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working women's centres

Committee Secretary
House of Representatives Standing Committee on
Education and Employment
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Dear Secretary

The National Network of Working Women's Centres (NWWC) are pleased to have the opportunity to provide this submission on the Inquiry into the Fair Work Amendment (Better Work/Life Balance) Bill 2012.

Our submission includes a number of relevant case studies. Names and other identifying details have been changed to ensure confidentiality.

We respond to what we see as the three main elements of the proposed amendments below.

1. Flexibility extended

Under the existing legislation, the right to request flexible working arrangements is limited to

- an employee[1] who is a parent of a child under school age or a child with a disability who is under 18, or
- an employee who has responsibility for the care of a child under school age or a child with a disability who is under 18.

[1] Please note that we recognise that employees must meet certain service requirements before being eligible to access right of request provisions. As the Bill does not propose changes from the existing law in this regard, we have not referred to these restrictions throughout the submission.

The request itself must only be for the purpose of assisting the employee to care for the child.

We understand that the proposed amendments would extend the right to request flexible working arrangements to *all* employees with 12 months service, regardless of their caring responsibilities, and does not specify for what purpose the request must be made.

The NWWC has long advocated for the broader definition of "carers" beyond the current limited definition in the Fair Work Act. The current narrow parameters fail to recognise the significant caring needs of school age children particularly during school holidays or illnesses. Further, the definition excludes the thousands of carers who provide care outside of a parenting role, such as those caring for a partner, a sibling, a friend, an elderly parent, or an adult with a disability. We note that these roles are disproportionately taken on by women, and thus it is female employees who often find themselves with no legislative access to the flexible work arrangements required to fulfill their caring responsibilities. We note that the UK protoytpe legislation for the current right to request provisions (the United Kingdom Employment Act 2002) was extended in 2007 to cover all carers of adults and children under 17 years, rather than just parents.

We also draw attention to the fact that the family and cultural obligations of Aboriginal workers often exceed flexible working arrangements available under the Act. It is not uncommon for Aboriginal workers, especially those in regional and remote locations, to require extended periods of leave to attend to cultural obligations, including sorry business. Additionally, family responsibilities of Aboriginal women are such that it is commonplace for Aunties, Sisters and Grandmothers to be primary carers for children who are not (biologically) their own. Many Aboriginal women are also carers of other extended family members. The Fair Work Act does not currently offer flexibilities that appropriately accommodate such cultural and family commitments.

2. A higher threshold for refusals of caring requests

While the Bill proposes expanding the right to request flexible working arrangements to all employees, and not just a limited definition of carers, the Bill does recognise the additional rights of carers in its imposition of a higher threshold on employers when assessing a request for flexible work arrangements from a carer. Rather than the employer able to refuse requests on "reasonable business grounds", where the employee is a carer the test is increased to requiring "serious countervailing business reasons" before a request can be refused.

As outlined above, the NWWC supports all moves to broaden the definition of carer beyond its narrow parameters, and to recognize the many roles that carers play. The NWWC supports the definition provided in the Bill ("an employee who has the responsibility for the care of another person").

The NWWC welcomes the proposal to impose a higher threshold on employers when assessing requests for flexible work from employees with caring responsibilities. However, the NWWC would like to see a more comprehensive definition of "serious countervailing business reasons" and concrete examples of how this may differ from "reasonable business grounds".

3. Enforceability - No more paper tigers

It is reasonable to say that at present, when considering the ability of the Fair Work Act to enforce requests for flexible work arrangements, its bark is worse than its bite.

Currently under the Fair Work act an employee who has had their request for flexible work arrangements refused, whether reasonably or unreasonably, has **no** mechanism for appeal unless this has previously been agreed to in a contract or enterprise agreement. This severely limits the enforceability of the provision, leaving many employees seeking flexible work (predominantly women) with rights on paper only. This has been a serious impediment to achieving greater work life balance for employees.

We believe that there is the need for a clear process for both employees and employers to deal with those situations where a request is not assented.

NWWC are aware of numerous cases where workers with legitimate needs for flexible working arrangements have had their request unreasonably denied. These employees are often faced with being forced to work full time, convert to casual employment or resign.

Case study:

Jody was a Manager in a non-government organisation. She had worked for the organisation for 6 years prior to taking parental leave and had been promoted 3 times during her employment. Upon her return to work after parental leave she was granted the flexibility to work from home for a period of 6 months. After a period of 6 months she was told she either had to return to her pre-parental leave management position in a full-time capacity or accept a demotion into a less senior part-time job. She agreed to accept the demotion, as she did not wish to put her baby into care at such a young age.

Case Study:

Shelly was to return from parental leave with her second child at end of October. Shelly works as a draftsperson and is paid $50,000 per year. At the beginning of October, toward the end of her leave, she requested to return to work 3 days per week on the basis of family responsibilities and breastfeeding.

Her employer resisted then offered 4 days per week and will not move from that and has offered a contract for 4 days until the 31st of January, at which time he insists that Shelly is to return to 5 days (on take it or leave it basis). The employer has said they will only consider 3 days after this if medical evidence for breast feeding is provided. The employer has cited business grounds and has been very uncooperative in his responses.

The NWWCs support the proposed amendments which would empower Fair Work Australia to deal with such disputes, including the ability to make flexible working arrangement orders where appropriate. We believe that these amendments are crucially important in addressing the current absence of enforceable provisions for workers seeking flexible work.

Included within the legislation there also needs to be accountability processes that ensure all organisations and particularly those organisations that do not have dedicated human resources employees attend information or educational seminars that highlight any changes in legislation or regulations.

Beyond the legislative hammer, there is also an outstanding need for education and workplace culture change. While public service employment to some degree has led the way with initiatives such as flexitime, it is often reported to NWWC that in practice arrangements are not flexible and take-up is low.

We look forward with interest to the report of the Inquiry, and are happy to be contacted about this submission.

Yours sincerely

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