



## Appendix A – Text of the Bill

2010-2011-2012

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **Fair Work Amendment (Tackling Job Insecurity) Bill 2012**

**No.     , 2012**

*(Mr Bandt)*

**A Bill for an Act to amend the *Fair Work Act 2009*, and for  
related purposes**

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**A Bill for an Act to amend the *Fair Work Act 2009*, and for related purposes**

The Parliament of Australia enacts:

**1 Short title**

This Act may be cited as the *Fair Work Amendment (Tackling Job Insecurity) Act 2012*.

**2 Commencement**

This Act commences on the day after this Act receives the Royal Assent.

**3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### *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 secure employment order (see Part 2-7B)”.

#### 2 Section 12

Insert:

*rolling contract basis*: see section 21A.

#### 3 Section 12

Insert:

*rolling contract employee*: see section 21A.

#### 4 Section 12

Insert:

*secure employment arrangement* means ongoing employment on a part-time or full-time basis.

#### 5 Section 12

Insert:

*secure employment order*: see subsection 306N(1).

#### 6 Section 12

Insert:

*small business exempt casual*: a casual employee is a *small business exempt casual* if:

- (a) the employer is a small business employer; and
- (b) the employee is not a long term casual employee.

#### 7 After section 21

Insert:

##### 21A Meaning of *rolling contract employee* and *rolling contract basis*

- (1) An employee who is employed on a rolling contract basis is a *rolling contract employee*.
- (2) An employee is employed by an employer on a *rolling contract basis* if:
  - (a) the contract of employment ends on a specified date or at the end of a specified period; and
  - (b) the employee has previously been employed by the employer under such a contract; and

(c) the current and previous contracts relate to the same kind of work.

- (3) For the purposes of paragraph (2)(a), a contract may end on a specified date or at the end of a specified period even if a term of the contract has the effect that the contract might be terminated before that date or before the end of that period.

### 8 Subparagraph 43(2)(a)(ii)

Omit “and”, substitute “or”.

### 9 At the end of paragraph 43(2)(a)

Add:

- (iii) a secure employment order (see Part 2-7B); and

### 10 After paragraph 172(1)(c)

Insert:

- (ca) matters pertaining to secure employment arrangements, including moving from casual employment, or from employment on a rolling contract basis, to secure employment arrangements;

### 11 After Part 2-7

Insert:

## Part 2-7B—Secure employment arrangements

### Division 1—Introduction

#### 306J Guide to this Part

This Part provides for transition to, and maintenance of, secure employment arrangements.

Division 1 deals with preliminary matters.

Division 2 deals with requests for secure employment arrangements. These include the following:

- (a) requests to change from casual employment to secure employment arrangements;
- (b) requests to change from employment on a rolling contract basis to secure employment arrangements.

Division 3 provides for the making of secure employment orders by FWA for employees or prospective employees.

#### 306K Meanings of *employee* and *employer*

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

## **Division 2—Requests for secure employment arrangements**

### **306L Requests to change from casual employment to secure employment arrangements**

- (1) A casual employee may request the employer, in writing, for a secure employment arrangement.
- (2) An employee organisation that is entitled to represent casual employees may, if asked to do so by one or more of the employees, request the employer, in writing, for a secure employment arrangement for that employee or those employees.
- (3) The employer must give the employee or organisation a written response to the request within 21 days, stating whether the employer grants or refuses the request.
- (4) If the employer refuses the request, the employer's written response must include details of the reasons for the refusal.
- (5) This section does not apply in relation to a small business exempt casual.

### **306M Requests to change from employment on rolling contract basis to secure employment arrangements**

- (1) A rolling contract employee may request the employer, in writing, for a secure employment arrangement.
- (2) An employee organisation that is entitled to represent rolling contract employees may, if asked to do so by one or more of the employees, request the employer, in writing, for a secure employment arrangement for that employee or those employees.
- (3) The employer must give the employee or organisation a written response to the request within 21 days, stating whether the employer grants or refuses the request.
- (4) If the employer refuses the request, the employer's written response must include details of the reasons for the refusal.

