



# Flexible Work Arrangements Literature Review

Report to the National Advisory Council on the  
Employment of Women (NACEW)

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# **EXECUTIVE SUMMARY**

## **Introduction**

Since July 2008 Part 6AA of the Employment Relations Act 2000 has provided that eligible employees are entitled to make a request for flexible working arrangements (FWA's) if they have responsibility for the care of any person.

Part 6AA of the Employment Relations Act reflects an employee-driven approach to flexibility, by providing employees with the right to make a request should they choose to do so, and a process for how requests will be considered. The legislation does not limit any employee and employer negotiating flexibility on an informal basis or agreeing to a variation in an employee's terms and conditions of employment under Part 6 of the Employment Relations Act.

The purpose of this review is to synthesise findings about FWAs from relevant literature in New Zealand, Australia, the United Kingdom, Northern Ireland, Republic of Ireland and Canada. This review focuses primarily on peer-reviewed articles and major studies within the subject area over the last five years.

## **Context**

The UK, Northern Ireland, New Zealand and Australia have each introduced legislation providing for a 'right to request' FWAs, all of which focus on caring responsibilities. There has also been some interest in introducing similar legislation in the United States and Canada.

Caring responsibilities and facilitating women's participation in the labour market is the primary focus of FWA legislation in the countries covered by this review. However, there is increasing interest in the use of FWAs to address other labour market pressures such as an ageing workforce by using these mechanisms to improve the participation of older workers.

Despite the economic crisis, governments in some countries covered by this review are continuing to take an expansive approach to the provision of FWAs by broadening the availability of 'right to request' provisions in legislation. During the last two years, a more expansive approach has been taken in the UK and Northern Ireland and new 'right to request' legislation came into force in Australia earlier this year.

## **Benefits and barriers to flexible work arrangements**

Evidence about the benefits and barriers to FWAs is generally contextualised within broader work-life balance literature with a significant amount discussing the benefits of work-life balance to businesses and employees alike.

Employee driven flexibility is widely regarded as a measure that can improve work-life balance. Unsupportive workplace cultures, perceived impacts on career progression and the perceptions of other employees are reported barriers to employees using FWAs.

There are significant gender differences in the industries and occupations that women and men work in, and their overall career choices. These decisions are often heavily influenced by the relative roles and perceptions of men and women relating

to caring responsibilities. This has significant implications for the availability and use of FWAs.

Recent surveys in the UK, New Zealand and Northern Ireland show that employers widely perceive flexibility as delivering positive business benefits with very few employers viewing flexibility as having a negative effect.

Evidence from the UK and Northern Ireland about the barriers businesses face when implementing FWAs is mixed. While administrative and other burdens are cited as barriers to flexibility, a majority of employers are offering flexibility to all employees.

FWAs of some form are provided in a majority of workplaces in the UK, Northern Ireland, New Zealand and Australia. However there are significant variations in employer and employee perceptions of the forms of flexibility available in the UK and Northern Ireland.

### **Impact of flexible work legislation**

In the UK, the number of employees who make formal requests for FWAs under the 'right to request' legislation, is much lower than the actual incidence of FWAs - with informal arrangements being widespread in the UK.

Survey data in the UK and Northern Ireland on the impact of 'right to request' legislation shows that:

- The most commonly available form of flexibility is part-time work
- A majority of requests for flexibility are accepted
- FWAs are much more likely to be accessed by women (particularly those with caring responsibilities)
- It is common practice for FWAs to be offered to all employees
- Women are more likely to make requests for FWAs and more likely to have FWAs available in their workplaces.
- UK and Northern Ireland women are more likely than men to have statutory requests for FWAs accepted in full by their employer.

Australian baseline information collected prior to the recent introduction of 'right to request' legislation reveals similar trends to that in the UK in relation to the number of requests for FWAs, the gendered nature of requests and similarities in the number of requests accepted by employers.

Awareness among New Zealand employers and employees of the availability of the 'right to request' is lower than the UK and Northern Ireland. However, the UK legislation had a high profile when passed and had ongoing publicity as subsequent extensions were made to the law.

### **Policy debates**

The key debates in the literature about 'right to request' legislation concern extending the 'right to request' to all employees. Much of the literature favours extensions to all employees irrespective of caring responsibilities. The key debates centre around:

- Whether flexible work policies focusing on people with caring responsibilities reinforce and entrench gender divisions
- The fairness to other employees of a 'right to request' flexibility that is exclusively the domain of carers and is not universally applied and the relative business benefits, costs and administrative burden of making a 'right to request' available to all employees irrespective of whether they have caring responsibilities
- The relevance of taking a life-cycle approach beyond caring responsibilities to consider other work-force issues.

# INTRODUCTION

## ***Purpose***

Part 6AA of the Employment Relations Act 2000 provides that eligible employees are entitled to make a request for FWAs if they have responsibility for the care of any person. The Act sets out specific procedures for making a request and a process for employers to consider a request, including grounds for refusal.

The National Advisory Council on the Employment of Women (NACEW) sought a literature review of FWAs to inform a wider review of Part 6AA of the Employment Relations Act 2000. The Act provides that the Minister of Labour, as soon as practicable, two years after the commencement of Part 6AA, report on its operation and effects including recommendations as to whether the provisions relating to a 'right to request' flexible work should be extended to all employees.<sup>1</sup>

The purpose of this review is to synthesise relevant literature about FWAs in New Zealand, Australia, the United Kingdom, Northern Ireland, Republic of Ireland and Canada from the last five years. With the exception of the Republic of Ireland and Canada, all of these countries have adopted similar legislation providing for a 'right to request' FWAs.

## ***Scope***

This review focuses of literature relating to FWAs in New Zealand, the UK, Northern Ireland, Republic of Ireland, Canada and Australia. A small amount of contextual literature has also been included to position this material in a broader international labour market context.

From the outset, it is necessary to consider an appropriate definition of 'flexible work' for the purposes of this review. The term 'flexible work' is often associated with the adoption of numerical and functional flexibility by firms to lower costs, increase outputs and improve productivity. However, this term is now as likely to refer to practices that enable employees to exercise more choices about how, when and where they work to meet their particular work-life balance needs. Zeytinolu (et al, 2009) suggests that there are two streams of literature that reflect these two different discourses. Kelliher and Anderson (2008) refer to this as a shift from 'flexibility of' to 'flexibility for' employees or, as described by Pocock (et al, 2009), a distinction between employer-centred and employee-centred flexibility. Fursman and Zodgekar (2009) discuss flexible work within the paradigm of optimal choices and place emphasis on the criteria of "quality" flexible work.

Part 6AA of the Employment Relations Act sits within an employee-driven approach to flexibility. The Act empowers employees, to make a request for a change to working arrangements to meet their caring responsibilities. The legislation provides a backstop for employees with caring responsibilities - without limiting employees' and employers' general entitlement to negotiate FWAs. Decisions by employers relating to functional and numerical flexibility are subject to the existing legal framework including the bargaining and good faith provisions under other parts of the Employment Relations Act. This literature review therefore focuses on flexible work

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<sup>1</sup> Section 69AAL, Employment Relations Act 2000.

from an employee-driven approach consistent with the purpose and intent of 'right to request' legislation in the UK, New Zealand, Australia and Northern Ireland.

