

11 November 2022

Senate Education and Employment Committees
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted via online portal

Dear Committee Members

Inquiry into *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022*

Circle Green Community Legal (**Circle Green**) welcomes the opportunity to make a submission on the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022 (the Bill)*.

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 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 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 under Australia's workplace and employment law system.

Comments on the Bill

Circle Green is strongly supportive of amending the *Fair Work Act 2009 (FW Act)* and related legislation to improve the workplace relations framework. In particular, Circle Green supports the Bill's aims of:

- improving job security and gender equity; and
- improving workplace conditions and protections by providing stronger access to flexible working arrangements, stronger protections for workers, including people targeted by sexual

harassment, and enhancing small claims procedures to better enable unpaid entitlement recovery.

Due to the limited time available to consider the Bill, we are only able to make general comments and observations on the Bill based on our overall experience assisting vulnerable and disadvantaged workers.

Our comments on the legislative amendments proposed by the Bill are outlined in the table below.

Proposed amendment	Comments
<p>Part 4 – Objects of the Fair Work Act</p>	<p>Circle Green supports amending the FW Act to explicitly include job security and gender equality into the object of the FW Act, meaning the Fair Work Commission (FWC) must take these objects into account when performing its functions and exercising its powers.</p> <p>Circle Green further supports amending the FW Act to include the promotion of these two new objects in the modern awards and minimum wages objectives.</p> <p>This marks a positive step to address the negative impacts of entrenched job insecurity and gender inequality on vulnerable workers in Australia.</p>
<p>Part 5 – Equal remuneration</p>	<p>Circle Green strongly supports the:</p> <ul style="list-style-type: none"> • introduction of the requirement to consider gender equity; • clarifying that equal remuneration matters must include consideration of historical undervaluation because of assumptions based on gender; and • removal of the need for ‘male comparator’ evidence in order for the FWC to grant an equal remuneration order.
<p>Part 6 – Expert panels</p>	<p>Circle Green supports the creation of expert panels relating to pay equity and the care and community sector.</p> <p>Circle Green champions the general principle that decisions regarding equal remuneration and industry-specific working conditions, particularly underpaid gendered labour industries, should be informed or made by people with lived experience or expertise relating to pay inequality and the industry concerned. Circle Green therefore recommends this principle be key when considering the constitution of the expert panels.</p>



Proposed amendment	Comments
<p>Part 7 – Prohibiting pay secrecy</p>	<p>Circle Green supports the introduction of a prohibition on pay secrecy.</p> <p>Circle Green recognises that an employee's ability to have open discussions about remuneration and employment terms and conditions is important to achieving pay equality, particularly for women and other underpaid groups who may not be aware of the existence, or the extent, of pay inequalities in their workplaces and industries.</p>
<p>Part 8 – Prohibiting sexual harassment</p>	<p>Circle Green strongly supports amending the FW Act to implement Recommendation 28 of the <i>Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces</i>, a prohibition against sexual harassment.</p> <p>Given the nature, and impact, of sexual harassment in the workplace, Circle Green believes it is positive that the prohibition:</p> <ul style="list-style-type: none"> • application appears to be broad in nature; • includes vicarious liability provisions; • provides for a 24-month time limitation; • allows the FWC to exercise dispute resolution and consent arbitration powers; • is a civil penalty provision; and, • allows the FWC to makes orders including: <ul style="list-style-type: none"> ○ for compensation; ○ remuneration lost; and, ○ performance of an act to redress loss or damage suffered. <p>These changes will, as a part of necessary broader reforms, assist in the redress and reduction of workplace sexual harassment.</p> <p>Circle Green particularly notes that enabling civil penalties to be ordered in workplace sexual harassment matters provides for a deterrence model that is not predicated on demonstrable and economically assessable victim trauma.</p> <p>Circle Green further notes that, whilst valuable, FWC dispute resolution and arbitration processes can be difficult for a self-represented applicant to navigate. This is particularly true for applicants who may be dealing with the trauma repercussions associated with sexual harassment in the workplace. Given this, it is important that the FWC, and relevant legal support services, are adequately resourced to facilitate access to this new jurisdiction.</p>



Proposed amendment	Comments
Part 9 – Anti-discrimination and special measures	<p>Circle Green strongly supports the addition of breastfeeding, gender identity and intersex status as characteristics protected against discrimination in the FW Act.</p>
Part 11 – Flexible work	<p>Circle Green’s clients include low-income employees with intersecting vulnerabilities, such as being sole income earners, having dependants, having a disability, or experiencing family and domestic violence. These vulnerabilities often require flexibility on behalf of the employer to facilitate participation of the employee in the workforce. Absent an enforceable right to request flexible working arrangements, the ability of such employees to hold on to employment is subject to the whim of their employer. Making the entitlement enforceable by civil penalty reflects the public interest in increasing workforce participation by these vulnerable groups.</p> <p>Given this, Circle Green strongly supports extending the grounds on which an employee may request flexible working arrangements and creating obligations on employers to consider and respond to requests.</p> <p>Further, Circle Green strongly supports making the right to request flexible working arrangements enforceable by dispute resolution and mandatory arbitration, as well as by civil penalty.</p> <p>Additionally, Circle Green notes and supports the following recommendations made by the Select Committee on Work and Care in its interim report on the issue of flexible work arrangements be incorporated into the Bill:</p> <ul style="list-style-type: none"> • all employees should be eligible to request flexible working arrangements; and • requests should only be refused if they would cause the employer ‘unjustifiable hardship’ rather than on the current basis of ‘reasonable business grounds’.
Part 24 – Enhancing the small claims process	<p>Circle Green strongly supports increasing the monetary cap in small claims proceedings from \$20,000 to \$100,000. This will enable a greater number of disputes to be heard using the small claims procedure and promote greater access to justice by reducing complexity and costs.</p> <p>Circle Green also strongly supports the introduction of provisions enabling a successful claimant to be awarded filing fees they paid to the court as costs.</p>
Part 25 – Prohibiting employment advertisements with pay rate that would contravene the Act	<p>Circle Green strongly supports a prohibition on advertising jobs with pay rates below the minimum wage, particularly as a civil penalty provision. This will assist in reducing exploitation of vulnerable workers and enable a culture of specific and general deterrence of such behaviour.</p>



Further reform needed

In addition to the above referenced reforms, Circle Green recommends further reform is needed to reduce the exploitation of vulnerable workers. Key areas in need of reform include:

- Criminalisation of wage theft;
- Eliminate sham contracting arrangements: amend the FW Act to create a presumption of employment relationship instead of a contracting relationship;
- Decrease over-casualisation: improve the definition of 'casual employee' in the FW Act to ensure that it can only be used to describe employees whose work is truly casual;
- Allow migrant workers to act against exploitative employers: provide effective visa protections to 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;
- Extend 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;
- Extend the powers of the FWC to include 'employee-like' forms of work (gig work);
- Include a right to superannuation within the NES so unpaid superannuation can be pursued as a workplace entitlement;
- Introduce portable entitlement schemes for those in insecure work;
- Legislate that companies with 250+ employees have to report their gender pay gap publicly; and
- Legislate a right for employees to disconnect.

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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