2010-2011-2012-2013

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Fair Work Amendment Bill 2013

(Amendments to be moved by Mr Bandt)

(1) Schedule 1, Part 3, page 8 (line 1) to page 9 (line 27), omit the Part, substitute:

Part 3—Better work/life balance

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:
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

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 are more beneficial to employees than the entitlements under this Part.
(2) However, a law of a State or Territory has no effect in relation to an employee to the extent that it provides an employee entitlement in relation to flexible working arrangements that is inconsistent with a term of an enterprise agreement that applies to the employee.

Division 2—Requests for flexible working arrangements

306D Requests for flexible working arrangements

Employee or organisation may request change

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

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

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

(a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or

(b) for a casual employee—the employee:

(i) is a long term casual employee of the employer immediately before making the request; and

(ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Formal requirements

(3) The request must:

(a) be in writing; and

(b) set out details of the change sought and of the reasons for the change.

Responding to the request

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

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

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

306E Requests for flexible working arrangements—special circumstances

Request for change for employee who is a carer

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

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.
Employment requirements for employee who is a carer

(2) Neither the employee, nor the organisation, is entitled to make a request under subsection (1) unless:
   (a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or
   (b) for a casual employee—the employee:
      (i) is a long term casual employee of the employer immediately before making the request; and
      (ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

Request for change for employee experiencing family violence

(3) An employee who is experiencing violence from a member of the employee’s family may request the employer to change the employee’s working arrangements to assist the employee to deal with the situation.

Formal requirements

(4) A request under subsection (1) or (3) must:
   (a) be in writing; and
   (b) set out details of the change sought and of the reasons for the change.

Responding to the request

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

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

(7) If the employer refuses the request, the written response under subsection (5) must include details of the reasons for the refusal.

Division 3—Flexible working arrangements orders

306F FWA may make flexible working arrangements order

Power to make flexible working arrangements order

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

Who may apply for flexible working arrangements order

(2) FWA may make a flexible working arrangements order only on application by any of the following:
   (a) an employee or organisation whose request under subsection 306D(1) or 306E(1) or (3) for a change in working arrangements has been refused;
   (b) an employee organisation that is entitled to represent an employee covered by paragraph (a);
   (c) the Age Discrimination Commissioner, the Disability Discrimination Commissioner or the Sex Discrimination Commissioner.
306G Implementation of flexible working arrangements in stages

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

306H Contravening a working arrangements order

An employer must not contravene a term of a flexible working arrangements order.

Note: This section is a civil remedy provision (see Part 4-1).

306I Inconsistency with modern awards and enterprise agreements

(1) A term of a modern award has no effect in relation to an employee to the extent that it is less beneficial to the employee than a term of a flexible working arrangements order that applies to the employee.

(2) A term of a flexible working arrangements order has no effect in relation to an employee to the extent that it is inconsistent with a term of an enterprise agreement that applies to the employee.

13 Subsection 539(2) (after table item 9)

Insert:

Part 2-7A—Flexible working arrangements

<table>
<thead>
<tr>
<th>9A</th>
<th>306H</th>
<th>(a) a person to whom a flexible working arrangements order relates;</th>
<th>(a) the Federal Court;</th>
<th>60 penalty units</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>(b) an organisation entitled to represent a person to whom a flexible working arrangements order relates</td>
<td>(b) the Federal Magistrates Court;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(c) an eligible State or Territory court</td>
<td></td>
</tr>
</tbody>
</table>

14 Subsection 545(1) (note 4)

Omit “65(5),”.

15 After paragraph 557(2)(f)

Insert:

(fa) section 306H (which deals with contraventions of flexible working arrangements orders);

16 After paragraph 576(1)(f)

Insert:

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

17 Paragraph 653(1)(c)

Repeal the paragraph, substitute:

(c) conduct research into the operation of the provisions of the National Employment Standards relating to requests for extensions of unpaid parental leave under subsection 76(1); and
(ca) conduct research into the operation of Part 2-7A in relation to requests for changed working arrangements; and

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

Insert:

(ea) a flexible working arrangements order;

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

Add:

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

20 **Subsection 739(2)**

Omit “65(5) or”.

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

Omit “65(5) or”.

22 **Subsection 740(2)**

Omit “65(5) or”.

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

Omit “65(5) or”.

[better work/life balance]

(2) Schedule 7, item 1, page 33 (lines 1 to 4), omit section 4.

[consequential amendment]