



University of
South Australia

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Ms Amanda Rishworth MP,
Chair,
House Standing Committee on Education and Employment
Inquiry into the Fair Work Amendment (Better Work/Life Balance) Bill 2012
House of Representatives
PO Box 6021
Parliament House
Canberra ACT 2600

Dear Ms Rishworth,

The Centre for Work + Life at the University of South Australia supports the Australian Green's proposed changes to the right to request provisions of the *Fair Work Act 2009*. Specifically, the proposal that the right to request flexible work arrangements is extended to all workers, regardless of their parenting status, and secondly that a right to appeal employer decisions on flexibility requests is instituted.

Our submission draws on two main data sources: the Centre's research on the impact of employee-centred flexible work arrangements on work-life outcomes and wellbeing and an analysis of the Australian right to request provisions in cross national comparison.

1. The Australian Work and Life Index (AWALI)

Over the past six years the Centre for Work + Life has conducted both qualitative and quantitative research on Australians' working lives, including research on the impact of employee-centred flexible work arrangements on work-life outcomes and wellbeing.

This work has included a set of nationally representative surveys, the 'Australian Work and Life Index' (AWALI) of working Australians in 2007, 2008, 2009 and 2010.

A major focus of the AWALI surveys has been on flexible work arrangements and the impact on work-life balance. Of particular relevance to the current Inquiry is the 2009 survey, which included a comprehensive set of questions on working Australians' requests for flexibility, the outcome of such requests and the link with work-life balance.

These survey questions are included in the 2012 AWALI survey, to enable a pre- and post- *Fair Work Act 2009* analysis of the impact of the new right to request entitlements on Australian's flexibility request behaviours – both prevalence and outcomes. AWALI 2012 survey findings will be released in August 2012.

Returning to the 2009 AWALI survey, data was collected from a nationally representative sample of 2800 working Australians. Making a request to change a work arrangement was reasonably common – 22% of Australians made such a request.

Requests were more common for:

- Women than men (29%, 16%);
- Mothers of pre-schoolers than fathers (50%, 17%);
- Mothers of children aged less than 16 years compared to fathers (35%, 16%).

These figures show women's flexibility request making is much more sensitive to child care responsibilities than that of men.

It is important to note that requests to change work arrangements were also reasonably common for men and women without children under 16 years of age: 25% of women and 16% of men.

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Supporting an extension of the right to request to all employees as well as carers, AWALI 2009 data shows that Australian workers request flexibility for a range of reasons, including but not restricted to child-care needs. These include:

- More family time;
- More personal/leisure time;
- Health reasons.

Indeed, the second most common reason for Australians to request a flexible work arrangement in 2009 was to engage in education and training. This is an important finding, given the central role that skill development has in the Australian workforce for economic sustainability. Clearly, extending the right to request a flexible arrangement to all Australian workers, regardless of their parenting status, would greatly improve the opportunity and capacity of Australian workers to engage in education and training and skill development.

The 2009 AWALI study also found clear evidence of work-life penalties for workers who had not had their request for flexibility approved by their employer.

On our work-life index measure, where 0 = no work-life conflict and 100 = very high work-life conflict, there was clear evidence of worse work-life outcomes for workers who had their requests rejected (index score = 63) compared to those with accepted requests (index score = 43).

A key point here is that those employees who had their requests only partially met by their employer also suffered a work-life penalty – reporting higher work-life interference (index score = 56) compared to those who had their requests fully granted.

We also found evidence of gender discrimination in request outcomes. Men were more likely to have their requests rejected or only partially accepted (30%) than women (20%).

In sum, evidence from the 2009 AWALI survey indicates that Australians request flexible work arrangements to meet a range of needs and goals that include, but are not limited to child-care. Whilst men are less likely to request flexibility than women, they are also more likely to have a request rejected or only partially met. Work-life outcomes are clearly compromised for men and women who cannot access the flexibility they need to meet childcare, study or other personal needs.

These findings are consistent with Australian and international research that provides clear evidence of the benefits of access to flexible work arrangements for employees' health, wellbeing and work-life balance (as discussed in our recent book 'Time Bomb' Work, Rest and Play in Australia Today', Pocock, Skinner & Williams 2012).

For a more detailed discussion of AWALI findings relevant to the current Inquiry please refer to the enclosed AWALI 2009 report. AWALI reports are also available to download from the Centre for Work + Life website: <http://www.unisa.edu.au/hawkeinstitute/cwl/projects/awali.asp>.

2. Australian Provisions in Cross National Comparison

The proposed amendments go some considerable way towards meeting the gaps in Australian right to request flexible work arrangements identified in the attached article by Charlesworth and Campbell (2008).

In the 'Right to Request Regulation: Two New Australian Models', we argue that in comparison to the German, Dutch and British regulation, the current Australian model is deficient in a number of respects:

- Its limit to parents of children under school age or of children with a disability up to 18 years of age. In both the Netherlands and in Germany, eligibility to make a request includes both employees with and without caring responsibilities. We therefore welcome the broader scope of the Greens' proposed amendments, as evidence including from the UK, suggests that the extension of the right to request to all employees would help address the gendered take-up of flexible work and gendered working time norms, and would challenge the view that flexible work is 'non-standard'.

- The European models provide for a far more rigorous approach to the duty of employers to seriously consider requests once they are made. For example, in respect of the rejection by an employer of a request concerning the quantum of hours, the Dutch model provides that an employer can only reject a request if there are 'serious countervailing business reasons'. We are pleased that this requirement in respect of the reasonableness of any rejection of a request has been incorporated into the Greens' amendments, at least in respect of carers. We would advocate that it is ultimately included in respect of all requests irrespective of whether the employee seeks the arrangements because of their carer responsibilities or not.
- The European models have explicit complaint processes and enforcement machinery. While there are some differences, employers are required to provide reasons for any refusal of a request in writing and rights of appeal are provided, including to courts and tribunals. In both the Netherlands and Germany, once internal grievance processes are exhausted, employees can contest an employer's decision to refuse their request on its merits. We are pleased that the Greens' proposal provides for enforcement mechanisms in respect of the right to request flexible work arrangements.
- The current Australian model potentially excludes a greater proportion of employees than do any of the European models, despite their size of workplace and service requirements, because of its exclusion of irregular casual employees and employees with less than 12 months' continuous service. We note, however, that the Greens' proposed amendment does not address these regulatory gaps and would therefore support the submission to your Inquiry from the Work+ Family Policy Roundtable that:
 - The requirement for continuous service should be 6 months at the maximum;
 - The ongoing nature of the employment, regardless of the changing pattern of hours of employment over the previous 12 months, or preferably 6 months, should be determinative in assessing a casual or labour hire employee's type and length of service;
 - In relation to labour hire employees, it should be the length of employment with the host employer that is taken into account.

Finally we submit that even enforceable right to request regulation is not a substitute for other minimum working time standards. That is, any such facilitative provisions need to be underpinned by a set of comprehensive non-negotiable collective employment rights, especially in respect of working time and leave arrangements. These include the regulation of weekly and daily hours, overtime and unsocial hours. The Dutch and the German models have developed within an established framework of working-time regulation, including that directed towards limiting long hours. This is quite unlike the more porous Australian regulatory framework of National Employment Standards and Modern Awards, which provides inadequate working time minima particularly for casual workers and those in female dominated industries and occupations.

The Centre for Work + Life would welcome an opportunity to appear at an Inquiry hearing to further discuss our research findings.

Yours sincerely

Associate Professor Sara Charlesworth
Acting Director
Centre for Work + Life