## **Method**

This literature review focuses on literature relating to New Zealand, Australia, the UK, Northern Ireland, Republic of Ireland and Canada within the subject area during the last five years. The terms of reference for this review included government reviews of existing flexibility provisions contained in country legislation.

There is a substantial amount of literature on flexibility within the work-life balance field and there are many case studies, policy papers and promotional material on the topic. To ensure manageability of the material, the primary focus was on peer-reviewed articles and major studies. Small case studies relating to individual worksites were excluded.

The Department of Labour provided the following resources:

- Three overviews of literature relating to flexibility prepared by the Department in 2005, 2009 and 2010.
- A copy of Work-life balance and flexibility in New Zealand: a snapshot of employee and employer attitudes and experiences 2008 (Department of Labour, 2008).
- A copy of Flexible working policies: a comparative review (Hegewisch, A., 2009)

To carry out this review, Google Scholar searches were conducted using key search terms (e.g. "flexible work arrangements", "legislation" "review", "survey" "right to request", "New Zealand", "Australia", "Canada", "Ireland", "United Kingdom" and "Northern Ireland"). This generated a range of material on the topic. A snowballing technique was subsequently applied where additional searches were conducted following up on references in the initial material generated. Information was prioritised according the criteria referred to earlier.

In addition, the Department of Labour's Information Centre conducted a high level search of materials using similar search terms on EBSCO and Gale databases.

## CONTEXT

Global labour markets, particularly those in developed countries have undergone rapid transformation during the last 30 years. Continuing globalisation, increasingly competitive labour markets and a more mobile labour force has occurred simultaneously with dramatic social change, most notably changes in the way women engage in the workforce and significant changes in the profile of families.

Research by the Families Commission (2008) provides an overview of labour market and demographic trends relating to the demand for FWAs. This includes the changing profile of families - with a growth in more complex family structures that no longer represent a male bread-winner and stay-at-home mother model. In addition, there has been a rapid growth in women's participation in paid work as well as a growth in the number of one-parent households. Caring responsibilities are also becoming more complex with extended family structures that increasingly include the care of older relatives.

Women, continue to have primary responsibility for the care of children and other dependents. While the reconciliation of work and caring responsibilities is a critical issue for working women, fathers' participation in caring responsibilities is increasing (Families Commission, 2008). However, men are still more likely to work full time and be working longer hours (Statistics New Zealand, 2008).

The Department of Labour reports that carers who have unpaid responsibility for the care of another person who is ill, has a disability, mental illness or addiction or are in their old age, represent approximately an eighth of the workforce and is growing (Department of Labour, 2010).

A key focus of work-life balance policies has been on balancing caring responsibilities and women's participation in paid work. The provision of quality flexible work is seen as one mechanism that can deliver employees and employers with win-win outcomes.

While caring responsibilities have been the central focus of policies focusing on employee-driven flexibility – there is now growing interest in how flexibility can address other labour market pressures. This includes a greater interest in taking a life-cycle perspective of labour force participation (Pillinger 2006, Pocock et al 2010). According to Pocock (et al, 2010) increasing female labour market participation, the growth in dual earner households and an ageing workforce, makes taking a life-cycle approach to labour market engagement a more important issue. Pillinger (2006) suggests that flexible working hours has been recognised as a solution to demographic changes in the labour market including the increasing participation of women and increasing competition in the global economy. She also notes that smart ways of working can make better use of skills and therefore is important to maintaining competitiveness.

In the last two years, labour markets across the world have been significantly impacted by the economic crisis. The International Labour Organisation (ILO) predicts that it will have a long-term impact with a long period of unemployment, increasing poverty and inequality (ILO, 2009). Therefore, it is relevant to consider the impact of a global recession on flexible work practices. Governments in some countries covered by this review are continuing to take an expansive approach to the provision of FWAs by broadening the availability of 'right to request' provisions in legislation. During the last two years, a more expansive approach has been taken in

the UK and Northern Ireland and new 'right to request' legislation came into force in Australia early this year. Similarly, an international review of parental leave policies reveals that the two most common changes have been improvements in entitlements for fathers and the provision of greater flexibility in leave taking (Moss ed, 2010).

According to Pocock (et al, 2010) work-life interference appears to be recession-proof – finding no evidence that such conflict has reduced during the recession. Research by Haar (2010) found that work-life balance issues continue to be important to employees during a recession even if employees fear losing their jobs. A UK Taskforce on working hours recently suggested that 'the recession has created a climate where there is an even stronger appetite for flexible working' (Family Friendly Working Hours Taskforce, 2010).

# COUNTRY APPROACHES TO FLEXIBLE WORK ARRANGEMENTS

## *Overview*

The UK, Northern Ireland, New Zealand and Australia have each introduced legislation providing for a 'right to request' FWAs, all of which focus on caring responsibilities. This approach was initiated in the UK, and is referred to as 'soft touch' regulation as it does not grant a 'right' to flexibility, but rather, provides a legal framework for employees to request and employers to consider changes in an employee's working arrangements (Levin-Epstein, 2005; Hegewisch et al, 2009).

"Right to request' legislation is among a variety of measures adopted by countries to manage employee-driven flexibility. Caring responsibilities and facilitating women's participation in the labour market are a central focus of most employee-driven flexibility legislation world-wide. The most common forms of flexibility relate to part-time working or a reduction in working hours around the birth of a child, but it is also notable that other life-cycle flexibility policies are also available in a number of countries. The range of measures available in different countries is usefully summarised by Hegewisch and Gornick (2008) who identify the following:

- A right to a reduction in working hours for any reason (France, Germany and the Netherlands)
- Specific legislation that enables parents to reduce their working hours for a specified period (in some cases with job protection) following the birth of a child (Austria, Denmark, France, Germany, Greece and Norway)
- The availability of part-time parental leave until a child reaches a certain age (Belgium Luxembourg, Portugal and Ireland)
- Varying degrees of flexibility for employees to pursue education and training (Greece, Belgium, Finland, France, Italy, Norway, Luxembourg, Spain and Sweden)
- Policies to facilitate older workers' to transition to retirement with partial access to the pension while remaining in work (Finland, Austria and Germany).

Canada and the United States are two notable exceptions where employee-driven flexibility mandated in legislation is quite limited. Other than the Family and Medical Leave Act and Americans with Disabilities Act, the US does not have employee driven flexibility legislation other than recourse to anti-discrimination law (Hegewisch and Gornick, 2008).

The central policy intent of existing legislation in Northern Ireland, Australia and New Zealand providing for a right to request FWAs is to ensure people with caring responsibilities have greater choices about how they engage in work and enable better work-life balance. The policy intent in each country is as follows:

- Northern Ireland – to address the particular challenges faced by parents and carers in achieving work life balance that is not experienced by other groups in the labour market (Department for Employment and Learning, 2010).

