

2010-2011-2012

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Fair Work Amendment (Better  
Work/Life Balance) Bill 2012**

**No.     , 2012**

*(Mr Bandt)*

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



---

## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	1
<b>Schedule 1—Amendments</b>		<b>3</b>
	<i>Fair Work Act 2009</i>	3



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

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Fair Work Amendment (Better*  
6                     *Work/Life Balance) Act 2012*.

7     **2 Commencement**

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

10    **3 Schedule(s)**

11                     Each Act that is specified in a Schedule to this Act is amended or  
12                     repealed as set out in the applicable items in the Schedule

---

1  
2  
3

concerned, and any other item in a Schedule to this Act has effect according to its terms.

---

1  
2 **Schedule 1—Amendments**  
3

4 ***Fair Work Act 2009***

5 **1 Paragraph 5(8)(a)**

6 Omit “or an equal remuneration order (see Part 2-7)”, substitute “, an  
7 equal remuneration order (see Part 2-7) or a flexible working  
8 arrangements order (see Part 2-7A)”.

9 **2 Section 12**

10 Insert:

11 *flexible working arrangements order*: see subsection 306F(1).

12 **3 Subparagraph 43(2)(a)(ii)**

13 Omit “and”, substitute “or”.

14 **4 At the end of paragraph 43(2)(a)**

15 Add:

16 (iii) a flexible working arrangements order (see Part 2-7A);  
17 and

18 **5 Subsection 44(2)**

19 Omit “65(5) or”.

20 **6 Subsection 44(2) (note 1)**

21 Repeal the note, substitute:

22 Note 1: Subsection 76(4) states that an employer may refuse an application to  
23 extend unpaid parental leave only on reasonable business grounds.

24 **7 Subsection 44(2) (note 2)**

25 Omit “65(5) or”.

26 **8 Division 4 of Part 2-2**

27 Repeal the Division.

28 **9 Section 146 (note)**

1 Omit “65(5) or”.

2 **10 After paragraph 172(1)(c)**

3 Insert:

4 (ca) matters pertaining to flexible working arrangements;

5 **11 Subsection 186(6) (notes 1 and 2)**

6 Omit “65(5) or”.

7 **12 After Part 2-7**

8 Insert:

9 **Part 2-7A—Flexible working arrangements**

10 **Division 1—Introduction**

11 **306A Guide to this Part**

12 This Part provides processes for changing working arrangements.

13 Division 1 deals with preliminary matters.

14 Division 2 deals with requests for flexible working arrangements,  
15 including flexible working arrangements for employees who are  
16 carers.

17 Division 3 provides for the making of flexible working  
18 arrangements orders by FWA to ensure that employers comply  
19 with this Part.

20 **306B Meanings of *employee* and *employer***

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

23 **306C State and Territory laws that are not excluded**

24 (1) This Act is not intended to apply to the exclusion of laws of a State  
25 or Territory that provide employee entitlements in relation to



---

1 flexible working arrangements, to the extent that those entitlements  
2 are more beneficial to employees than the entitlements under this  
3 Part.

- 4 (2) However, a law of a State or Territory has no effect in relation to  
5 an employee to the extent that it provides an employee entitlement  
6 in relation to flexible working arrangements that is inconsistent  
7 with a term of an enterprise agreement that applies to the  
8 employee.

## 9 **Division 2—Requests for flexible working arrangements**

### 10 **306D Requests for flexible working arrangements**

11 *Employee or organisation may request change*

- 12 (1) An employee, or an employee organisation that is entitled to  
13 represent the employee, may request the employer to change the  
14 employee's working arrangements.

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

- 18 (2) Neither the employee, nor the organisation, is entitled to make the  
19 request unless:  
20 (a) for an employee other than a casual employee—the employee  
21 has completed at least 12 months of continuous service with  
22 the employer immediately before making the request; or  
23 (b) for a casual employee—the employee:  
24 (i) is a long term casual employee of the employer  
25 immediately before making the request; and  
26 (ii) has a reasonable expectation of continuing employment  
27 by the employer on a regular and systematic basis.

