



Appendix A—Text of the Bill

2010-2011-2012

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fair Work Amendment (Better Work/Life Balance) Bill 2012

No. , 2012

(Mr Bandt)

A Bill for an Act to amend the Fair Work Act 2009, and for related purposes

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1 **A Bill for an Act to amend the Fair Work Act 2009, and**
2 **for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 *This Act may be cited as the Fair Work Amendment (Better*
6 *Work/Life Balance) Act 2012.*

7 **2 Commencement**

8 This Act commences on the day after this Act receives the Royal
9 Assent.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule concerned,
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.

Schedule 1—Amendments

Fair Work Act 2009

1 Paragraph 5(8)(a)

Omit “or an equal remuneration order (see Part 2 7)”, substitute “, an equal remuneration order (see Part 2 7) or a flexible working arrangements order (see Part 2 7A)”.

2 Section 12

Insert:

flexible working arrangements order: see subsection 306F(1).

3 Subparagraph 43(2)(a)(ii)

Omit “and”, substitute “or”.

4 At the end of paragraph 43(2)(a)

Add:

(iii) a flexible working arrangements order (see Part 2 7A);
and

5 Subsection 44(2)

Omit “65(5) or”.

6 Subsection 44(2) (note 1)

Repeal the note, substitute:

Note 1: Subsection 76(4) states that an employer may refuse an application to extend unpaid parental leave only on reasonable business grounds.

7 Subsection 44(2) (note 2)

Omit “65(5) or”.

8 Division 4 of Part 2 2

Repeal the Division.

9 Section 146 (note)

Omit “65(5) or”.

10 After paragraph 172(1)(c)

Insert:

(ca) matters pertaining to flexible working arrangements;

11 Subsection 186(6) (notes 1 and 2)

Omit “65(5) or”.

12 After Part 2 7

Insert:

Part 2 7A—Flexible working arrangements

Division 1—Introduction

306A Guide to this Part

This Part provides processes for changing working arrangements.

Division 1 deals with preliminary matters.

Division 2 deals with requests for flexible working arrangements, including flexible working arrangements for employees who are carers.

Division 3 provides for the making of flexible working arrangements orders by FWA to ensure that employers comply with this Part.

306B Meanings of *employee* and *employer*

In this Part, ***employee*** means a national system employee, and ***employer*** means a national system employer.

306C State and Territory laws that are not excluded

(1) This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to flexible working arrangements, to the extent that those entitlements

1 are more beneficial to employees than the entitlements under this
2 Part.

3 (2) However, a law of a State or Territory has no effect in relation to
4 an employee to the extent that it provides an employee entitlement
5 in relation to flexible working arrangements that is inconsistent
6 with a term of an enterprise agreement that applies to the
7 employee.

8 **Division 2—Requests for flexible working arrangements**

9 **306D Requests for flexible working arrangements**

10 *Employee or organisation may request change*

11 (1) An employee, or an employee organisation that is entitled to
12 represent the employee, may request the employer to change the
13 employee's working arrangements.

14 Note: Examples of changes in working arrangements include changes in
15 hours of work, changes in patterns of work and changes in location of
16 work.

17 (2) Neither the employee, nor the organisation, is entitled to make the
18 request unless:

- 19 (a) for an employee other than a casual employee—the employee
20 has completed at least 12 months of continuous service with
21 the employer immediately before making the request; or
22 (b) for a casual employee—the employee:
23 (i) is a long term casual employee of the employer
24 immediately before making the request; and
25 (ii) has a reasonable expectation of continuing employment
26 by the employer on a regular and systematic basis.

27 *Formal requirements*

28 (3) The request must:

- 29 (a) be in writing; and
30 (b) set out details of the change sought and of the reasons for the
31 change.

1 *Responding to the request*

2 (4) The employer must give the employee, or the employee
3 organisation (as the case requires), a written response to the request
4 within 21 days, stating whether the employer grants or refuses the
5 request.

6 (5) The employer may refuse the request only on reasonable business
7 grounds.

8 (6) If the employer refuses the request, the written response under
9 subsection (4) must include details of the reasons for the refusal.

10 **306E Requests for flexible working arrangements—carers**

11 *Request for change for employee who is a carer*

12 (1) An employee who has responsibility for the care of another person,
13 or an employee organisation that is entitled to represent the
14 employee, may request the employer to change the employee's
15 working arrangements to assist the employee to care for the other
16 person.

17 Note: Examples of changes in working arrangements include changes in
18 hours of work, changes in patterns of work and changes in location of
19 work.

20 (2) Neither the employee, nor the organisation, is entitled to make the
21 request unless:
22 (a) for an employee other than a casual employee—the employee has
23 completed at least 12 months of continuous service with
24 the employer immediately before making the request; or
25 (b) for a casual employee—the employee:
26 (i) is a long term casual employee of the employer
27 immediately before making the request; and
28 (ii) has a reasonable expectation of continuing employment
29 by the employer on a regular and systematic basis.

30 *Formal requirements*

31 (3) The request must:
32 (a) be in writing; and
33 (b) set out details of the change sought and of the reasons for the
34 change.

1 *Responding to the request*

2 (4) The employer must give the employee, or the employee
3 organisation (as the case requires), a written response to the request
4 within 21 days, stating whether the employer grants or refuses the
5 request.

6 (5) The employer may refuse the request only on serious
7 countervailing business grounds.

8 (6) If the employer refuses the request, the written response under
9 subsection (4) must include details of the reasons for the refusal.

10 **Division 3—Flexible working arrangements orders**

11 **306F FWA may make flexible working arrangements order**

12 *Power to make flexible working arrangements order*

13 (1) FWA may make any order (the **flexible working arrangements**
14 **order**) it considers appropriate to ensure that an employer complies
15 with section 306D or 306E.

16 *Who may apply for flexible working arrangements order*

17 (2) FWA may make a flexible working arrangements order only on
18 application by any of the following:

19 (a) an employee or organisation whose request under subsection
20 306D(1) or 306E(1) for a change in working arrangements
21 has been refused;

22 (b) an employee organisation that is entitled to represent an
23 employee covered by paragraph (a);

24 (c) the Age Discrimination Commissioner, the Disability
25 Disability Discrimination Commissioner or the Sex Discrimination
26 Commissioner.

27 **306G Implementation of flexible working arrangements in stages**

28 A flexible working arrangements order may implement changed
29 working arrangements in such stages (as provided in the order) as
30 FWA thinks appropriate.

1 **16 After paragraph 576(1)(f)**

2 Insert:

3 (fa) flexible working arrangements (Part 2 7A);

4 **17 Paragraph 653(1)(c)**

5 Repeal the paragraph, substitute:

6 (c) conduct research into the operation of the provisions of the
7 National Employment Standards relating to requests for
8 extensions of unpaid parental leave under subsection 76(1);
9 and

10 (ca) conduct research into the operation of Part 2 7A in relation
11 to requests for changed working arrangements; and

12 **18 After paragraph 675(2)(e)**

13 Insert:

14 (ea) a flexible working arrangements order

15 **19 At the end of subsection 716(1)**

16 Add:

17 ; (g) a term of a flexible working arrangements order.

18 **20 Subsection 739(2)**

19 Omit “65(5) or”.

20 **21 Subsection 739(2) (note)**

21 Omit “65(5) or”.

22 **22 Subsection 740(2)**

23 Omit “65(5) or”.

24 **23 Subsection 740(2) (note)**

25 Omit “65(5) or”.