



## Modern Awards Review 2023-24 (AM2023/21)

### Submission cover sheet

#### Name

(Please provide the name of the person lodging the submission)

Imogen Tatam, Senior Lawyer (Law Reform) - Workplace

#### Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Circle Green Community Legal

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#### Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

## How to prepare a submission

Submissions should be emailed to [awards@fwc.gov.au](mailto:awards@fwc.gov.au). Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

## Background

1. Circle Green Community Legal (**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. Our services are aimed at assisting people who are marginalised and face disadvantage in gaining access to justice. More information about Circle Green's services can be found on our website: <https://www.circlegreen.org.au/>.
2. Circle Green is the only community legal centre in WA with a specialist workplace law practice that provides state-wide services to marginalised and disadvantaged non-unionised WA workers. Our workplace law services include legal advice, casework, representation, and education on state and national workplace law. Among our client base are many workers who have care responsibilities in addition to job responsibilities.
3. We thank the Fair Work Commission's (**Commission**) for the opportunity to contribute to its review of the modern awards, in particular the focus on work and care. Our submission will focus on the entitlements we consider would be of benefit to our clients under awards and, due to time and resource constraints, will not comment on operational detail or propose specific wording.

## Issues

4. Protections and entitlements under the *Fair Work Act 2009* (Cth) (**FW Act**), relevant discrimination laws and awards must, in our view, protect the agency of carers in the workforce. Care arrangements are highly variable and specific to each person's circumstances. Accordingly, working carers should have the ability to choose from a range of options and entitlements that best suit their personal circumstances. They should be empowered to exercise their expertise on their own care situation and obligations to make arrangements that best allow them to balance their work and care responsibilities.
5. Circle Green observes that informal carers tend to be women and tend not to be in the workforce. From our work with clients attempting to engage in the workforce whilst providing informal care, we also observe that this cohort often face intersectional workplace disadvantage factors such as gender, race, culturally and linguistically diverse (**CALD**) background, and insecure work.

6. The lack of workplace engagement and secure employment for informal carers<sup>1</sup> indicates that existing carer employment entitlements are insufficient in supporting working carers. Further, given the various barriers that carers already face, it is crucial that the law offers them a broader range of options to be able to enter, and remain in, the workforce despite their caring responsibilities.
7. To broaden the range of options and entitlements available to working carers, Circle Green considers that modern awards should be varied to include the following.

7.1 Personal leave and carer's leave as separate entitlements.

- (a) All workers, including casual employees, should be entitled to a separate paid carer's leave entitlement. Employees with caring responsibilities are more likely to be in insecure or casual employment arrangements, but these types of employees currently do not have access to paid personal leave or annual leave. As stated in the Senate Select Committee on Work and Care Final Report (**Select Committee Final Report**), 'working carers are disproportionately concentrated in jobs lacking paid sick and holiday leave and yet, ironically, their need for paid sick leave and a holiday to rest and recover is great'.
- (b) Based on our observation that working carers are more likely to be in insecure or casual employment, we also consider that paid carer's leave should be an entitlement available to all workers, not just permanent employees. We therefore recommend that the current NES entitlement to personal / carer's leave be applied to casual employees under all awards (as already set out in some awards); and/or a separate carer leave entitlement to be provided to all employees under all awards.
- (c) Further, any separate carer's leave entitlement should be available in a broader range of situations, such as providing care on an ad-hoc basis if standing care arrangements fall through. This is particularly relevant to the care of young children, older people, and people with disabilities as care for these cohorts is likely to take place on an ongoing and daily basis. Primary carers are enabled to work only if other care arrangements can be made for those relying on their care. Unexpected gaps in that pre-arranged care, caused by arrangements changing at short notice or falling through, are not likely to constitute situations that fall squarely within the definition of an "illness, injury, or emergency".

7.2 A broadened definition of "immediate family" for taking carer's leave.

- (a) Further to paragraph 7.1 above, Circle Green considers that any separate carer's leave entitlement should be broadened in line with Recommendation 17 of the Select Committee Final Report, which recommends that the definition of "immediate family" in the FW Act be amended and broadened to include:

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<sup>1</sup> Deloitte, *The value of informal care in 2020* (May 2020), pages 12-13; Carers Australia, *2023 Carer Wellbeing Survey Snapshot: Employment Outcomes for Female Carers* (December 2023), page 5.

