

19 August 2022

Committee Members
Education and Employment Legislation Committee
c/o Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

Submitted via online portal

Dear Committee Members

Inquiry into *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022*

Circle Green Community Legal (**Circle Green**) welcomes the opportunity to make a submission on the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (the Bill)*.

About Circle Green

Circle Green Community Legal 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 family and domestic violence (**FDV**) impacts.

We reflect on some of client's experiences in our submission, both in general terms and in case studies. For all case studies, we have changed or removed names and other identifying information to protect client confidentiality.

Comments on the Bill

Overall, Circle Green is strongly supportive of the legislative amendments proposed by the Bill, which ultimately recognises the important role of workplaces in addressing FDV and its impacts. Our comments on the legislative amendments proposed by the Bill are outlined in the table below.

Proposed amendment	Comments
<p>Amendment to provide 10 days paid FDV leave at full rate of pay</p>	<p>Circle Green welcomes the Bill's proposed amendment of the National Employment Standards (NES) in the <i>Fair Work Act 2009</i> (Cth) (FW Act) to provide an entitlement to a minimum of 10 days paid FDV leave at an employee's full rate of pay for the days they would have otherwise worked or were rostered. This amendment would represent significant progress in supporting employees experiencing FDV to remain in employment and maintain their financial security, both of which are often critical for workers to escape FDV. Circle Green also commends the Government's for recognising the importance of employees having access to the full entitlement upfront from front the commencement of employment.</p> <p>Circle Green would recommend the entitlement be increased to a minimum of 20 days paid FDV leave as further support is needed, particularly for vulnerable and disadvantaged employees, who may face multiple legal issues and additional barriers when escaping FDV.</p>
<p>Extension of paid FDV leave entitlement to casual employees</p>	<p>Circle Green strongly supports the extension of paid FDV leave to casual employees. Vulnerable and disadvantaged women are more frequently in casual work and are also at higher risk of experiencing FDV. We consider that the extension of paid FDV leave to casual employees is critical to addressing these intersecting factors impacting on the job and financial security of employees experiencing FDV.</p>
<p>Expansion of definition of FDV to cover intimate partners and unrelated household members</p>	<p>Circle Green welcomes an expanded definition of FDV to cover intimate partners and household members who are not relatives. The gaps in the current definition unreasonably leave some employees experiencing FDV without access to FDV leave.</p>



Proposed amendment	Comments
<p>Facilitating extension of paid FDV leave to all employees in Australia by using the external affairs power</p>	<p>As a WA-based legal assistance service, Circle Green strongly supports facilitating the extension of paid FDV leave under the FW Act to all employees in all workplaces in Australia by relying on the external affairs power in the Australian Constitution.</p> <p>WA is the only state in Australia which has not referred its law-making powers with respect to workplace relations. WA employees employed by sole traders, partnerships of natural persons, or other non-constitutional corporations would otherwise not be entitled to paid FDV leave (under the FW Act otherwise).</p> <p>To ensure no disparity between WA employees based on the nature of their employer from the proposed commencement date of the legislative amendments in the Bill, Circle Green would welcome the prompt ratification of <i>International Labour Organization Convention (ILO) Convention 190</i>.</p>
<p>Amendments to notes about how FDV leave may be used</p>	<p>Circle Green welcomes additional examples of the scope of activities for which FDV leave may be taken being inserted into legislative notes in the FW Act. These notes would provide useful clarity to give employees experiencing FDV leave the confidence to access their FDV leave entitlements and address FDV impacts. We also consider they are likely to prevent simple interpretation disputes between employees and employers who do not have easy access to legal assistance as they make understanding the legislative FDV leave provisions more accessible to the public.</p>

Further reform needed

In addition to the introduction of paid FDV leave, Circle Green recommends further reform to support victims of FDV and the ratification of *ILO Convention 190*, including:

- enforceable flexible working arrangements for employees experiencing FDV; and
- protections against adverse action because of being subject to FDV.

Enforceable flexible working arrangements

Employees experiencing FDV currently have a right to request flexible working arrangements, such as a change in their work patterns or work location. In our experience, changes of this nature can have a substantial impact on an employee experiencing FDV feeling safe to continue attending work and remain in their employment, particularly where they may have recently left an abusive relationship and are in a public facing role (e.g. in retail or hospitality).



However, there is not currently an enforceable right to receive flexible working arrangements when an employee's request is unreasonably refused by an employer. In practice, this can make it difficult for employees experiencing FDV to access flexible working arrangements. To remedy this issue, Circle Green recommends amending the FW Act to provide employees experiencing FDV with an enforceable right to flexible working arrangements which are reasonable in the circumstances.

Case Study 1 – Sumi

Sumi is from a culturally and linguistically diverse background and worked for a large retail chain business in a public facing role. Sumi was experiencing FDV and her ex-partner would often call and attend Sumi's workplace or get his relatives or associates to attend her workplace to intimidate her.

Circle Green's workplace team provided Sumi with legal advice on her rights and options and further assisted Sumi to make a written request for flexible working arrangements to her employer to change her location of work. Sumi's employer agreed to move Sumi to another of their many business locations following the request. This meant Sumi felt safe going to into work, as her ex-partner no longer knew where she worked to continue intimidating her.

If Sumi's employer did not grant her request for flexible working arrangements, Sumi would have had to decide between resigning and losing her financial security, or continuing to work under her current arrangements which compromised her safety at work.

Protections against adverse action because of being subject to FDV

In our experience, employees experiencing FDV are at high risk of dismissal or other adverse action being taken against them in circumstances where:

- an employee discloses to their employer that they are experiencing FDV;
- an employee discloses to their employer that they have a restraining order which covers the workplace;
- the perpetrator attends an employee's workplace (including in breach of a restraining order);
or
- the perpetrator engages in FDV at an employee's workplace.

In these circumstances, employees experiencing FDV do not have a clear and unambiguous protection against dismissal under the existing general protections provisions in the FW Act and not all employees are protected against unfair dismissal.

Circle Green supports the inclusion of 'being subject to FDV' as a protected characteristic under section 351(1) of the FW Act. Amending the FW Act in this way would provide stronger protections for employees experiencing FDV and would help prevent negative employment and financial impacts of FDV.



Case Study 2 – Jocelyn

Jocelyn is an Aboriginal woman who is a single parent. She experienced FDV and had a restraining order against the perpetrator of the FDV. Jocelyn worked as a casual employee at a small store and the restraining order prevented the perpetrator from entering the store. Jocelyn told the employer about the restraining order and explained that the police would need to be called if the perpetrator entered the store she worked at. The employer told Jocelyn that they would not prevent the perpetrator from entering the store, regardless of the restraining order. The employer dismissed Jocelyn because the restraining order made her working at the store too difficult for them. This left Jocelyn without an income, and at risk of homelessness, with a young child under her care. Jocelyn was not protected against unfair dismissal under the FW Act, which left her with the prospect of having to make more technical legal arguments to pursue a claim in relation to her dismissal.

Thank you for taking the time to consider Circle Green's submission. We commend the Government's swift action on this important issue and are supportive of further workplace relations reform to assist employees experiencing FDV.

Yours sincerely

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