28 *Formal requirements*

- 29 (3) The request must:  
30 (a) be in writing; and  
31 (b) set out details of the change sought and of the reasons for the  
32 change.

1                                    *Responding to the request*

- 2                    (4) The employer must give the employee, or the employee  
3                                    organisation (as the case requires), a written response to the request  
4                                    within 21 days, stating whether the employer grants or refuses the  
5                                    request.
- 6                    (5) The employer may refuse the request only on reasonable business  
7                                    grounds.
- 8                    (6) If the employer refuses the request, the written response under  
9                                    subsection (4) must include details of the reasons for the refusal.

10                    **306E Requests for flexible working arrangements—carers**

11                                    *Request for change for employee who is a carer*

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

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

- 20                    (2) Neither the employee, nor the organisation, is entitled to make the  
21                                    request unless:
- 22                                    (a) for an employee other than a casual employee—the employee  
23                                    has completed at least 12 months of continuous service with  
24                                    the employer immediately before making the request; or  
25                                    (b) for a casual employee—the employee:
- 26    (i) is a long term casual employee of the employer  
27    immediately before making the request; and  
28    (ii) has a reasonable expectation of continuing employment  
29    by the employer on a regular and systematic basis.

30                                    *Formal requirements*

- 31                    (3) The request must:
- 32                                    (a) be in writing; and  
33                                    (b) set out details of the change sought and of the reasons for the  
34                                    change.

---

*Responding to the request*

- 1
- 2 (4) The employer must give the employee, or the employee  
3 organisation (as the case requires), a written response to the request  
4 within 21 days, stating whether the employer grants or refuses the  
5 request.
- 6 (5) The employer may refuse the request only on serious  
7 countervailing business grounds.
- 8 (6) If the employer refuses the request, the written response under  
9 subsection (4) must include details of the reasons for the refusal.

10 **Division 3—Flexible working arrangements orders**

11 **306F FWA may make flexible working arrangements order**

12 *Power to make flexible working arrangements order*

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

16 *Who may apply for flexible working arrangements order*

- 17 (2) FWA may make a flexible working arrangements order only on  
18 application by any of the following:
- 19 (a) an employee or organisation whose request under subsection  
20 306D(1) or 306E(1) for a change in working arrangements  
21 has been refused;
- 22 (b) an employee organisation that is entitled to represent an  
23 employee covered by paragraph (a);
- 24 (c) the Age Discrimination Commissioner, the Disability  
25 Discrimination Commissioner or the Sex Discrimination  
26 Commissioner.

27 **306G Implementation of flexible working arrangements in stages**

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

1 **306H Contravening a working arrangements order**

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

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

5 **306I Inconsistency with modern awards and enterprise agreements**

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

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

12 **13 Subsection 539(2) (after table item 9)**

13 Insert:

14

**Part 2-7A—Flexible working arrangements**

---

9A	306H	(a) a person to whom a flexible working arrangements order relates;	(a) the Federal Court; (b) the Federal Magistrates Court;	60 penalty units
		(b) an organisation entitled to represent a person to whom a flexible working arrangements order relates	(c) an eligible State or Territory court	

15

16 **14 Subsection 545(1) (note 4)**

17 Omit “65(5),”.

18 **15 After paragraph 557(2)(f)**

19 Insert:

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

1 **16 After paragraph 576(1)(f)**

2 Insert:

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

4 **17 Paragraph 653(1)(c)**

5 Repeal the paragraph, substitute:

6 (c) conduct research into the operation of the provisions of the  
7 National Employment Standards relating to requests for  
8 extensions of unpaid parental leave under subsection 76(1);  
9 and

10 (ca) conduct research into the operation of Part 2-7A in relation to  
11 requests for changed working arrangements; and

12 **18 After paragraph 675(2)(e)**

13 Insert:

14 (ea) a flexible working arrangements order;

15 **19 At the end of subsection 716(1)**

16 Add:

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

18 **20 Subsection 739(2)**

19 Omit “65(5) or”.

20 **21 Subsection 739(2) (note)**

21 Omit “65(5) or”.

22 **22 Subsection 740(2)**

23 Omit “65(5) or”.

24 **23 Subsection 740(2) (note)**

25 Omit “65(5) or”.