## **Division 3—Secure employment orders**

### **306N FWA may make secure employment order**

- (1) FWA may, on application in accordance with section 306P, make any order (a *secure employment order*) it considers appropriate to provide, or to maintain, secure employment arrangements for the person or persons to whom the order will apply.
- (2) A secure employment order may apply to:
  - (a) any one of the following persons (a *relevant person*):
    - (i) a casual employee;
    - (ii) a rolling contract employee;
    - (iii) a prospective employee who, if employed at the time the application for the order was made, would be a casual employee or rolling contract employee;
    - (iv) an employee who already has a secure employment arrangement;
    - (v) a prospective employee who, if employed at the time the application for the order was made, would have a secure employment arrangement; or
  - (b) two or more relevant persons; or

- (c) a class of relevant persons.
- (3) Without limiting paragraph (2)(c), the class may be described by reference to one or more of the following:
  - (a) a particular industry or part of an industry;
  - (b) a particular kind of work;
  - (c) a particular type of employment;
  - (d) a particular employer.
- (4) A secure employment order must specify the employer or employers who are required to comply with the order, being the employer or employers of the relevant person, relevant persons or class of relevant persons to whom the order applies.
- (5) Despite subsection (2), a secure employment order cannot apply to a small business exempt casual.

### **306P Application for secure employment order**

- (1) Application for a secure employment order in relation to a request refused under section 306L or 306M may be made by:
  - (a) if the employee made the request—any of the following:
    - (i) the employee;
    - (ii) an organisation that is entitled to represent the interests of the employee, if asked by the employee to make the application;
    - (iii) the Age Discrimination Commissioner, the Disability Discrimination Commissioner or the Sex Discrimination Commissioner; or
  - (b) if an organisation made the request—the organisation.
- (2) Application for a secure employment order otherwise than in relation to a request refused under section 306L or 306M may be made by:
  - (a) an organisation that is (or, for prospective employees, that would be) entitled to represent the interests of the relevant person, relevant persons or class of relevant persons to whom the order will apply; or
  - (b) an employer organisation that is entitled to represent the industrial interests of an employer of a relevant person, relevant persons or class of relevant persons to whom the order will apply.

### **306Q Matters for FWA to consider**

In deciding whether, or the terms on which, to make a secure employment order, FWA must have regard to the following:

- (a) the needs of employees to have secure jobs and stable employment;
- (b) an employer's capacity to use arrangements that are not secure employment arrangements in cases where this is genuinely appropriate having regards to the needs of the business;
- (c) the size of the employer or employers to whom the order will apply;
- (d) if the application was made under subsection 306P(2)—whether the order should apply to the same employees and prospective employees, and require the same employers to comply with it, as are covered by a relevant modern award;
- (e) any other matter FWA considers relevant.



**306R Content of orders affecting more than one person**

- (1) Orders providing or maintaining secure employment arrangements for more than one relevant person may include one or more of the following:
- (a) an order requiring that all the relevant persons who are long term casual employees be offered a secure employment arrangement;
  - (b) an order providing for a process by which all the relevant persons who have been employed by the employer for a certain period of time can elect to have a secure employment arrangement;
  - (c) an order specifying the terms of secure employment arrangements under which casual loadings would be phased out over a period of time so as to avoid a sharp drop in employee remuneration;
  - (d) an order implementing secure employment arrangements in such stages (as provided in the order) as FWA thinks appropriate;
  - (e) an order requiring the employer to provide information to FWA for the purposes of monitoring the staged implementation of secure employment arrangements;
  - (f) an order regulating the engagement of prospective employees on a casual basis, a rolling contract basis or a secure employment basis;
  - (g) an order regulating the employer's use of arrangements that are not secure work arrangements in circumstances in which secure work arrangements could be used.
- (2) Subsection (1) does not limit the orders that FWA may make under this section.

**306S Implementation of secure employment order in stages**

A secure employment order may implement secure employment arrangements in such stages (as provided in the order) as FWA thinks appropriate.

**306T Contravening a secure employment order**

An employer must not contravene a secure employment order.

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

**306U Inconsistency with modern awards and enterprise agreements**

A term of a modern award or an enterprise agreement has no effect in relation to an employee to the extent that it is less beneficial to the employee than a term of a secure employment order that applies to the employee.

**12 Subsection 539(2) (after table item 9)**

Insert:

**Part 2-7B—Secure employment arrangements**

9B	306T	(a) a person to whom a secure employment order applies;	(a) the Federal Court; (b) the Federal Magistrates Court;	60 penalty units
		(b) an organisation entitled to represent a person to whom a secure employment order	(c) an eligible State or Territory court	

applies

**13 After paragraph 557(2)(f)**

Insert:

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

**14 After paragraph 576(1)(f)**

Insert:

(fa) secure employment arrangements (Part 2-7B);

**15 After paragraph 653(1)(c)**

Insert:

(ca) conduct research into the operation of Part 2-7B in relation to requests for secure employment arrangements; and

**16 Subparagraph 653(1)(d)(i)**

Repeal the subparagraph, substitute:

(i) the circumstances in which such requests are made; and

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

Insert:

(ea) a secure employment order;

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

Add:

; (g) a term of a secure employment order.