2008-2009

The Parliament of the
Commonwealth of Australia

THE SENATE

Fair Work Bill 2008

(Amendments to be moved by Senator Siewert on behalf of the Australian Greens in committee of the whole)

Requests for flexible working arrangements

(1) Clause 65, page 76 (lines 5 to 8), omit subclause (1), substitute:

(1) An employee may request the employer for a change in working arrangements to assist the employee to care for someone who is:

(a) a child of the employee, or a child the employee has responsibility for the care of, if the child:
   (i) is under school age; or
   (ii) is under 18 and has a disability; or

(b) a person in need of care who is:
   (i) the spouse or de facto partner of the employee; or
   (ii) a member of the employee’s immediate family; or
   (iii) a member of the employee’s household.

(2) Clause 65, page 76 (lines 27 to 29), omit subclause (4), substitute:

(4) If an employee makes a request in accordance with subsection (3):

(a) the employer must, within 28 days of receiving the written request, meet with the employee to discuss the request; and

(b) the employer must give the employee a written response to the request within 14 days of the meeting, stating whether the employer grants or refuses the request.
(3) Clause 65, page 77 (after line 2), at the end of the clause, add:

FWA can review refusal of request

(7) If the employer refuses the request, the employee may apply to FWA to review the employer’s decision on the following grounds:
(a) because there has been a contravention of a requirement of this section; or
(b) because there has been a misunderstanding or misapplication of a fact relating to the application.

(8) The application must be made within 7 days after the employer gives the employee a written response under subsection (4), unless FWA is satisfied there are circumstances which justify a late application.

(9) FWA may make:
(a) an order for reconsideration of the request; and
(b) an award of compensation to be paid by the employer to the employee.

(10) The amount of compensation must be an amount, not exceeding 26 weeks’ pay for the employee, as FWA considers fair in all the circumstances.

Amendment (4) is an alternative to amendments (1) to (3)

(4) Clause 65, page 76 (lines 5 to 8), omit subclause (1), substitute:

(1) An employee who is a parent, or has responsibility for the care, of a child may request the employer for a change in working arrangements to assist the employee to care for the child if the child:
(a) is under school age; or
(b) is under 18 and has a disability.

(5) Clause 76, page 89 (after line 9), after subclause (5), insert:

(5A) If the employer refuses the request, the employee may apply to FWA to review the employer’s decision on the following grounds:
(a) because there has been a contravention of a requirement of this section; or
(b) because there has been a misunderstanding or misapplication of a fact relating to the application.

(5B) The application must be made within 7 days after the employer gives the employee a written response under subsection (3), unless FWA is satisfied there are circumstances which justify a late application.

(5C) FWA may make:
(a) an order for reconsideration of the request; and
(b) an award of compensation to be paid by the employer to the employee.

(5D) The amount of compensation must be an amount, not exceeding 26 weeks’ pay for the employee, as FWA considers fair in all the circumstances.