- (i) any person who is a member of an employee's household, and has been for a continuous period of over 18 months;
  - (ii) any of the employee's children (including adopted, step, and ex-nuptial children);
  - (iii) any of the employee's siblings (including a sibling of their spouse of de facto partner); and
  - (iv) any other person significant to the employee to whom the employee provides regular care.
- (b) As noted in the Select Committee Final Report, Circle Green agrees that the current definition of "immediate family" for the purposes of accessing carer's leave is inadequate, and particularly affects marginalised cohorts, such as Aboriginal and Torres Strait Islander communities, people from CALD backgrounds, and LGBTQIA+ communities, who are unlikely to have family structures that fall within the definition of a Western traditional concept of family, or heteronormative family structures.

### 7.3 More flexible use of unpaid carer's leave.

- (a) The FW Act entitlement to two days of unpaid carer's leave per occasion can only be accessed by permanent employees who have exhausted their personal / carer's leave. It is also available to casual employees, but they do not have a personal leave entitlement.
- (b) Circle Green supports the Productivity Commission's Recommendation 5 in the Carer Leave Inquiry Report (**Carer Leave Report**). This recommendation is for the removal the requirement that unpaid carer's leave can only be accessed when a permanent employee's personal / carer's leave has been exhausted.
- (c) As noted at paragraph 4 above, Circle Green strongly supports the notion that carers should have access to the flexibility they need through a range of options. We note that this flexibility should include the ability to elect between taking paid or unpaid carer's leave, depending on what best suits their circumstances. Further, where personal and carer's leave is currently a joint entitlement, it is unreasonable to expect carers to have used up their personal / carer's leave for caring responsibilities, as it directly and disproportionately inhibits carers' access to personal leave for their own health and wellbeing, compared to non-carers.
- (d) Further, Circle Green continues to strongly support the provision of a minimum statutory entitlement to unpaid carer's leave, similar to the unpaid parental leave legislation, which includes the provision for 12 months of leave in the first instance, with the right to request up to a further 12 months where the refusal of any extension of unpaid carer's leave could only be made on reasonable business grounds. Circle Green considers that this entitlement be extended to all employees, including casual employees, with continuous service of at least 12 months. This should add

to, not replace, any existing options and entitlements available to carers, such as flexible working arrangements.

#### 7.4 Guaranteed hours, notice of rosters, and the “right to say no” for casual employees.

- (a) The Commission notes at paragraph 100 of the Discussion Paper that most of the 25 awards reviewed contain guaranteed hours provisions for part-time employees. The Commission goes on to note<sup>2</sup> that two of the 25 awards specifically prohibit employers rostering an employee to work outside their nominated available hours, and that some awards also impose restrictions on employers requiring part-time employees to work in excess of their guaranteed hours, or outside of their agreed ordinary hours<sup>3</sup>. Circle Green is supportive of these provisions that provide certainty for workers, which assist working carers to plan their work and care obligations in advance without prejudicing their employment.
- (b) Circle Green is particularly keen to see the implementation of Recommendation 21 of the Select Committee Final Report, that the Commission review current awards to ensure:
  - (i) employees have predictable, stable rosters, by requiring employers to give advance notice of at least two weeks of rosters and roster changes (except in exceptional circumstances), and genuinely consider employee views about the impact of proposed roster changes and to accommodate the needs of the employee; and
  - (ii) employees have a “right to say no” to extra hours with protection from negative consequences.
- (c) In line with this recommendation, Circle Green recommends that awards should include:
  - (i) a provision that requires employers to give at least two weeks’ notice of rosters and roster changes; and
  - (ii) a “right to say no” to extra hours or last-minute roster changes without adverse consequences.
- (d) Further, given the highly casualised nature of the working carers cohort, Circle Green considers that these provisions should also be extended to casual employees, to the extent that they do not restrict the flexible and irregular nature of casual employment.
- (e) Casual employees should also have protections under both the FW Act and relevant awards, to protect them from adverse action when they refuse extra hours or changes to the roster on short notice (e.g. without two weeks’ notice). It is

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<sup>2</sup> Paragraph 179.

<sup>3</sup> Paragraph 180.

unreasonable to expect casual employees, who currently do not have personal/carer's leave or annual leave entitlements, and with current limited scope of unpaid carer's leave, to be able to arrange formal care for dependents, or to reschedule their care commitments at short notice.

8. Thank you for considering our submission. We would be very pleased to discuss any aspect further. Please contact Imogen Tatam at [workplace@circlegreen.org.au](mailto:workplace@circlegreen.org.au) or (08) 6148 3660 to do so.
9. We wish to acknowledge the contributions of the following Circle Green team members in preparing this submission:
  - (a) Fiona Yokohata – Lawyer – Workplace;
  - (b) Imogen Tatam – Senior Lawyer (Law Reform) – Workplace; and
  - (c) Elisha Butt – Principal Lawyer – Workplace.

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Date: 11 March 2024