- New Zealand – initially intended to increase the participation of parents of young children by providing flexible work options to assist parents’ work-life balance<sup>2</sup>, however amendments to the legislation prior to being passed into law provide flexibility to meet the needs of all eligible employees with caring responsibilities.
- Australia - to assist “employees to balance their work and family responsibilities by providing for flexible working arrangements”.<sup>3</sup>
- UK – to increase competitiveness and enable better choices for working parents (Department of Trade and Industry, 2000).

Interest in the benefits, costs and impacts of ‘right to request’ legislation is growing (Hegewisch and Gornick 2008; Epstein 2005). In 2006 the Canadian Federal Labour Standards Review Commission released a range of recommendations to modernise the Part III of the Canada Labour Code. The Commission recommended that employees should have a right to request flexible work modelled on the UK legislation (Federal Labour Standards Review Commission, 2006). Under this proposal, an employee continuously employed for 26 weeks would have a right to request flexible work if they take care of a spouse, partner, relative or child. The responsible Government Department, Human Resources and Skills Development Canada, subsequently released a discussion paper in 2009 exploring the Commission’s proposals in more detail and seeking public feedback (Human Resources and Skills Development Canada, 2009). There have been no further developments since the public consultation closed in June 2009.

In the US, in March 2009, Congresswomen Carolyn Mahoney, led the introduction of an Act into the US Congress providing for a ‘right to request’ alternative work arrangements.<sup>4</sup> The Act provides for a right to request changes to working arrangements for any reason and an employer has a duty to consider and respond to an employee’s request. Where a request is declined, an employer is obliged to provide reasons for their decision. The Act covers employees who work for an average of at least 20 hours per work or at least 1000 hours per year and excludes employers with less than 15 employees.<sup>5</sup>

## ***New Zealand***

Part 6AA of the Employment Relations Act provides that employees with six months service with the same employer are entitled to make a request for FWAs if they care for any person and they have not made a request under the Act during the previous 12 months. The Act sets out specific procedures for making a request and grounds under which an employer may refuse such requests.

Part 6AA establishes a specific process for considering a request for flexibility where an employee has caring responsibilities. The legislation does not limit any employee and employer negotiating flexibility on an informal basis or agreeing to a variation in

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<sup>2</sup> Explanatory Note, Employment Relations (Flexible Working Hours) Amendment Bill 2005

<sup>3</sup> Section 3(d), Fair Work Act 2009.

<sup>4</sup> H.R. 1274 Working Families Flexibility Act, 111th Congress, 2009 – 2010.

<sup>5</sup> See sections 2(1)(B) and 2(2)(B)(i)(I) - H.R. 1274 Working Families Flexibility Act, 111th Congress, 2009 – 2010

an employee's terms and conditions of employment under Part 6 of the Employment Relations Act.

### ***Australia***

In 2009 the Australian Government passed the Fair Work Act to provide that from 1 January 2010, parents or carers (with 12 months service) with children under school age, or children with disabilities under 18, are entitled to request FWAs to assist with the care of a child. The entitlement is part of a package of minimum National Employment Standards set out in the legislation. A summary of Australian provisions is set out in Appendix A.

### ***United Kingdom***

In the United Kingdom legislation providing for a 'right to request' FWAs came into effect in April 2003. Initially it provided that parents (with 26 weeks service) of children under the age of six and parents of children with a disability under the age of 18 had a right to request FWAs. In 2007, equivalent provisions were established for carers of other dependent adults. The Employment Act was subsequently extended in April 2009 to apply to parents of children under the age of 17. In September 2010, the UK Government announced that the 'right to request' provisions will be extended to caring responsibilities for children under the age of 18 from April 2011, and that it will launch a consultation in late 2010 on further extensions to all employees. A summary of UK provisions is set out in Appendix A.

### ***Northern Ireland***

A 'right to request' FWAs in Northern Ireland has followed a similar path to the UK, with legislation coming into effect in April 2003. It provides that parents of children under the age of six and parents of children with a disability under the age of 18 have a 'right to request' FWAs. This right was extended in 2007 to include the care of other dependent adults under the Flexible Working (Eligibility, Complaints and Remedies) Amendment Regulations (Northern Ireland) 2007. Following public consultation, in June 2010 the Department for Employment and Learning announced that the 'right to request' will be extended to cover employees with responsibility for the care of children aged 16 and under. A summary of provisions is set out in Appendix A.

### ***Republic of Ireland***

The Republic of Ireland has no legislation providing for a right to request flexible work other than narrow provisions in the Carers Leave Act 2001 enabling temporary leave for the full time care of another person if an employee has worked for the same employer for at least 12 months. Leave of up to 104 weeks and job protection for the period of leave is available.

### ***Canada***

Currently there is no Federal legislation in Canada providing for FWAs, but some elements of FWAs are available in some jurisdictions – such as the ability to work compressed work-weeks. Further detail is set out in Appendix A.

# **BENEFITS AND BARRIERS TO FLEXIBLE WORK ARRANGEMENTS**

## ***Summary***

- Evidence about the benefits and barriers to FWAs is generally contextualised within broader work-life balance literature with a significant amount of literature discussing the benefits of work-life balance to businesses and employees alike.
- Employee driven flexibility is widely regarded as a measure that can reduce work-life balance conflict and there is evidence that it has a positive relationship with better work-life balance. Unsupportive workplace cultures, perceived impacts on career progression and the perceptions of other employees are reported barriers to employees achieving flexibility.
- There are significant gender differences in the industries and occupations men and women work in, and their overall career choices. These decisions are often heavily influenced by the relative roles and perceptions of men and women relating to caring responsibilities. This has significant implications for the availability and use of FWAs.
- Recent surveys from the UK, New Zealand and Northern Ireland show that employers widely perceive flexibility as delivering positive business benefits with very few employers viewing flexibility as having a negative effect.
- Evidence from the UK and Northern Ireland about the barriers businesses face when implementing FWAs is mixed. While administrative and other burdens are cited as barriers to flexibility, a majority of employers are offering flexibility to all employees regardless of whether they have caring responsibilities.

## ***Overview***

Evidence about the benefits and barriers to FWAs is generally contextualised within broader work-life balance literature. There is a significant amount of literature on the benefits of work-life balance to businesses and employees alike. It is widely reported that employees who have greater work-life balance are more likely to have higher levels of motivation and commitment to their jobs, are less stressed, are more productive, have better relationships at home with their families and have better health outcomes.

The benefits of work-life balance policies and practices for business cited in international literature include improved employee retention, reduced turnover, improved employee motivation and loyalty, and improved productivity. A review by the Equal Employment Opportunities Trust (2006) concluded that there is a body of research that supports a positive relationship between work-life balance and productivity. However there are some competing views about the strength of the business case with some suggesting that the productivity outcomes (Bloom et al, 2006), and the business case for work-life balance (Beauregard and Henry, 2009) has not been rigorously examined. Others suggest that the return on investment for businesses has also not been subject to rigorous analysis (Lero et al, 2009).

