Additional comments – Mr Bandt

I welcome the Committee's majority support for the principle behind my Bill, namely that our workplace laws should help people achieve a better work/life balance.

I also welcome the support from most groups who made submissions to the Inquiry for broadening and strengthening the right to request flexible working arrangements.

However, I make two points.

First, I acknowledge there is not a consensus regarding the best way to implement some aspects of the proposed changes. In particular, there is an issue as to whether it is appropriate to move 'flexible working arrangements' outside the NES framework, as proposed in the Bill. In this regard, I do not agree with the Committee's conclusions regarding this matter in paragraphs 1.42 and 1.57 of the report, although I accept that there is an issue that needs to be resolved.

It is important to understand the rationale behind this element of the Bill.

After a series of attacks from both Labor and Coalition governments, awards now contain very few protections. Enterprise agreements are now the place where many long fought for and hard-won protections are contained. If enterprise agreements are not given primacy then there is a possibility that flexible working arrangements may (inadvertently) provide a way to 'contract out' of such an agreement.

The Bill as drafted therefore reflects the fact that in the current legislative environment, enterprise bargaining and enterprise agreements may be the primary mechanisms for providing better industrial outcomes, including around work/life balance.

By inserting 'flexible working arrangements' into the list of permitted bargaining matters, as proposed in the Bill, this will encourage new agreements to include such issues.

Where an enterprise agreement does include such matters, they would take precedence. This is important because there may be some areas where, for example, it is not appropriate to have someone working for a very short period of hours. It is probably best left to the enterprise to determine this.

It may not be appropriate to have highly skilled emergency services professionals working two or three hours a week, for example. This situation could have the potential to undermine the important level of skills, training and teamwork required to perform many of these jobs. I note the submission from the United Firefighters Union of Australia to this effect.

Of course, such protections must not be used as a barrier to women participating in such highly regulated workplaces. There is force in the submissions to the Inquiry that requiring full-time work in highly regulated workplaces has been a barrier to women's participation. Indeed, that is one of the key points of this Bill: to make it easier for those with caring responsibilities, who are still most often women, to enter or remain in the workforce.

A balance needs to be struck. In my view, it remains preferable that such balances be struck by the employees and employers concerned, taking into account the specific nature of the industries concerned. This will ultimately lead to better work/life outcomes. Against this must be weighed the demonstrated strong preference for the National Employment Standards remaining a clearly understood set of universal minimum conditions.

One solution, not explored at length during this inquiry, may be to allow enterprise agreements to take precedence but require them to meet a 'work/life balance' test so that all people are able to get and keep jobs at that enterprise and so that any barriers to participation are removed.

Given the Recommendation of the Committee to consider the Bill after the Independent Review Report and the Government's response, I consider it is appropriate to also revisit this issue at that time.

Secondly, paragraphs 1.44 to 1.50 and 1.58 deal with whether requests for better work/life balance should be enforceable. There were some very strong submissions to the Committee that if requests are not enforceable or justiciable, the right may be of little value. I am pleased that the Committee has not decided to keep the 'unenforceable' status quo and has instead left the door open to making this right enforceable. This issue too should be considered after the Independent Review of the Act, at which time the strong evidence before the Committee on this question should be re-examined.

Adam Bandt MP