

Right to Request Regulation



Labour Market Flexibility & Regulation Forum

McCaughey Centre & Centre for Applied
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Sara Charlesworth, RMIT University

Right to Request Regulation...

- ❑ Employees have a right to request changes to working time arrangements
- ❑ Employer has a duty to seriously or reasonably consider the request
- ❑ Employer can only refuse on certain business grounds
- ❑ A grievance mechanism & right of appeal to a court or tribunal

→RTR is:

- ❑ Individual right NOT a collective right
- ❑ Facilitative or procedural regulation: NOT a right to *achieve* changes but a right to *request* changes



Presentation

- 4 Australian models of RTR regulation
 - Dimensions and differences
 - Compared with EU RTR regulation

- An optimal Australian model?
 - To meet policy goals such as job quality, gender equality
 - To provide genuine exercise of employee choice
 - Broader industrial framework
 - Other government support
 - Strategic implementation issues

Two IR models...

| | Regulation | Eligibility | Scope | Duty of emp | Proc /process | Enforce process |
|----------------------------|----------------------------------|---|---|--|---|---|
| AIRC 2005 | Award clause | Parental leave returnees | <p>Sim. UPL up to 8 wks</p> <p>Add. UPL up to 52wks</p> <p>P/T work till child school age</p> | <p>Consider based on employee circs</p> <p>Refuse on reason. grounds eg cost, impact on customer etc</p> | Employee request/ Employer decision to be in writing | Award griev. Process AIRC conc/ arbit |
| Fed ALP Policy 2007 | In 10 National Employt Standards | <p>Parental leave returnees</p> <p>Parents of pre school children</p> | <p>Add. UPL up to 52wks</p> <p>Flex work arrangts</p> | <p><i>Policy:</i></p> <p>Refuse on reason. bus gds</p> <p><i>Emerson:</i></p> <p>Refuse if <i>any</i> adverse impact</p> | <p><i>Policy:</i></p> <p>?</p> <p><i>Emerson:</i></p> <p>Employer to write letter</p> | <p><i>Policy:</i></p> <p>Fair Work Aus</p> <p><i>Emerson:</i></p> <p>none</p> |

Two Anti-Discrimination models...

| | Regulation | Eligibility | Scope | Duty of emp | Proc /process | Enforce process |
|---------------------------------|---|------------------------------|--|---|----------------------|-------------------------------|
| HREOC | <i>New Family Responsib. & Carers' Rights Act</i> | All carers | Flex work arrangts | Emp to reason. consider | ?formal | Complaint to HREOC/ Fed court |
| Vic ALP/ Vic Govt Policy | Vic <i>EO Act</i> proscribe family resp. discrim | Parents after birth of child | Inc UPL 52→104 wks P/T work till child at school Flex work hrs Unpaid CL where no other leave or reg casual | Emp to seriously consider Can refuse only on business grounds related to circs of case | ?formal | Complaint to VEOHRC/ VCAT |

How do these proposals measure up?

→ Weaker than EU models eg:

- *Eligibility*: All workers (Netherlands & Germany)
- *Scope*: Specific variations to quantum, scheduling and location of hours (UK)
- *Duty of the Employer*: Employer can only refuse request if 'serious countervailing business reasons' (Netherlands)
- *Regulation*: Limits to AD models
 - Employee has to prove discrimination
 - Longer more complex grievance process

An Optimal Australian Model?

- Policy goals of work/family balance, gender equality, job quality:
 - Eligibility = ALL workers
 - Strong employer duty
 - Strong enforcement
- Underpinned by:
 - Comprehensive *non-negotiable* collective employment rights
 - Other regulation to protect employees from unilateral change in working time arrangements and right to *refuse* long hours, overtime etc
 - Minimum wage & unfair dismissal protection
- Govt & social supports to ensure employees are practically able to use RTR eg UK
 - Wide-ranging consultation in developing law
 - Involvement of and support for employers (inc \$\$)
 - Wide ranging information and guidance
 - Comprehensive system of review and evaluation
 - Part of broader W/F policy package

Strategic implementation?

- Option 1: *All* workers eligible
- Option 2: Staged implementation:
parents → carers → all workers
 - Address employer resistance
 - Information/support
 - Small Business Advocate
 - Review, evaluation and consultation about the impact of any RTR
 - Fair Work Australia to hold inquiry
 - Inquiry findings as basis for extension of RTR

Three EU Models...

| | Eligibility | Scope | Duty of emp | Proc /process | Enforce process |
|----------------|--|--|--|-------------------------------|---|
| N'lands | All workers -10+ emplees -12 mths ser | ↑↓ wkly hrs Sched of hrs | Reject hrs change only if <i>serious</i> reasons Sched hrs only if reason. & fair | Requests in writing | Internal griev process/ court appeal |
| G'many | All workers -15+ emplees -6 mths ser | ↑↓ wkly hrs & sched of <i>those</i> hrs | Reject only if <i>substan. influence</i> wk org, safety, disp. costs | Requests in writing | Internal griev process/ court appeal |
| UK | Parents w child <6 Disab child <18 Carers -6 mths ser | Change Hrs of work Sched of hrs Location of work | Must seriously consider but can reject on wide # of bus gds. | Requests/ decision in writing | Emp trib (Proc only) |