Fair Work Amendment Bill 2014

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

(1) Clause 2, page 2 (at the end of the table), add:

10. Schedule 3 The day after this Act receives the Royal Assent.  

[better work/life balance]

(2) Page 32 (after line 18), at the end of the Bill, add:

Schedule 3—Better work/life balance

1 Fair Work Act 2009

Before paragraph 5(8)(b)

Insert:

(ba) provided by a flexible working arrangements order (see Part 2-7B); and

2 Section 12

Insert:

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

3 Before subparagraph 43(2)(a)(ii)

Insert:

(ib) a flexible working arrangements order (see Part 2-7B); or

4 Subsection 44(2)

Omit “65(5) or”.

5 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.

6 Subsection 44(2) (note 2)
Omit “65(5) or”.

7 Division 4 of Part 2-2
Repeal the Division.

8 Section 146 (note)
Omit “65(5) or”.

9 Before paragraph 172(1)(d)
Insert:
   (cb) matters pertaining to flexible working arrangements;

10 Subsection 186(6) (notes 1 and 2)
Omit “65(5) or”.

11 Before Part 2-8
Insert:

Part 2-7B—Flexible working arrangements

Division 1—Introduction

306M 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 FWC to ensure that employers comply with this Part.

306N Meanings of employee and employer

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

306P 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 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**

### 306Q 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.

### 306R Requests for flexible working arrangements—carers

*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.
(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 serious countervailing business grounds.

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

Division 3—Flexible working arrangements orders

306S FWC may make flexible working arrangements order

Power to make flexible working arrangements order

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

Who may apply for flexible working arrangements order

(2) FWC may make a flexible working arrangements order only on application by any of the following:
   (a) an employee or organisation whose request under subsection 306Q(1) or 306R(1) 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.

306T Implementation of flexible working arrangements in stages

A flexible working arrangements order may provide for changed working arrangements in such stages as FWC thinks appropriate.
306U  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).

306V  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.

12  Subsection 539(2) (before table item 10)

Insert:

### Part 2-7B—Flexible working arrangements

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

60 penalty units

13  Subsection 545(1) (note 4)

Omit “65(5),”.

14  Before paragraph 557(2)(g)

Insert:

(fb) section 306U (which deals with contraventions of flexible working arrangements orders);

15  Before paragraph 576(1)(g)

Insert:

(fb) flexible working arrangements (Part 2-7B);

16  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
17 Before paragraph 653(1)(d)
   Insert:
   (cb) conduct research into the operation of Part 2-7B in relation to requests for changed working arrangements; and

18 Before paragraph 675(2)(f)
   Insert:
   (eb) a flexible working arrangements order;

19 At the end of subsection 716(1)
   Add:
   ; (h) 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]