## ***Employee benefits and barriers***

Employee driven flexibility is widely regarded as a measure that can reduce work-life balance conflict. For example, in New Zealand, research by the Department of Labour (2008) found that employees who reported a particular FWA was available to them were more likely to rate their work-life balance highly. This is supported by research by the Families Commission showing that 88% of survey respondents who had a lot of flexibility were satisfied with their work-life balance, compared to 52% of respondents who had little or no flexibility (Families Commission, 2008). Statistics New Zealand data also shows that among employed people, those that did not have flexible hours in their main job were more likely to be dissatisfied or very dissatisfied with their work-life balance (Statistics New Zealand, 2008). Similarly in Australia, a 2008 survey found that employees without FWAs were more likely to experience work-life balance conflict (Pocock et al, 2009).

A range of studies associate FWAs with positive outcomes for employees. This includes a positive impact on employee's perceptions of job quality (Kelliher & Anderson, 2008), increased job satisfaction and reduced leaving intentions (Forsyth and Polser-Debruyne, 2007), enabling families to spend more time together, and reducing stress and pressure (Families Commission, 2008).

The impact of workplace cultures is widely discussed in literature relating to work-life balance. A review of recent literature by Fursman concluded that 'it continues to be a major determinant of work-life balance' (2008, p. 11). New Zealand research by the EEO Trust (2006), Department of Labour (2008) and Families Commission (2008) reveal the extent to which workplace culture can be a specific barrier to using FWAs (as discussed further below). Similarly, Australian research by Pocock (et al, 2009) identifies the extent to which workplace culture presents barriers for employees to achieving flexibility.

Attitudes and expectations of co-workers and employers intermingled with issues about fairness, managerial support, feelings of guilt, and career impacts are particular barriers to flexibility (Hayman, 2009). Hayman (2009) found that the availability of flexible work options alone may not be enough to influence work-life balance outcomes for employees and that perceived usability is critical. A UK study by Waumsley and Houston (2009) also found that perceptions play a significant role - with study participants perceiving that flexible working is detrimental to work performance and career progression. This was despite participants' recognising that flexible working delivers work-life balance benefits.

Research by the Families Commission, found that a perception of unsupportive workplace cultures; a perceived impact on career progression and reduction in income; and a perception that flexibility was only available to highly valued employees were among the barriers experienced by employees (Families Commission, 2008). It also found that flexibility could also lead to guilt about taking time off and employees working harder and doing longer hours than might ordinarily be the case (Families Commission, 2008).

A recent smaller study of firms in the New Zealand accounting sector noted the impact of traditional values and culture within the sector that work against flexibility (Ministry of Women's Affairs, 2010). This includes a culture of long hours and at partnership level, a perception that being a partner and caring for children were 'mutually exclusive' (Ministry of Women's Affairs, 2010 p 11).

Work-life balance issues including FWAs have a significant gender dimension (Fursman, 2008). Fursman's 2008 review of literature usefully summarises some of the key issues emerging as including:

- The significance of gender differences in the industries and occupations that women and men work in, with different occupations affording different opportunities to access FWAs.
- A range of literature discusses gender differences in decision-making about career choices - with women more likely to make decisions based on accommodating family needs.
- Differences in the availability of FWAs, both in the UK and New Zealand, with women more likely to request arrangements affecting their total number of hours worked where as men were more likely to request forms of flexibility that had no effect on income and earnings.
- Research revealing differences between men and women's perceptions of work with women more likely to place weight on putting family needs before work (Fursman, 2008).

### ***Business benefits and barriers***

The business benefits of FWAs are referred to extensively throughout academic, human resource management and business literature. These include improving recruitment through widening the talent pool and making workplaces attractive places to work, improving employee retention, increasing employee commitment and discretionary effort, reducing absenteeism, increasing productivity and improving profitability (EEO Trust, 2007; Family Friendly Working Hours Taskforce, 2010). More recently, in the UK this has extended to perceived environmental benefits for business (Family Friendly Working Hours Taskforce, 2010).

Flexibility is widely perceived as positive across both large and small businesses. In New Zealand, prior to the introduction of the 'right to request' legislation, more than two thirds of New Zealand employers said they were either supportive or very supportive of FWAs (Department of Labour 2008).

Scottish research on SMEs found that owner managers generally viewed FWAs as beneficial (Maxwell et al, 2007). Research by the British Chambers of Commerce (2007) found that perceived benefits identified by SMEs included improvements in employee relations, productivity and staff retention. New Zealand research (Department of Labour, 2008) found that small employers with less than five employees were more likely to be very supportive of FWAs.

The British Chambers of Commerce (2007) survey of SMEs found that for businesses offering flexibility a desire to be legally compliant was a motivator for 16.5% of businesses. This was well behind other motivators such as productivity (18.4%), being an employer of choice (24.7%), improving retention (33.2%), responding to employee requests (38.4%), and personal conviction (39.0%). A survey of businesses, not restricted by size, by Smeaton (et al, 2007) conducted during 2006 found that the motivators for introducing FWAs were to improve morale, recruitment and/or retention (41%), to accommodate work-life balance needs of employees (37%), to improve the service provided to customers (20%) and to improve productivity (8%).

This review has found little material exploring business benefits FWAs beyond perceptions based data. Table 1 below sets out findings from two major UK surveys exploring business benefits further. It shows that employers widely perceive flexibility as delivering positive business benefits and very few view flexibility as having a negative effect. However, it is notable, that in the UK, employers that responded to the Government’s third work-life balance survey in 2007 were significantly less likely to identify positive business benefits from flexibility and more likely to be neutral compared to earlier data collected in the second work-life balance survey in 2003 (Eurofound, 2007). On the other hand, two surveys of employers in Northern Ireland in 2003 and 2006 (that mirrored the UK surveys) found that there was little change in employers’ perceptions of the business benefits (Department for Employment and Learning (2007).

**Table 1: UK Business impacts of flexible work arrangements**

Areas of employer impact	Findings from major surveys
Employee relations	Two surveys show that most employers see FWAs as having a positive impact on employee relations - 69% and 58% respectively (CBI & Harvey Nash, 2009; Hayward et al, 2007)
Recruitment/retention	63% of employers see FWAs as having a positive impact on recruitment and retention (CBI & Harvey Nash, 2009)  42% of employers saw it as having a positive impact on recruitment (Hayward et al, 2007)  42% of employers saw it as having a positive impact on retention (Hayward et al, 2007)
Absenteeism	41% of employers see FWAs as having a positive impact on absence rates (CBI & Harvey Nash, 2009)  38% of employers saw it as having a positive impact on absenteeism (Hayward et al, 2007)
Productivity	30% of employers see FWAs as having a positive impact on productivity and 15% see it as having a negative impact with the remaining group neutral (CBI & Harvey Nash, 2009)  41% of employers saw it as having a positive impact on productivity and 10% saw it as having a negative impact (Hayward et al, 2007)
Customer service	18% of employers see FWAs as having a positive effect on customer service, 67% are neutral and 16% see it as having a negative effect (CBI & Harvey Nash, 2009)
Compliance costs	21% of employers saw FWAs as having a positive impact on labour costs, 59% were neutral and 20% saw it as having a negative effect (CBI & Harvey Nash, 2009)

Sources: Department for Business Enterprise and Regulatory Reform’s Third Work-Life Balance Employer Survey conducted in 2007 (Hayward et al, 2007) and the Confederation of British Industry’s Employment Trends Survey 2009 (CBI & Harvey Nash, 2009).

