Fair Work Amendment Bill 2013

(Amendments to be moved by Mr Bandt)

(1) Schedule 1, page 8 (after line 5), after item 16, insert:

16A Subsection 55(3)
After “subsection (2)”, insert “, except as provided in section 56A”.

[consequential: flexible working arrangements are subject to enterprise agreements]

(2) Schedule 1, page 8, after proposed item 16A, insert:

16B After section 56
Insert:

56A Flexible working arrangements: no contracting out of enterprise agreements

None of the following has any effect to the extent that it would be inconsistent with an enterprise agreement:
   (a) an arrangement or agreement made as a result of a request under section 65 (which deals with requests for flexible working arrangements);
   (b) a decision of the FWC of the kind referred to in subsection 598(1) in relation to a dispute about the operation of Division 4 of Part 2-2 (which deals with requests for flexible working arrangements);
   (c) any other exercise of a power of the FWC, including an outcome of a process carried out in accordance with subsection 595(2) (which deals with the FWC’s power to deal with disputes otherwise than by arbitration), in relation to a dispute about the operation of Division 4 of Part 2-2.

[flexible working arrangements are subject to enterprise agreements]

(3) Schedule 1, Part 3, page 9 (after line 27), at the end of the Part, add:

18A After section 65
Insert:

65A FWC may deal with a dispute about the operation of this Division

(1) The FWC may deal with a dispute about the operation of this Division (including a dispute about whether a refusal of a request under section 65 is on reasonable business grounds).

(2) The FWC may deal with the dispute by arbitration.

Note: The FWC may also deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

(3) The FWC may deal with the dispute only on application by any of the following:
   (a) an employee who has made a request under section 65;
   (b) an employee organisation that is entitled to represent the industrial interests of an employee referred to in paragraph (a).

   [FWC may arbitrate or otherwise deal with disputes about flexible working arrangements]

(4) Schedule 1, Part 3, at the end of the Part, add (after proposed item 18A):

18B Section 146 (note)
   Omit “65(5) or”.
   [consequential: dealing with disputes about flexible working arrangements]

(5) Schedule 1, Part 3, at the end of the Part, add (after proposed item 18B):

18C Subsection 186(6) (notes 1 and 2)
   Omit “65(5) or”.
   [consequential: dealing with disputes about flexible working arrangements]

(6) Schedule 1, Part 3, at the end of the Part, add (after proposed item 18C):

18D Subsection 739(2)
   Omit “65(5) or”.

18E Subsection 739(2) (note)
   Omit “65(5) or”.
   [dealing with disputes about flexible working arrangements]

(7) Schedule 1, Part 3, at the end of the Part, add (after proposed item 18E):

18F Subsection 740(2)
   Omit “65(5) or”.

18G Subsection 740(2) (note)
   Omit “65(5) or”.
   [consequential: dealing with disputes about flexible working arrangements]