

30 November 2022

Employment Taskforce  
Treasury  
Langton Cres  
Parkes ACT 2600

**By email:** [employmentwhitepaper@treasury.gov.au](mailto:employmentwhitepaper@treasury.gov.au)

Dear Employment Taskforce

### **Employment White Paper submission**

Circle Green Community Legal (**Circle Green**) welcomes the opportunity to make a submission to the Treasury Employment Taskforce on the Employment White Paper (**the White Paper**).

### **About Circle Green**

Circle Green is an independent, not-for-profit community legal centre in Western Australia (**WA**) providing workplace, tenancy, humanitarian, and family and domestic violence legal assistance services to the WA community. Within these specialist areas, Circle Green provides state-wide legal 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 which 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 relations law. This means Circle Green has first-hand experience and expertise in providing legal assistance to help vulnerable and disadvantaged WA workers address workplace relations issues resulting from Australia's workplace and employment laws.

### **Comments on the Terms of Reference**

Circle Green is strongly supportive of cohesive long-term government policies, built on a diverse range of perspectives, designed to create a better-trained and inclusive workforce with more opportunities for employees, particularly women and other economically disadvantaged groups.

We attach three recent submissions made by Circle Green which include key recommendations relevant to the Employment Taskforce's considerations in relation to the White Paper:

- Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 Inquiry submission dated 11 November 2022 (**Attachment A**);
- Carer Leave Inquiry submission dated 26 August 2022 (**Attachment B**); and

- Work and Care Inquiry submission dated 8 September 2022 (**Attachment C**).

Complementary to this, please see the table below for our comments on the Terms of Reference informed by the experiences of our clients and the published outcomes of the Jobs and Skills Summit (**the Summit**).

Term of reference	Comments
<p><b>1. Full employment and increasing labour productivity growth and incomes, including the approach to achieving these objectives.</b></p>	<p>Circle Green notes the Summit identified training outcomes relevant to this term of reference, namely matching up skills shortages to vocational education and training (<b>VET</b>) with a particular focus on diverse workers and equity targets.</p> <p>Circle Green recognises the benefit to the public and the economy of having a responsive VET system. For VET programs to be successful, employment issues faced by trainees and apprentices need to be recognised and addressed.</p> <p>Common employment issues faced by Circle Green clients who are trainees and apprentices include:</p> <ul style="list-style-type: none"> <li>• bullying, harassment and discrimination;</li> <li>• employer non-compliance with training agreements, including failure to provide adequate training and terminating training agreements without cause;</li> <li>• oppressive and unreasonable employment contract clauses, including restraints of trade, excessively lengthy notice of resignation periods, and repayment of employer costs (that effectively operate as penalties for terminating employment)); and</li> <li>• inadequate support by training and apprenticeship regulators to assist with these issues.</li> </ul> <p>These difficulties discourage trainees and apprentices from completing courses and successfully pursuing career opportunities and development.</p> <p>We support the development and introduction of measures to address these issues to ensure the success of policies and practices designed to increase traineeships and apprenticeships.</p> <p>In particular, Circle Green recommends:</p> <ul style="list-style-type: none"> <li>• establishing stronger wraparound support services for trainees and apprentices who experience issues in their training and employment; and</li> </ul>



Term of reference	Comments
	<ul style="list-style-type: none"> <li>prohibiting unfair terms in employment and training contracts, such as unreasonable restraints of trade and oppressive resignation notice periods.</li> </ul>
<p><b>2.1 Building a sustainable care economy in the context of an ageing population and other drivers of demand for care services.</b></p>	<p>Circle Green clients with caring responsibilities regularly identify experiencing the following employment issues:</p> <ul style="list-style-type: none"> <li>insecurity of work type;</li> <li>difficulty accessing flexible working arrangements;</li> <li>difficulty accessing appropriate leave to fulfil care responsibilities;</li> <li>discrimination;</li> <li>adverse and damaging action, including dismissal, as a result of attempting to balance work and care responsibilities; and</li> <li>limitations to accessing justice in legal claims with minimum employment periods and short time limitation periods.</li> </ul> <p>Please see Attachments 1 – 3 for details on our recommendations to address these systemic issues which will aid in building a sustainable care economy moving forward.</p>
<p><b>2.2 Energy transition and tackling climate change to achieve net zero.</b></p>	<p>Circle Green recognises the climate change emergency and supports strategies to tackle it.</p> <p>Circle Green supports a coordinated approach to ensure a just transition for regional communities and affected workers. Adequate redeployment and redundancy laws will be a vital part of this transition.</p> <p>Currently Circle Green clients experience the following issues in relation to redeployment and redundancy:</p> <ul style="list-style-type: none"> <li>lack of adequate and genuine consultation;</li> <li>misinformation as to what constitutes ‘suitable alternative employment’;</li> </ul>