Employee's perspectives of the business benefits of FWAs have not been explored to the same extent as that of employers. An Australian study of employees in a large multinational accounting firm found that those who used various forms of FWAs had higher levels of job satisfaction, organisational commitment and intention to stay compared to those who were not using such options (Albion and Chee, 2006). Other research by Kelliher (2008) found that 61% of employees and 45% of their managers identified that flexibility had a positive impact on the quantity of work for themselves or co-workers. Further 60% of employees and more than 40% of managers identified that flexible working had improved the quality of their work (Kelliher, 2008).

Evidence from the UK and Northern Ireland about the barriers for businesses to implement flexible work practices is mixed. Existing literature exploring barriers to flexibility in the UK and Northern Ireland frequently does not examine the source of barriers in particular detail and in some cases it is unclear whether 'administrative burden' cited by businesses is organisational or due to provisions in legislation providing for a 'right to request' FWAs increasing administrative burden.

With respect to the costs and administrative burden of 'right to request' legislation, contrasting perspectives emerge. Some employers and business groups in the UK cite costs and administrative burden as a reason why a 'right to request' should not be extended to all employees (see for example UK House of Commons All-Party Parliamentary Small Business Group, 2009). On the other hand, many employers suggest that the legislation should be extended to all employees on the grounds of fairness, and survey data shows that it is common practice in the UK and Northern Ireland for employers to make flexibility more widely available (British Chambers of Commerce, 2007; Hayward et al, 2007; Department for Employment and Learning, 2006).

Respondents in a study of Scottish SMEs on approaches to FWAs noted that the disadvantages cited by more than half of respondents included operational problems and administrative burdens (Maxwell et al, 2007). The main barrier to being more flexible among SMEs that responded to a survey by the British Chambers of Commerce (2007) was the difficulty in achieving objectives with a reorganised workload and resources – which was identified among 56.4% of respondents. Other barriers identified included a desire to be fair to all employees (32.1%) and the administrative burden of new policies (21.1%). It is also notable that 17.6% of respondents in the same survey said that they didn't feel there were any barriers (British Chambers of Commerce, 2007).

In Northern Ireland there is some evidence that businesses with less than 10 employees (representing 88.8% of businesses) were less likely to be able to accommodate requests for flexibility (Department for Employment and Learning, 2009). The same research also found that smaller businesses with 5 – 9 employees were more likely to have no flexible working practices in the workplace (18% of small businesses compared to 6% of businesses with 50 or more employees).

There is a small amount of New Zealand data showing that in some cases it may be easier for SMEs to provide some types of FWAs. For example, 2008 research found that SMEs with less than 10 staff were more likely to provide occasional flexible start and finish times and flexible breaks to all employees compared to large organisations (Department of Labour, 2008). On the other hand, part-time work and study leave was less likely to be available to employees in organisations with less than five staff, compared to larger organisations (Department of Labour, 2008).

Research commissioned by UK Department for Business Enterprise and Regulatory Reform found that while requests for flexible work (previously identified as an high administrative burden) appeared to require some initial investment of time by employers, the process was considered relatively straightforward (Lambourne et al, 2008). The same research also referred to qualitative evidence that the existing process was too formal and employers' apparent tendency to take a more informal approach to dealing with requests for FWAs (Lambourne et al, 2008). In research by the British Chambers of Commerce (2007) over 90% of SMEs said that the set up costs of flexibility were minimal or zero.

In 2008 when the UK Government consulted on extensions to the 'right to request', it also sought views from stakeholders about reducing the regulatory burden by providing that employers would no longer be required, as a matter of course, to provide written notification where there was an agreement to a revised working pattern (unless specifically requested by the employee). A majority of submitters successfully opposed this on the grounds that record keeping was good practice, savings would be minimal and it would contribute to confusion and unrealistic expectations (Department for Business, Enterprise and Regulatory Reform, 2009).

Research in New Zealand by the EEO Trust (2006) found that among workplaces already implementing flexibility, the costs were either not apparent, or were outweighed by the benefits to business. As referred to earlier, 60% of New Zealand employers reported in the Department of Labour's baseline research that FWAs were either positive or very positive (Department of Labour, 2008).

# IMPACT OF FLEXIBLE WORK LEGISLATION

## *Summary*

- FWAs of some form are provided in a majority of workplaces in the UK, Northern Ireland, New Zealand and Australia. However there are significant variations in employer and employee perceptions of how much flexibility is available in UK and Northern Ireland.
- In the UK the number of employees who make formal requests for FWAs is much lower than the actual incidence of FWAs - with informal arrangements being much more widespread.
- Survey data in the UK and Northern Ireland on the impact of 'right to request' legislation shows that:
  - The most commonly available form of flexibility is part-time work
  - A majority of requests for flexibility are accepted
  - FWAs are much more likely to be accessed by women (particularly those with caring responsibilities)
  - It is common practice for FWAs to be offered to all employees
- There are discernable gender differences emerging with women more likely to make requests for FWAs and more likely to have FWAs available in their workplaces.
- UK survey data shows that women are more likely to have statutory requests for FWAs accepted in full by their employer.
- Australian baseline information collected prior to the introduction of 'right to request' legislation reveals similar trends to that in the UK, with women much more likely to make requests than men and requests from women were more likely to be accepted by the employer.
- Awareness among New Zealand employers and employees of the availability of the right to request is lower than the UK and Northern Ireland.
- Differences in experiences with the 'right to request' FWAs among different groups in the labour market are not well explored in international literature. There is little exploration of, for example, the experiences of people with responsibility for caring for other adults or disabled people. In the New Zealand context, there is also only a small amount of research on the availability and take up of a 'right to request' FWAs among Maori and Pacific people.

## ***United Kingdom and Northern Ireland***

The UK and Northern Ireland have the most extensive commentary on the availability, use and impact of legislated FWAs. During the last 7 years, a series of major surveys have been conducted in both countries that provide insight into the development and impact of FWAs. Both the UK and Northern Irish governments carried out surveys when 'right to request' legislation was introduced, and have repeated these surveys. Generally, the surveys have found that a majority of requests for flexibility are accepted and it is common practice for FWAs to be offered to all employees.

This section summarises findings from major surveys that have taken place during the last five years. Given their methodological differences it is not possible to make a direct comparison between them. However, the results are broadly indicative of

overall trends. With respect to UK data, it is important to note the overall finding that informal FWAs is widespread throughout British workplaces and therefore the number of formal requests for FWAs is much lower than the actual rate of flexible working (Hooker et al, 2007).

