



29 February 2012

The Committee Secretary
House of Representatives Standing
Committee on Education and Employment
Parliament House
Canberra ACT 2600

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Dear Committee Secretary

Re. *Inquiry into the Fair Work Amendment (Better Work/Life Balance) Bill 2012*

The Australian Industry Group (Ai Group) makes this submission to the House of Representatives Standing Committee on Education and Employment in response to its inquiry into the *Fair Work Amendment (Better Work/Life Balance) Bill 2012*.

Ai Group is one of the largest national industry bodies in Australia representing employers in manufacturing, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, airlines and other industries. Together, Ai Group and its affiliates represent the interests of approximately 60,000 businesses which employ in excess of 1.2 million staff.

The Bill proposes to amend the *Fair Work Act 2009* (FW Act) by expanding and changing the nature of the right to request flexible working arrangements under the Act. Ai Group opposes the Bill and urges the Committee to recommend that the Bill not be passed.

The 'right to request flexible working arrangements' in Part 2-2, Division 4 of the FW Act

Ai Group strongly supports the existing right to request provisions in Part 2-2, Division 4 of the FW Act. The right to request provisions, in their current form, are a very important feature of the Act. They encourage cooperation through open dialogue between employees and their employers, about achieving meaningful flexibility in the workplace that works on both a personal level for the employee and an operational level for the employer.

As a National Employment Standard (NES) entitlement, the right to request flexible working arrangements cannot be excluded by a modern award or enterprise agreement.

It is not necessary to extend the ‘right to request flexible working arrangements’ to all employees

Currently, the right to request flexible working arrangements is an entitlement for parents with children under school age and those with children under 18 who have a disability. To qualify for the right, parents with children under school age and those with children under 18 who have a disability, need to have completed at least 12 months’ service with the employer.

Ai Group opposes the proposed extension of the right to request provisions to all employees. The existing provisions strike the right balance between the interests of employers and employees and were the subject of a lengthy consultation process during the development of the NES and the FW Act.

Employees who do not have a formal entitlement under Part 2-2, Division 4 of the Act can of course still make a request for flexible work arrangements. This is acknowledged in the Explanatory Memorandum for the *Fair Work Bill 2008*:

“270. An employee who is not eligible to request flexible working arrangements under this Division (e.g., because they do not have the requisite service) is not prevented from requesting flexible working arrangements. However, such a request would not be subject to the procedures in this Division.”

Every day in hundreds of workplaces requests for flexible work arrangements are made and granted. In the vast majority of cases the provisions of the FW Act are not needed used. Most employers try very hard to accommodate reasonable requests from their employees for flexible work arrangements.

FWA should not be empowered to impose working arrangements on an employer

We strongly oppose the proposal to give a compulsory arbitration power to FWA in respect of the right to request provisions, through ‘flexible working arrangements orders’. This power would impede the rights of employers to manage their businesses in a productive and efficient manner.

This issue of whether compulsory arbitration should be available in respect of the right to request flexible provisions was heavily contested between employer groups and unions during the development of the NES and the FW Act. During the development of the NES, the Government announced that FWA would not be empowered to impose requested working arrangements on an employer. For example, the following question and answer has been extracted from the Government’s NES Discussion Paper (p.12):

‘Can Fair Work Australia impose a flexible working arrangement on an employer?’

No. The proposed flexible working arrangements NES sets out a process for encouraging discussion between employees and employers. The NES recognises

the need for employers to be able to refuse a request where there are 'reasonable business grounds'. Fair Work Australia will not be empowered to impose the requested working arrangements on an employer.'

In Ai Group's submission in response to the NES Discussion Paper, we said:

'Ai Group supports the approach set out on page 12 of the NES discussion paper, whereby:

- The provisions of Division 3 of the NES are intended to encourage discussion between employers and employees;*
- Fair Work Australia would not have the power to impose any requested work arrangements upon employers.*

Such an approach is educative and is more likely to achieve positive outcomes than a heavy-handed prescriptive approach.'

During the Senate Committee inquiry into the *Fair Work Bill 2008*, Ai Group submitted:

'Ai Group strongly supports s.44(2) which implements the Government's public commitment to not expose employers to orders where they refuse a request for flexible work arrangements on reasonable business grounds.'

The Bill does not provide any capability for 'flexible working arrangement orders' to be terminated

The Bill proposes to give FWA the power to make 'flexible working arrangements orders' but does not deal with how to terminate an order if the circumstances of the employer or employee change. The circumstances of employers and employees often change over time. This is an inherent flaw in the Bill.

In short, the Bill would replace the current, cooperative, approach to flexibility at the workplace with an adversarial one. The effect of this would be reduced flexibility for employers and employees.

We urge the Committee to recommend that Parliament reject the Bill.

Yours sincerely

Heather Ridout
Chief Executive