Term of reference	Comments
	<ul style="list-style-type: none"> <li>• misuse of the ‘ordinary and customary turnover of labour’ exemption to avoid redundancy pay obligations;</li> <li>• targeting for redundancy due to discriminatory reasons, such as taking parental leave; and</li> <li>• non-payment or underpayment of redundancy entitlements.</li> </ul> <p>To address these issues generally and for the purposes of climate change transition, Circle Green recommends:</p> <ul style="list-style-type: none"> <li>• legislating minimum requirements for redundancy consultation;</li> <li>• providing greater clarity on employer redeployment obligations and what constitutes suitable alternative employment;</li> <li>• removing or narrowing the ‘ordinary and customary turnover of labour’ exemption to redundancy pay;</li> <li>• prohibiting making an employee redundant while they are on parental leave; and</li> <li>• removing the exemption for small business employers from making redundancy payments.</li> </ul>
<p><b>2.3 The transformation associated with digitalisation and emerging technologies.</b></p>	<p>In alignment with the Summit outcomes, Circle Green strongly supports increased protections and conditions for new types of workers, such a gig economy workers.</p> <p>Circle Green recommends consideration be given to a combination of:</p> <ul style="list-style-type: none"> <li>• employee deeming provisions, which create a rebuttable presumption of employment as a starting point;</li> <li>• the creation of minimum conditions, such as minimum pay rates, paid leave entitlements, and victimisation and termination protections, for employee-like arrangements; and</li> <li>• increased protections for independent contractors from unfair contract terms.</li> </ul>



Term of reference	Comments
<p><b>2.5 The adaptability of our workforce to meet the needs of emerging industries and areas of traditional economic strength.</b></p>	<p>Circle Green supports the following Summit outcomes:</p> <ul style="list-style-type: none"> <li>• an attraction and retention plan for agricultural workers; and</li> <li>• a construction industry forum to address issues such as mental health, safety, training, apprentices, productivity, culture, diversity, and gender equity.</li> </ul> <p>In relation to agricultural work, Circle Green notes this is an area of high worker exploitation, particularly of migrant workers. Accordingly, Circle Green recommends any attraction and retention plan includes the following:</p> <ul style="list-style-type: none"> <li>• expanding mandatory reporting obligations for employers under the <i>Modern Slavery Act 2018 (Cth)</i> and introducing powers of investigation and compliance, including civil penalties for failure to comply;</li> <li>• criminalisation of wage theft;</li> <li>• allowing migrant workers to act against exploitative employers by creating legally enforceable visa protections for whistle-blowers who report exploitation or wage theft to regulatory bodies such as the Fair Work Ombudsman, and extend these protections to exploitation and wage theft claims progressed through the courts;</li> <li>• extending the Fair Entitlements Guarantee to all employees, including those on temporary visas. Applicants can currently claim a certain level of unpaid wages, notice, annual leave and redundancy pay and the scheme should be extended to include claims on superannuation; and</li> <li>• introducing portable entitlement schemes for those in insecure work.</li> </ul>
<p><b>3. Job security, fair pay and conditions, including the role of workplace relations.</b></p>	<p>Please see Attachments 1 – 3 for details on our recommendations to address job security, fair pay and conditions, including the role of workplace relations.</p> <p>Further to these recommendations, Circle Green supports improving these areas by:</p> <ul style="list-style-type: none"> <li>• limiting the use of restraints of trade in employment contracts for award-covered employees;</li> </ul>