**Table 2: Impact of Legislation in the United Kingdom and Northern Ireland**

Area of impact and main points	Country	Findings
Over 90% of employers have FWAs available in their workplaces	United Kingdom	<p>Consistent findings across three major recent surveys that over 90% of workplaces have FWAs available (Hayward, et al, 2007; CBI &amp; Harvey Nash, 2009; Elsmore, 2009)</p> <p>The availability of FWAs has risen from half of employers in 1999 to 93% of employers in 2009 (CBI &amp; Harvey Nash, 2009). Hayward (et al, 2007) found that availability increased from 88% to 95% of workplaces between 2003 and 2007.</p>
	Northern Ireland	90% of employers said they provide flexible working practices to employees, up from 87% in 2003 (Department for Employment and Learning, 2007)
The most common form of FWA available is part-time work – but employers and employees perceptions of availability differs	United Kingdom	<p>Consistent findings from studies show that employers cite that part-time work is the most common form of flexibility offered (Hayward, et al, 2007; CBI &amp; Harvey Nash, 2009; Elsmore, 2009). Differences in employer and employee perceptions of availability should be noted with Hayward (et al, 2007) reporting that 92% of employers stated it was available in their workplaces. On the other hand employee survey data revealed that 69% of employees said it would be available (Hooker et al, 2007)</p> <p>There are consistent findings that employer reported availability of all forms flexibility is growing (Hayward, et al, 2007; CBI &amp; Harvey Nash, 2009).</p>
	Northern Ireland	Employers reported that part-time work was the most commonly available practice. It is important to note the difference between employer and employee reporting with 86% of employers saying part-time work was currently used or available, however, only 49% of employees stated that part-time work were available (Department for Employment and Learning, 2007).
Most employers make FWAs available to all employees	United Kingdom	Two large surveys suggest that more than 60% of employers offer FWAs to all employees (Hayward, et al, 2007; CBI & Harvey Nash, 2009) Another survey suggests that 92% of employers would consider a request from any employee (Hayward et al, 2007)
	Northern Ireland	Evidence that employers in Northern Ireland are making flexible practices available to all employees (but this varies by the type of arrangement sought) (Department

		for Employment and Learning, 2006)
The number of statutory requests for FWAs for a sustained period of time differ in the UK and Northern Ireland	United Kingdom	17% of all employees had made a request for FWAs during the previous 2 years for a sustained period of time (Hooker et al, 2007)
	Northern Ireland	11% of employees in the preceding two years had made a request to change their working arrangements for a sustained period of time (Department for Employment and Learning, 2006)
Women are much more likely to request FWAs than men	United Kingdom	22% of female employees had made a request compared to 14% of male employees in the previous two years (Hooker et al, 2007)  Take up continues to be higher in workplaces that have more women than men (Hayward et al, 2007)
	Northern Ireland	15% of females and 7% of males had made a request (Department for Employment and Learning, 2007)  This is a change since the previous survey in 2003, with the number of females dropping from 18% to 15% and males increasing from 6% to 7% (Department for Employment and Learning, 2007).
Satisfaction with current working arrangements or work-life balance is a key reason for not requesting FWAs	United Kingdom	Among employees that had not requested a change to their working arrangements, 80% were either content with their current working arrangements or happy with their current work-life balance (Elsmore, 2009)
	Northern Ireland	Among employees that had not requested a change in working arrangements 45% said they were 'happy with current arrangements (Northern Ireland Statistics and Research Agency, 2006b).
Most requests for FWAs are approved in full by employers	United Kingdom	60% of requests for flexibility were fully agreed to by the employer (Hooker et al, 2007)  93% and 94% of requests from parents and carers respectively were approved in 2009 (CBI & Harvey Nash, 2009)
	Northern Ireland	73% of requests for flexibility were agreed to in full by the employer in 2006 (Department for Employment and Learning, 2007)
In the UK, women are more likely to have requests agreed to in full and men are more likely to have requests declined	United Kingdom	There are gender differences relating to requests that are declined with 24% of men declined compared to 10% of women in private sector jobs (Hooker et al, 2007). The same research suggests that women were more successful with their requests with 66% of women having their request fully agreed to compared to 53% of males.

Sources: Department for Business Enterprise and Regulatory Reform's Third Work-Life Balance Employer Survey conducted in 2007 (Hayward et al, 2007) and its companion survey, the Department for Trade and Industry's Third Work-Life Balance Employee Survey conducted in early 2006 (Hooker et al, 2007); the Confederation of British Industry's Employment Trends Survey 2009 (CBI & Harvey Nash, 2009); a smaller survey commissioned by the Department for Work and Pensions on Caring and Flexible Working conducted during 2008 (Elsmore, 2009); two Omnibus surveys conducted by Northern Ireland Statistics and Research Agency covering employees and employers (Department for Employment and Learning in 2006) and complementary data from the same surveys published by the Northern Ireland Statistics and Research Agency (2006).

### **Union membership**

While union members that responded to UK's Third Work-Life Balance survey said that work-life balance issues were just as important to them as non-union members, the data reveals some differences in the experiences of union<sup>6</sup> and non-union members. For example among employees surveyed, the level of perceived access to reduced working hours, a compressed working week and working part time was lower among union members. Further, union members were less likely to take up part-time work. Union members were also less likely to see flexitime as feasible in their workplaces (Hooker et al, 2007). Overall, a pattern emerges of union members reporting that some FWAs are less available to them compared to non-union members.

### **Differences in perceptions**

A comparison of UK employer and employee surveys in 2003 and 2007 show a growth in employers' reported availability of FWAs across the six types of flexibility measured with the most significant growth taking place in the availability of reduced working hours for a limited period rising from 40% to 74% (Hayward et al 2007). However, while employers reported increasing availability, reported take up remained relatively unchanged among employees in the second survey (Hooker et al, 2007).

Similarly, it is notable that differences in perceptions emerge in Northern Ireland data with 86% of employers saying part-time work was currently used or available, however, only 49% of employees stated that part-time work were available (Department for Employment and Learning, 2007).

### **New Zealand**

The impact of 'right to request' provisions under Part 6AA has not been specifically explored in existing literature on FWAs. However, existing literature shows that FWAs are a significant feature of the employment relations environment. Prior to the introduction of 'right to request' legislation, research showed that FWAs were increasingly common with more workplaces offering various forms of flexibility over time (EEO Trust, 2006). A benchmark survey conducted by the Department of Labour (2008) shortly before the legislation came into force revealed that a majority of New Zealand employers reported offering flexible work to all or some of their staff. Similarly research by the Families Commission showed that three quarters of employees suggested that their workplace had 'a lot' or a 'fair amount' of flexibility (Families Commission, 2008).

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<sup>6</sup> Includes union and staff association members.

The most common forms of FWAs available prior to the introduction of a 'right to request' appear to be flexible start and finish times and flexible breaks during the day (Department of Labour, 2008; Families Commission, 2008). Statistics New Zealand's Survey of Working Life shows that prior to the introduction of the legislation, 48% of employed people<sup>7</sup> had flexible start and finish times (Statistics New Zealand, 2008).

The Department of Labour research did not report on overall take up of FWAs by gender. However a gender breakdown of available FWAs reported by employees differed, with men more likely than women to say they had access to flexible breaks and working from another location, while women were more likely than men to report access to part-time work and job sharing (Department of Labour, 2008). Statistics New Zealand data also shows that among people working 35 or more hours per week, women (40.9%) were significantly more likely than men (27.4%) to say that they thought their employer would let them reduce their hours (Statistics New Zealand, 2008).

