivity Commission

Carer Leave Inquiry

Circle Green Community Legal (**Circle Green**) welcomes the opportunity to provide further feedback to the Productivity Commission (**the Commission**) on the draft findings and recommendations contained in Carer Leave Inquiry position paper (**the Position Paper**).

About Circle Green

Circle Green is a community legal centre in WA providing state-wide specialist legal services in the areas of workplace, tenancy, humanitarian, and family and domestic violence to the WA community. Within these specialist areas, Circle Green provides services including legal advice, casework, representation, duty lawyer services, outreach, community legal education, information, referrals, advocacy, and law reform. Our services are aimed at assisting people who face vulnerability or disadvantage in their access to justice. You can find more information about Circle Green's services on our website: <https://www.circlegreen.org.au/>.

Workplace law services

Circle Green is the only community legal centre in WA that has a specialist workplace law practice that provides state-wide workplace law services to vulnerable and disadvantaged non-unionised WA workers. Our workplace law services include legal advice, casework, representation, and education on state and federal workplace law. This means Circle Green has expertise in providing legal assistance to vulnerable WA workers, including workers providing informal care to older people and others in the community.

Submission

In our previous submission, Circle Green was strongly supportive of amending the National Employment Standards (**NES**) under Part 2-2 of the *Fair Work Act 2009* (Cth) (**FW Act**) to provide for a minimum statutory entitlement to unpaid carer's leave in accordance with Recommendation 43 of the Royal Commission into Aged Care Quality and Safety.

In this submission, we wish to provide brief, broad feedback on some of the key aspects of the Position Paper's draft findings and recommendations.



Our comments on the Position Paper are outlined in the table below.

Issues Paper	Circle Green comments
<p>Draft finding 3 – Extended unpaid leave in the National Employment standards is not the highest priority</p>	<p>We believe that Draft Finding 3 of the Position Paper may place too much faith in the upcoming amendments to the FW Act flexible working arrangements to achieve flexibility for informal carers.</p> <p>We agree with the view expressed in the Position Paper that, like other groups of marginalised workers, informal aged carers would most benefit from greater workplace flexibility to manage work and care responsibilities. However, we do not believe that the recently passed amendments to the FW Act’s flexible working arrangements entitlement (the FWA Amendments) will achieve this policy outcome on their own. Although the FWA Amendments are a welcome strengthening of the entitlement, our experience shows that employers will continue push back on requests for flexible working arrangements.</p> <p>Further, we doubt that the main demographic that makes up informal carers (i.e. older workers, women, workers in insecure work) will be able to effectively negotiate with a reluctant or unwilling employer about flexible working arrangements. We also doubt that this demographic of workers will take up the dispute resolution procedures created by the FWA Amendments. We tend to see that workers consider that it is unrealistic for them to carry out a dispute resolution process at the Fair Work Commission while still employed (hence a proportionately low uptake of the Commission’s stop bullying and sexual harassment jurisdiction despite the high number of workers who report experiencing these issues).</p> <p>Workers who rely on flexible working arrangements (e.g. workers with disabilities and workers with caring responsibilities) benefit from having a “toolbox” of industrial options that they can use to achieve the balance they need. A standalone paid carer leave (separate from personal leave) and an unpaid carer leave entitlement would increase the options in the toolbox alongside flexible working arrangements.</p> <p>We therefore recommend that a paid or unpaid carer’s leave entitlement is implemented alongside the FWA Amendments, and that the government does not wait until the review of the FWA Amendments before it considers implementing an unpaid carer’s leave entitlement.</p>
<p>Information request 1 – Feedback on 12-month continuous service period</p>	<p>We are concerned that the 12-month continuous service period in the provisional model may present an obstacle for informal carers accessing the unpaid carer leave entitlement.</p> <p>Workers with caring responsibilities may be employed in insecure work (e.g. fixed- or maximum-term engagements, casual work)</p>



	<p>because they consider that it helps them accommodate their caring responsibilities. Insecure working conditions can result in either breaks in service over longer periods of time, or shorter periods of service. We are concerned that the proposed continuous service period is too long of a period to be effective.</p> <p>We also note that the comparison to the unpaid parental leave entitlement may not be apropos. Arguably, the continuous service period for unpaid parental leave may also be too long, but setting that point to one side, the ability for unpaid parental leave to be extended may justify a longer continuous service period for eligibility. If an employer is liable for maintaining an employee’s employment for two years, then it may be appropriate to require a substantial employment relationship to enliven the entitlement.</p> <p>Without the liability of a possible two-year period of leave, a 12-month qualifying service period is arbitrarily onerous for an employee. As the cap on the provisional model entitlement is half that of the existing unpaid parental leave entitlement, and because of informal carers being more likely to work under insecure conditions, we recommend that the continuous service period should be half of the period required for the unpaid parental leave entitlement, i.e. six months.</p>
<p>Information request 1 – Feedback minimum leave duration may be too inflexible</p>	<p>We are concerned that the minimum leave duration of three months may be too inflexible to be of use to informal carers. As noted above, informal carers use leave as part of a “toolbox” of entitlements to give them the flexibility they need to balance work and care. Requiring a minimum leave duration of three months fails to afford informal carers the flexibility they need. This issue is not offset by the FWA Amendments for the reasons stated above – we expect that the demographic making up informal carers will have difficulty negotiating flexible working arrangements with unwilling employers, or disputing the decisions of employers at the Fair Work Commission.</p> <p>To increase flexibility, we suggest a shorter minimum leave duration be considered. We also propose that consideration be given to enabling a portion of the leave entitlement to be taken flexibly, similar to unpaid parental leave.</p>

Thank you for taking the time to consider Circle Green’s submission. If we can provide any further information, please contact Elisha Butt, Principal Lawyer – Workplace, or Matthew Giles, Lawyer – Workplace at workplace.admin@circlegreen.org.au.

Yours faithfully

Circle Green Community Legal

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