



26 August 2022

## Submission about unpaid carer's leave to the Productivity Commission

Dear Commission

Thank you for the opportunity to make a submission about the possibility of extending the unpaid carer's leave entitlements in the *Fair Work Act 2009* (Cth) (**FW Act**).

### About JobWatch

1. JobWatch Inc (**JobWatch**) is an employment rights, not-for-profit community legal centre. We are committed to improving the lives of workers, particularly the most vulnerable and disadvantaged.
2. JobWatch is funded by the Fair Work Ombudsman, Victoria Legal Aid and the Victorian Government. We are a member of Community Legal Centres Australia and the Federation of Community Legal Centres (Victoria).
3. JobWatch was established in 1980 and is the only service of its type in Victoria, Queensland and Tasmania. Our centre provides the following services:
  - i. Tailored information and referrals to workers from Victoria, Queensland and Tasmania, via a free and confidential telephone information service (**TIS**);
  - ii. Community legal education, through a variety of publications and interactive seminars aimed at workers, students, lawyers, community groups and other relevant stakeholders;
  - iii. Legal advice and representation for vulnerable and disadvantaged workers across all employment law jurisdictions in Victoria; and
  - iv. Law reform work and advocacy aimed at promoting workplace justice and equity for all workers.
4. Since 1999, JobWatch has maintained a comprehensive database of the callers who contact our TIS. To date we have collected more than 240,000 caller records, with each record usually canvassing multiple workplace problems, including contract negotiation, recovery of wages, discrimination, harassment, bullying and unfair dismissal. Our database allows us to follow trends and report on our callers' experiences, including the workplace problems they face and what remedies, if any, they may have available at any given time across State and Federal laws.

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5. JobWatch currently assists approximately 12,000 callers through the TIS per year. The vast majority of our callers are not union members and cannot afford to get legal assistance from a private lawyer. In order to become clients of the legal practice, workers must have an employment law matter that has legal merit and their cases must satisfy the requirements of our funding agreements (which typically focus on client vulnerability and public interest issues).

### **JobWatch’s views about extending the carer’s leave entitlements in the FW Act**

6. We strongly agree that the FW Act should be amended so as to give employees a better entitlement in respect of unpaid carer’s leave.
7. One option, as suggested by Professor Andrew Stewart, would be for the new entitlement to be modelled on the unpaid parental leave provisions in the FW Act (ie employees with at least 12 months of service would be entitled to ask for up to two years of unpaid carer’s leave and employers could only refuse an extension of the first 12 months’ leave on reasonable business grounds).
8. For example: *Maria has been employed by employer X for 6.5 years. She gives her employer written notice of the fact that in 10 weeks’ time she intends to start taking a period of 12 months of unpaid carer’s leave in order to care for an elderly parent. She must give her employer evidence that would satisfy a reasonable person about the fact that carer’s leave is required to be taken for the duration of the request. If she wishes to extend the unpaid carer’s leave, Maria will have to notify her employer in writing of this at least 4 weeks before the end of the original leave period (ie 4 weeks before the 12 months of leave comes to an end). The notice must specify the new end date for the leave (not more than 24 months from when Maria started her leave).*
9. Alternatively, section 19 of the *Equal Opportunity Act 2010* (Vic) (**Vic EO Act**) could provide a useful model. It provides that:  
*An employer must not, in relation to the work arrangements of an employee, unreasonably refuse to accommodate the responsibilities that the employee has as a parent or carer.*
10. If a similar obligation were imposed on employers under the FW Act, in the context of unpaid carer’s leave, it would mean that all employees – not only permanent and long-term casual employees who have completed 12 months’ service with the employer – would be entitled to request unpaid carer’s leave (ie from the commencement of their employment). Requests for unpaid leave could not be unreasonably refused (or could only be refused on reasonable business grounds).
11. For example: *Belinda has been employed by a large employer on a casual basis for the last six months. Belinda’s mother is in her 90s. She lives with Belinda. Recently, her mother had a fall*

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*and Belinda decided she would need time off work to care for her, instead of placing her in an aged care facility. Belinda makes a written request as soon as practicable (after the mother's fall) for 12 months off as unpaid carer's leave. Her employer must not unreasonably refuse the request.*

12. With either of the options canvassed above, there should be a mechanism for employees to formally challenge an employer's refusal. For example, employees should have 28 days within which to apply to the Fair Work Commission (or other statutory body), if they do not agree that the employer had reasonable business grounds for refusing the unpaid carer's leave (or the extension).
13. We further submit that employees who ask for flexible working arrangements (including for reasons connected with their care responsibilities) should also have a formal appeal mechanism, if the employer refuses the request ostensibly on reasonable business grounds. An employer's failure to respond in writing to the employee's request, within the 21 day timeframe, or a failure to provide reasonable business grounds for the refusal, should attract pecuniary penalties.

Please do not hesitate to contact us with any queries.

Yours sincerely,

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