The Department of Labour (2008) research on the take up of FWAs did not differentiate between carers with children and carers with other caring responsibilities. It also did not report on the availability and take up of FWAs with respect to union membership. The extent of any differences in the experiences of union members is largely unexplored in New Zealand literature on the subject.

Research and analysis on the availability and use of FWAs according to ethnicity is also limited. The Department of Labour research (2008) found that there was no significant difference in the availability of FWAs according to ethnicity, but some variability in use, with Maori more likely to use flexible start and finish times compared to others (Department of Labour, 2008). Research by the Families Commission found that Maori and Pacific people were more likely to have had a negative reaction from their employer about FWAs and were more nervous about asking for FWAs (Families Commission, 2008).

Qualitative research by the Families Commission (2008) found that it appeared that employees were discussing FWAs informally with employers 'to test reaction' rather than making a formal request, and observed that a negative reaction may discourage employees for making a formal request.

## ***Australia***

Australian 'right to request' legislation was introduced in January 2010, and therefore the full effect of the legislation is yet to be seen. The Australian Work and Life Index 2009 provides baseline information on the extent of FWAs in workplaces prior to its introduction (Pocock et al, 2009). Among Australian employees 22.4% had made a request for flexible work in the previous year. The same research also found that 68.6% of those employees had requests fully granted (Pocock et al, 2009) and about 10% were refused.

It appears that similar gendered patterns emerge in Australia to that in the UK with Pocock (et al, 2009) finding that women were twice as likely to make a request than men and these requests were strongly associated with the care of children,

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<sup>7</sup> Note that the definition of employed people is wider than the definition of an "employee" covered by Part 6AA of the Employment Relations Act.

particularly in relation to the care of children under five years of age. Similar to the UK, women (72.9%) were also more likely to have requests granted than men (62.3%).

## ***Canada***

Currently Canada has no specific legislation providing for a 'right to request' FWAs. Nevertheless, FWAs are common in the Canadian labour market. Using data from Statistics Canada's 2003 Workplace and Employee Survey, Zeytinoglu (et al, 2009) found that 57% of working Canadians (excluding workers in public administration) had some form of flexibility – noting that this was consistent with other Canadian research.

## ***Knowledge of legislation***

Research shows that knowledge of FWA legislation among employers and employees in the UK has remained reasonably high since 2003. Among employees, 56% were aware of the 'right to request' flexible work (Hooker et al, 2007) and when prompted just over 60% of employers were aware of new entitlements available to carers to request flexible working (Hayward et al, 2007). Charlesworth and Campbell (n.d.) suggest the success of UK legislation can be attributed to wide and inclusive consultation prior to it being passed, an extensive public education programme at the time the legislation was implemented and a government sponsored work-life balance campaign.

In 2009 the UK Secretary for State for the Department for Work and Pensions established a Taskforce on Flexible Working. In 2010 the Taskforce concluded that the availability of flexible work options was not sufficiently widespread and more work was needed to proactively promote the business benefits of flexibility to employers (Family Friendly Working Hours Taskforce, 2010).

Research by the Northern Ireland Department for Employment and Learning (2006) found awareness of the legislation among employers in Northern Ireland was high with 79% being aware of employers' duty to consider requests for flexibility under the legislation.

The Department of Labour's benchmark survey in 2008 showed that 64% of the 1,100 New Zealand employers and 40% of the 1,004 employees surveyed were aware of the 'right to request' legislation which was about to come into force (Department of Labour, 2008). Awareness of the eligibility criteria under the Act among employers was lower at 17% (Department of Labour, 2008).

## **POLICY DEBATES**

### ***Summary***

- The critical debates on flexibility in the literature all concern extending the right to request legislation to all employees. These debates centre around:
  - Whether flexible work policies focusing on people with caring responsibilities reinforce and entrench gender divisions
  - The fairness to other employees of a 'right to request' flexibility that is exclusively the domain of carers and is not universally applied and the relative business benefits, costs and administrative burden of a 'right to request' available to all employees irrespective of whether they have caring responsibilities
  - The relevance of taking a life-cycle approach beyond caring responsibilities to consider other work-force issues.
- Available literature discussing the merits of extending 'right to request' legislation tends to support extensions to all employees beyond caring responsibilities.
- There is limited literature exploring access to FWAs with respect to minimum periods of employment or tenure.

### ***Extending entitlements to all employees***

Over time work-life balance policies have generally shifted away from a primary focus on mothers combining the care of young children and work, towards a more holistic approach focusing on other aspects of employees' lives (Lero et al, 2009). This has coincided with a shift beyond viewing work-life balance issues solely from an employee perspective, to how it benefits businesses (Lero et al, 2009).

While 'right to request' legislation has expanded incrementally over time to include more employees, it has not gone beyond caring responsibilities in any country. In the UK, the 'right to request' FWAs has been extended twice since the original legislation was enacted. The Northern Ireland Government has also announced it will extend 'right to request' legislation for a second time. In May 2010 the UK Government signalled its intention to extend the entitlement to request FWAs to all employees in line with the Coalition Agreement between Conservative Party and Liberal-Democrat Party (UK Cabinet Office, 2010). In September 2010 the Government announced an extension to the care of children under the age of 18 from April 2011, and that a public consultation will take place in late 2010 on extending the right to request FWAs to all employees.

In New Zealand, the Employment Relations (Flexible Working Hours) Amendment Bill, was extended during the Parliamentary process to encompass eligible employees with responsibility for the care of any person. In Australia, before changes to the Fair Work Act came into force this year, there were already calls for it to be extended to other employees with caring responsibilities (Baird and Williamson, 2009).

The merits of extending 'right to request' legislation to all employees (regardless of whether they have caring responsibilities) is widely debated in the literature and centres around three connected issues:

- Whether flexible work policies focusing on people with caring responsibilities reinforce and entrench gender divisions (discussed by Gardiner and Tomlinson, 2009; Hegewisch and Gornick, 2008; Himmelweit, 2007; Charlesworth and Campbell, n.d.).
- The fairness to other employees of a 'right to request' flexibility that is exclusively the domain of carers and is not universally applied (see for example, Department for Employment and Learning, 2009; Hegewisch and Gornick, 2008) and the relative business benefits, costs and administrative burden of such extensions (see for example, the UK House of Commons All-Party Parliamentary Small Business Group, 2009; Department for Employment and Learning, 2009).
- The relevance of taking a life-cycle approach beyond caring responsibilities to consider other work-force issues such as providing improved access for people with disabilities, retaining older workers and encouraging skills development (see for example, Maxwell et al, 2006; Hogarth and Bosworth, 2009; Fagan et al, 2006; Department for Employment and Learning, 2009).

### **Right to request legislation reinforces gender divisions**

A key issue is the extent to which flexible work policies that focus on caring responsibilities reinforce and entrench gender divisions (Gardiner and Tomlinson, 2009; Hegewisch and Gornick, 2008; Himmelweit, 2007; Waumsley and Houston, 2009). In the UK, Fagan (et al, 2006) notes for example, a majority of requests for FWAs are from women who work part-time. A survey by Hooker (et al, 2007) shows that, in the private sector, men are much more likely to have a request for flexibility declined than women. Gardiner and Tomlinson (2009) question whether placing 'the burden of responsibility on the individual to request and negotiate flexibility with their employer, may make it more difficult, especially for men, to challenge gender stereotypes' (p. 674).

