

# Flexible work for all Australians



*The option for greater flexibility in work arrangements is increasingly important for Australians to manage the balance between work, family and community. Advances in work - life balance, gender equality, and increased participation in the workforce from women, carers and older workers can be realised by broadening and strengthening this area of Australian industrial relations law.*

The Greens believe that all workers should be supported to better balance their work, family and community lives. Under the current legislation this right is available to narrowly defined groups of parents and while employers are permitted to refuse requests on 'reasonable business grounds' only, their decisions are not subject to review. The Greens successfully negotiated for parents with children with a disability under 18 years of age to be entitled to request flexible working arrangements in the Fair Work Act.

The Greens propose to extend the existing right to request flexible working arrangements in the Fair Work Act 2009 to all Australian workers and provide for conciliation and arbitration of any disputes arising from such a request. The Greens will amend The Fair Work Act to give access to this entitlement to all carers, with a review in two years to recommend a time frame for extending the entitlement to all workers.

The Greens will:

- Amend the Fair Work Act immediately so that all workers with caring responsibilities (informal carers) have a right to request flexible working arrangements, this will include for example parents with adult children with disabilities and people caring for elderly parents.
- Legislate for a review after 2 years with recommendations for a timeline to extend the entitlement to all workers.
- Elaborate on the meaning of 'reasonable business grounds' in regulations (the grounds are presently provided by Fair Work Australia, but they have no legal effect). The permissible grounds could be supplied by Fair Work Australia, or drawn from the Victorian Equal Opportunity Act 1995.
- Provide for refusals to grant flexible working arrangements to be referred to Fair Work Australia for resolution (with decisions to be published to promote understanding of the new rules).
- Conduct public education and provide incentives, support, reviews and consultation on

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the new approach to ensure its successful operation (as has happened in the UK).

- Reduce to six months the period of time that an employee must have been with their employer before being eligible to request flexible work. It is twelve months compared with six months in the UK and Germany.

## Present situation in Australia

### *Who is affected by the legislation?*

Around 25-30% of full-time, non self-employed workers consistently report that they would like to work fewer hours.<sup>1</sup> They cite a range of reasons including family, study, and participation in community activities. However, under the Fair Work Act this entitlement presently only provides a right to request flexible working arrangements for parents and guardians of children under school age or disabled children under eighteen years of age. Other workers seeking more flexible working hours must resort to the lower paid and comparatively deskilled option of casual work or the limited range of part-time work options. As caring responsibilities are largely shouldered by women, this situation disproportionately affects female workers.

### *Extending the entitlement to all carers*

Extending the entitlement to request flexible work arrangements to all carers will mean that many Australians with caring responsibilities will have the opportunity to better manage their roles. Many Australian workers are informal carers – they care for family members and friends as part of their everyday lives. Informal care in Australia is estimated to contribute around \$30.5bn per year to the economy<sup>2</sup> and with our ageing population this will increase exponentially. A more responsive workplace will reduce pressure of competing roles for Australia's informal carers by taking advantage of options such as working from home, part-time work and a more responsive approach to personal needs.

1 Australia at Work: In a Changing World, Brigid Van Wanrooy, Sally Wright, John Buchanan, Susanna Baldwin, Shaun Wilson, November 2009, p.40.

2 The Economic Value of Informal Care, Access Economics and Carers Australia, 2005 <http://www.access-economics.com.au/publicationsreports/getreport.php?report=6&id=6>

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## Case studies

Leah has a full time job working on average 60 hours a week. Her elderly father who lives alone has recently been diagnosed with Alzheimer's disease. Leah has to share his care with her family, which will require her to dedicate one or two days a week to his care. She wants to request from her employer a reduction of her working week of one day and the ability to work from home as required. Leah envisages that her father will be placed in care in the future at which point she would like to return to her original work arrangements.

Bruce and Linda care for their 22 year old daughter with a disability. Linda has been working part-time but has recently been offered a promotion to full time work. Bruce has been working full time but this change of arrangements will require him to reduce his hours to part-time to enable him to take on greater caring responsibilities. Bruce wants to request an ongoing reduction in working hours to 24 hours a week.

## Reducing the employment period for eligibility

The current provisions requiring an employee to have worked for 12 months before requesting flexible work arrangements discriminates against parents of young children, predominantly women. As Charlesworth and Campbell found in their 2008 study, it is working parents of pre-school age children who are most likely to make these requests and 21% of working women of child-bearing age (25-44 years) had less than 12 months service with their current employer.<sup>3</sup>

## Options for conciliation

Unlike the other National Employment Standards, the right to request flexible working arrangements is not subject to review by the Federal Court or any other third party. During the debate on the Fair Work Act, the Greens moved an amendment to provide for review by Fair Work Australia, but it was defeated. The Greens believe that Fair Work Australia is the best qualified body to determine the parameters of 'reasonable business grounds' and how flexible working arrangements might be structured to accommodate them.

<sup>3</sup> Right to Request Regulation: Two New Australian Models, 21 Australian Journal of Labor Law, Sara Charlesworth & Iain Campbell, 2008, p.122.

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The situation is different in Victoria, where parents and carers have a right to request flexible work, with complaints conciliated by the Victorian Equal Opportunity and Human Rights Commission and subsequently determined by the Victorian Civil and Administrative Tribunal if necessary.

## The situation in other countries

The Netherlands, Germany and the United Kingdom all have a legislated right to request flexible working hours, with an obligation upon employers to grant the request unless there are legitimate business reasons to refuse. In the Netherlands and Germany, the right to request is available to all workers, while in the UK the right is available to parents of children under school age, children with a disability under 18 years of age, and carers of certain adult dependents. The Netherlands and Germany provide for independent merits review of refusals, while the UK only permits review of the procedure followed to refuse the request.

## Benefits of this measure

This measure will provide better work/life balance for workers with caring responsibilities, especially women and older workers. The ability to reduce hours or change their timing provides more options for workers to balance their work and caring responsibilities, and for families to balance their working and parenting responsibilities more equitably between them.

It will create greater workforce participation which is fundamental to advancing Australia's economic and social interests, particularly for women, carers and older workers. There have been numerous reports noting inflexibility in the workplace as a major barrier to these groups accessing appropriate paid work. Addressing this issue will provide employers with greater access to skills, reduce the costs of lost work days, increase tax revenues, and generally stimulate greater economic activity. For example a recent U.K. study found that one million economically inactive workers aged 50 and older said they would return to the labour market if more flexible jobs were available.<sup>4</sup>

<sup>4</sup> (Statutory Routes to Workplace Flexibility in Cross-National Perspective, Institute for Women's Policy Research Center for WorkLife Law, University of California, 2008, pp.7-8)