

**The Australian HR Institute**

**Submission to the Senate  
Education and Employment Committee  
on the  
*Secure Jobs Better Pay Bill 2022***

**November 2022**

**Contact:**

Sarah McCann-Bartlett  
CEO, Australian HR Institute  
[sarah.mccann-bartlett@ahri.com.au](mailto:sarah.mccann-bartlett@ahri.com.au)  
Level 4, 575 Bourke Street  
MELBOURNE VIC 3000  
(03) 9918 9263



## The Australian HR Institute

The Australian HR Institute (AHRI) is the professional body for Human Resources in Australia, with approximately 16,000 members from Australia and internationally.

AHRI sets industry standards for HR practice through both the AHRI Practising Certification program and industry accreditation of HR qualifications at Australian universities.

Professional membership with AHRI ensures that HR practitioners:

- Adhere to a robust professional code of conduct that is supported by governance requirements and disciplinary procedures
- Are effectively supported in their continuing professional development to ensure currency of skills and knowledge is maintained
- AHRI provides a wide range of learning and development opportunities in HR, people management and business skills
- AHRI's globally benchmarked Australian HR Capability Framework underpins all AHRI's professional development products, events, and programs, and combines what HR practitioners should know, what they are expected to do, and what their peers expect them to be in terms of behaviours and capabilities
- AHRI conducts independent research and liaise with both Australian and international partners on matters of interest to Australian employees and workplaces.

## Summary

AHRI supports those elements of the *Secure Jobs Better Pay Bill 2022* (the Bill) that will contribute to promoting productive and inclusive workplaces, including the proposed expansion of an employer's obligation to discuss and consider different work arrangements with employees.

However, AHRI is concerned about the potential for productivity and employers' ability to create diverse workforces to be negatively affected by some of the policies proposed by the Bill; most notably the proposed enhanced role of the Fair Work Commission (FWC) and the effect on the enterprise agreement and awards model. The potential intervention of the FWC in a wider number of disputes is likely to increase the administrative burden on and costs for employers, which will hamper productivity and stifle job growth. This may also exacerbate the existing barriers in the current enterprise agreement and awards framework that already stifle employers' enthusiasm for improving the offering of and uptake in flexible working.

This submission focuses on flexible working and the proposed changes to fixed term contracts.

### **Flexible working**

AHRI supports many of the proposals put forward to improve the offering and uptake of flexible working.

It is sensible to expand the circumstances in which an employee may request flexible working arrangements, to include situations where an employee, or a member of their immediate family or household, experiences family and domestic violence. From an inclusivity perspective, AHRI also supports the proposed amendments that would support employees with a disability to access flexible working arrangements by strengthening employer obligations when considering an employee's request.

**However, to be truly effective, we believe that the right to request flexible working arrangements for these two groups of employees should be a day-one right.**

AHRI supports the principle of expanding the employer's obligations to discuss a request for a flexible work arrangement with the employee. In particular, by ensuring that employers inform the employee of any working arrangement they would be willing to accept in the event of a refusal, both employers and individuals are less likely to make inferior choices. This is because the chances of optimal outcomes are undermined if employers and employees make decisions without full information about the likely consequences or benefits.

Taken together, these measures will ensure that employees are fully informed about possible choices. They are also consistent with the principle of light-touch regulation. AHRI's guiding principle is that regulation should always be a last resort and applied in as light a way as necessary to achieve its specified objectives at minimum administrative cost.

At the same time, we believe that there are proposals that could be key barriers to promoting productive and inclusive workplaces. AHRI has particular concerns about the proposed enhanced role of the Fair Work Commission (FWC) and the constraint that enterprise agreements continue to place on organisations' ability to offer and promote flexible working arrangements.

AHRI agrees that the Fair Work Commission (FWC) should have the power to resolve disputes by mandatory arbitration where the employer has refused to respond to a request for a flexible working arrangement.

However, AHRI does not support the FWC's proposed role to grant requests or make orders about working arrangements, while becoming involved in a broader range of disputes where a request is declined on business grounds, for three key reasons.

First, it is hard for the FWC to determine if the business grounds are "reasonable" without the knowledge of the organisation and its operations. Reasons for declining requests are often complex, especially among SMEs. These include an inability to cover some employee skills and the issue of managerial and/or organisational complexity. As the FWC has itself acknowledged in the past, it is not its role to make determinations on operational matters or if the business grounds are reasonable.

Second, the proposals risk increasing the administrative burden and costs for employers. If the FWC were to make a determination in favour of an employee's request, this could raise wage costs for employers. For example, if the FWC were to determine that the refusal is not reasonable, and the request was to say work a Sunday to Thursday rather than Monday to Friday; under most employer agreements and awards, the Sunday would then trigger double-time. Non-wage costs could also be increased, mainly through a one-off cost due to changes in administrative processes and the ongoing need for more legal expertise, which would disproportionately affect SMEs.

Third, the proposed amendments could stifle job growth and hamper productivity growth. Productivity will suffer because management time will be spent administering this extra red tape rather than focusing on business performance and innovation.

**The decision to offer employees flexible work, and precisely which flexible working arrangements to adopt, should therefore be determined solely by organisations themselves.**

The biggest barrier to a greater uptake of flexible working in Australian workplace is the inflexibility of employer awards. AHRI has taken soundings from our members and has undertaken research in this area recently. It is clear that there is considerable employer enthusiasm for improving the uptake in flexible working arrangements across Australian workplaces, due in part to the tight labour market.

However, some employers say that the current system does not allow them to negotiate terms that allow for greater flexibility with their trade union. Some employer feedback suggests that flexible working requests can often only be agreed to at an additional cost to

the business under an Enterprise Agreement or Award. For instance, one member we spoke to argued that the major union they negotiate with continues to seek to negotiate the Individual Flexibility Arrangement terms down to a single item (such as arrangements about taking annual leave). This makes any agreement essentially useless and hampers their ability to agree to flexible working requests.

**AHRI believes that a more effective way of improving uptake of flexible working practices would be to extend the existing right to request flexible working to all employees. This would meet the regulatory tests of being simple to understand and easy to implement at minimum administrative cost.**

AHRI agrees with the policy objective of improving both the offering of and uptake in flexible working arrangements; an objective which is shared by many employers. **However, this won't be achieved until enterprise agreements and awards allow for similar flexibility to that that was granted during the pandemic.**

#### **Fixed-term contracts**

Overall, AHRI believes the proposed changes would incentivise employers to end the practice of employing individuals on a series of fixed-term contracts beyond a 24-month period. This could have benefits from an employee well-being, employee engagement and productivity perspective.

ENDS