Term of reference	Comments
	<ul style="list-style-type: none"> <li>• limiting the enforceability of excessively long notice periods for award-covered employees;</li> <li>• creating a right in the <i>Fair Work Act 2009</i> (Cth) (<b>FW Act</b>) for employees to challenge unfair and oppressive contractual terms;</li> <li>• requiring conciliation for non-dismissal-based general protections claims at the FWC level;</li> <li>• removing the ability of small businesses to dismiss employees without notice or procedural fairness under the Small Business Fair Dismissal Code where they believe an employee has engaged in serious misconduct;</li> <li>• stronger penalties and easier procedures to use against companies and individuals who open and close short-term small businesses and franchises in order to avoid liability for unpaid entitlement claims; and</li> <li>• establishing a Secure Australian Jobs Code, requiring employers providing services to Commonwealth government entities to adhere to prescribed standards of secure employment; and</li> <li>• ensuring adequate funding to relevant community legal centres and support services to ensure workers can pursue their rights in relation to job security, pay and conditions.</li> </ul>
<p><b>4. Pay equity, including the gender pay gap, equal opportunities for women and the benefit of a more inclusive workforce.</b></p>	<p>Please see Attachments 1 – 3 for details on our recommendations related to pay equity, including the gender pay gap, equal opportunities for woman and the benefit of a more inclusive workforce.</p> <p>Circle Green further recommends the White Paper give consideration to the following:</p> <ul style="list-style-type: none"> <li>• requiring employers with 500+ employees to commit to targets to improve gender equality in their workplaces;</li> <li>• requiring the Australian Public Service to set gender equity targets and report on progress towards meeting those targets;</li> <li>• prohibiting making an employee redundant while they are on parental leave;</li> </ul>



Term of reference	Comments
	<ul style="list-style-type: none"> <li>• adding pregnancy, menstruation, and menopause as grounds on which employees can request flexible working arrangements under the FW Act; and</li> <li>• reducing the eligibility period for unpaid parental leave under the FW Act to 6 months for employers with 15 or more employees.</li> </ul>
<b>5. Labour force participation, labour supply and improving employment opportunities</b>	<p>Circle Green recognises the economic and public interest in increasing workforce participation, particularly by marginalised and diverse groups.</p> <p>Circle Green advises that marginalised and diverse groups of people experience higher levels of workplace discrimination and disadvantage.</p> <p>Circle Green therefore recommends that measures improving workforce participation of marginalised groups are accompanied by measures addressing issues those workers face in the workplace.</p>
<b>5.1 Reducing barriers and disincentives to work, including the role of childcare, social security settings and employment services.</b>	<p>Please see Attachments 1 – 3 for details on our recommendations to reduce barriers and disincentives to work, including the role of childcare, social security settings and employment services.</p> <p>Further Circle Green supports amending the FW Act for workers with disability to align with the Australian Human Rights Commission’s IncludeAbility initiative. In particular, we recommend that exceptions from paying workers with a disability the relevant minimum wage are abolished or significantly restricted and regulated to ensure that workers with disability are not exploited for their labour.</p> <p>Circle Green also recommends a review of junior wages under the FW Act and moderns awards to ensure young workers receive fair wages for the work they perform.</p>
<b>5.4 Migration settings as a complement to the domestic workforce.</b>	<p>Further to recommendations made earlier in this submission and in Attachments 1 – 3, Circle Green recommends:</p> <ul style="list-style-type: none"> <li>• conducting a review of the FW Act small claims process to examine how it can be more effectively used for wage redress for migrant workers;</li> </ul>



Term of reference	Comments
	<ul style="list-style-type: none"> <li>• establishing a National Labour Hire Registration Scheme to better regulate labour hire operators;</li> <li>• establishing free legal assistance and education for overseas students accessible through their education providers; and</li> <li>• making it an offence for a person to unduly influence, pressure or coerce a migrant worker to breach a condition of their visa.</li> </ul> <p>We also recommend creating legally enforceable whistle-blower visa protections for migrant workers who report exploitation or wage theft to regulatory bodies such as the Fair Work Ombudsman, and extend these protections to exploitation and wage theft claims progressed through the courts.</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, or Kendra Hagan, Senior Lawyer, on (08) 6148 3660.

Yours faithfully

*Circle Green Community Legal*

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