



Australian
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Inquiry into the Fair Work Amendment (Better Work/Life Balance) Bill 2012

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO THE HOUSE OF
REPRESENTATIVES STANDING COMMITTEE ON EDUCATION AND EMPLOYMENT**

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1 Introduction

1. The Australian Human Rights Commission makes this submission to the House of Representatives Standing Committee on Education and Employment in its Inquiry into the Fair Work Amendment (Better Work/Life Balance) Bill 2012.

2 Provisions of the Fair Work Amendment (Better Work/Life Balance Bill) 2012

2. The Amendment Bill proposes to amend the *Fair Work Act 2009* (Cth) (FWA) to extend the right to request flexible working arrangements to all employees and to increase Fair Work Australia's power to determine and enforce reasonable requests under the legislation.
3. The specific amendments to the FWA proposed under the Bill will enable all employees who have completed 12 months' continuous service and long term casual employees who have been engaged on a regular and systematic basis and have a reasonable expectation of continuing engagement:
 - a right to request flexible working arrangements which can only be refused by an employer on 'reasonable business grounds'; and
 - for employees who have a responsibility for the care of another person a right to request flexible working arrangements which can only be refused by an employer on 'serious countervailing business grounds'.¹
4. The Bill would also allow Fair Work Australia to make orders to ensure that an employer complies with the request mechanisms. Applications could be made to Fair Work Australia by the employee, an employee organisation that is entitled to represent an employee, or the Age Discrimination Commissioner, Disability Discrimination Commissioner or the Sex Discrimination Commissioner.²

3 Extending the right to request flexible working arrangements

5. The right to request flexible working arrangements provided for under the FWA National Employment Standards, has been a welcome recognition of the reality that many workers need to balance paid employment with their family and caring responsibilities. However, in its current form it is insufficient to address the needs of workers with family responsibilities in a number of respects.
6. The Commission supports the Bill as it addresses several of these limitations, which were identified and addressed in the Commission's submission to the *Fair Work Act Review* (12 March 2012).³
7. The Commission positively notes that the proposed extension of the right to request flexible work arrangements to all employees ensures employees

affected by domestic/ family violence will have a right to request flexible working arrangements.

8. The Commission further positively notes that the proposed extension of the right to request flexible work arrangements to all employees ensures employees with a disability will have a right to request flexible working arrangements.

4 Further amendments to the right to request flexible working arrangements

- 9 The Commission notes one further amendment to the right to request that could be made.

- 10 Flexible working arrangements does not apply to employees unless they have at least 12 months continuous service and also, in the case of casual employees, a reasonable expectation of continuing employment.⁴ These qualification requirements disproportionately impact on employment categories dominated by women with family responsibilities.⁵ As Sara Charlesworth and Iain Campbell observe:

This qualification requirement will exclude many of the working parents of pre-school age children who are most likely to make requests. In 2006 for example, 21% of working women of child bearing age (25-44 years) and 44% of women employed on a casual basis had less than 12 months service with their current employer.⁶

- 11 ***Recommendation 1: The Commission recommends that the qualification requirements that restrict the categories of employees who can make a request for flexible working arrangements be removed.***⁷

5 Application for a flexible working arrangement by the Age Discrimination Commissioner, the Disability Discrimination Commissioner or the Sex Discrimination Commissioner

12. The provision in the Bill that would enable applications for a flexible work arrangement to be made to Fair Work Australia by the Age Discrimination Commissioner, Disability Discrimination Commissioner or the Sex Discrimination Commissioner, expands the powers of Commissioners to make applications under the FWA.

13. The Commission notes, that should such a provision be made within the FWA, it would be necessary to:

- Expand coverage of the power to all Commissioners operating at the Australian Human Rights Commission, including the Race Discrimination Commissioner, the Aboriginal and Torres Strait Islander Social Justice Commissioner and the Human Rights Commissioner;
- Clarify the scope of the power;

- Clarify the reviewable nature of the power; and
- Consider the resource implications for the Commission for undertaking such applications.

¹ Fair Work Amendment (Better Work/Life Balance) Bill 2012, s306D.

² Fair Work Amendment (Better Work/Life Balance) Bill 2012, s306F.

³ Australian Human Rights Commission, *Submission to the Department of Education, Employment and Workplace Relations for the Post-Implementation Review of the Fair Work Act 2009* (12 March 2012).

⁴ *Fair Work Act 2009* (Cth) s65(2).

⁵ Australian Human Rights Commission, *Submission to the Senate Legal and Constitutional Affairs Committee on the Inquiry into the effectiveness of the Sex Discrimination Act 1984 (Cth) in eliminating discrimination and promoting gender equity* (1 September 2008), p105.

⁶ Sara Charlesworth and Iain Campbell, 'Right to request regulation: Two new Australian models' (2008) 21(2) *Australian Journal of Labour Law* 116, p 5.

⁷ Australian Human Rights Commission, *Submission to the Senate Education, Employment and Workplace Relations Committee Inquiry into the Fair Work Bill 2008* (2009), p 4. At http://www.hreoc.gov.au/legal/submissions/2009/20090123_Fair_Work.html (viewed 15 February 2012).