The 2008 Walsh Review of the 'right to request' in the UK notes that there is a continuing perception that flexibility is a women's issue primarily associated with caring for children (Walsh, 2008). The review found that while the 'right to request' was primarily exercised by women, more generally, men made up almost half of all people who worked flexibly overall (Walsh, 2008).

Charlesworth and Campbell (n.d.) argue that optimal 'right to request' legislation should not reinforce gender divisions and should broadly apply to all employees, rather than only those with caring responsibilities - as is the case in the Netherlands and Germany. In addition they suggest that:

'It would help address gendered working time norms and the gendered take-up of flexible work and would challenge the view that flexible work is non-standard' (p 14).

Durkalski (2009) points out that even if the right to request in the UK was extended, it will not address gender divisions and the devaluation of women's work outside the workplace. Instead, these issues require much more significant solutions than what can be addressed by a procedural 'right to request' (Durkalski, 2009).

Fagan (et al, 2006) conclude that the UK legislation has had little or no impact on the prevalence of long working hours and gender divisions in the UK. They suggest the culture of long working hours may be a barrier to men asking for flexibility and that a stronger regulatory environment is needed. They argue that the narrow emphasis on caring responsibilities has failed to address the prevalent long hours work culture in Britain among men and has missed the opportunity to address other policy objectives, such as active ageing policies that support older workers.

There is limited discussion about the policy issues relating to gender divisions in Government reviews of existing legislation in the UK and Northern Ireland. In Northern Ireland for example, Government policy has focused on delivering preferential treatment for carers. Following a review of whether the provisions should be extended further, the Government decided that:

“Extending the right to all employees in a single step could have unintended negative equality impacts with an increased number of requests from parents and carers being refused due to increased operational pressures”  
(Department for Employment and Learning, 2010, p 13).

### **Universal availability to all employees**

A second debate relates to the fairness of existing ‘right to request’ legislation that is exclusively available to employees’ with caring responsibilities. A number of academics, businesses and other organisations argue that the right to request should be universally available to any employee who has a need for some form of flexibility. Hegewisch and Gornick (2008) for example, suggest universal availability has less danger of entrenching a ‘mummy track’ and would have ease of application from a human resource management perspective, as it would reduce the pressure on employers to decide who qualifies. In addition a broader application would ensure less resentment among other employees (Charlesworth and Campbell, n.d.). On the other hand in the UK, it was argued that a broader extension to all employees would lead to employers having to turn down more requests for business reasons and impose an additional burden through having to determine who should get priority (Walsh, 2008).

In practice, most businesses in the UK and Northern Ireland say they are making the ‘right to request’ available to all employees. A survey by the British Chambers of Commerce on the impact of flexible work legislation on SMEs found that most of these businesses were offering flexibility to all employees beyond the requirements of the legislation (British Chambers of Commerce, 2007). This is consistent with the findings of the Third Work Life Balance Survey that 92% of employers would consider a request for flexibility from employees that are outside the scope of the existing legislation (Hayward et al, 2007). Similarly employers in Northern Ireland are making flexible practices available to all employees although this varies by the type of arrangement sought (Department for Employment and Learning, 2006).

### **The relevance of taking a life-cycle approach**

As noted earlier, a number of policy approaches in other countries support elements of employee-driven flexibility through taking a life-cycle approach. This includes for example, policies enabling part-time parental leave taking, reduced working hours to access training and enabling access to some superannuation at the same time as reduced working hours to facilitate transitions into retirement (Hegewisch and Gornick, 2008).

In the UK and Northern Ireland, Government reviews of 'right to request' legislation have tended to focus on assessing the availability, uptake and ease of applying flexibility in the workplace rather than any wider assessment of wider economic and social impacts. While entitlements have been expanding incrementally, these have not moved beyond the original policy intention of providing enhanced choices for parents and carers.

The Northern Ireland Government in its most recent consultation on extensions in 2009 noted that while extending the right to request would alter the existing policy rationale, it could potentially drive other policy objectives such as retaining skills, retirement policies and promoting job creation (Department for Employment and Learning, 2009). However, the Government maintained the existing focus on caring responsibilities.

There is increasing interest in taking a life-cycle perspective of labour force participation (Pillinger 2006; Pocock et al 2010). According to Pocock (et al, 2010) increasing female labour market participation, the growth in dual earner households and an ageing workforce, makes taking a life-cycle approach to engagement in paid work a more important issue. Pillinger (2006) suggests that flexible working hours has been recognised as a solution to demographic changes in the labour market including the increasing participation of women and increasing competition in the global economy. She also notes that smart ways of working can make better use of skills and is also important to maintaining competitiveness.

Research for the Trade Union Congress by Maxwell (et al, 2006) identified opportunities in the UK to use flexible work policies to address wider policy imperatives including strategies to retain older workers in employment by providing opportunities for FWAs and providing better job opportunities for people with disabilities. Similarly Fagan (et al, 2006) suggest working time policy in the UK must respond to key social and economic challenges in the 21st century and that a policy on caring responsibilities misses the opportunity for flexibility to address other policy priorities, particularly in relation to encouraging older workers to stay in the labour market.

### ***Employees covered by legislation***

During the last 20 years, a global growth in non-standard employment has challenged the traditional notion of an 'employee' and consequently, access to minimum conditions of employment. Despite this, access to a wide range of employment protections in many countries continues to be based on tenure requirements, and in many cases is considered by policy makers as an appropriate measure to balance the interests of employers and employees.

The existing tenure requirement to access 'right to request' provisions under Part 6AA of the Employment Relations Act is six months continuous service with the same employer. This is consistent with access to 14 weeks paid parental leave under the Parental Leave and Employment Protection Act 1987 and access to sick leave under the Holidays Act 2003.

The tenure requirements in the UK and Northern Ireland are similarly based on six months continuous service with the same employer. In Australia 12 months continuous service with the same employer is required. However, the legislation also enables access for casual employees with regular or systematic employment for a sequence of at least 12 months with the same employer, and who also have a reasonable expectation of ongoing employment.

There has been little debate about the merits of tenure periods in the literature. In the UK, the 2008 Walsh Review considered the question of whether the 26-week tenure requirement should be reduced on the grounds that it would assist in helping people back into the labour market (Walsh, 2008). However, Walsh concluded that a shared understanding of what is required of a role and the feasibility of flexibility was unlikely to occur at the beginning of an employee's employment and therefore a reduction in the 26-week tenure requirement was not recommended (Walsh, 2008)

Charlesworth and Campbell (n.d.) noted that the 12 month tenure requirement in Australia was likely to exclude a large number of working parents with young children who are the most likely to make requests. They referred to 2006 statistics indicating that '21 percent of working women of child bearing age (25 – 44) had less than 12 months service with their current employer' (Charlesworth and Campbell, n.d. p 7).

The impact of job tenure on access to FWAs has not been explored in New Zealand literature. However, job tenure data shows that a majority of employed people (78.4%) had been in their main job for one year or more, and women were more likely to have shorter job tenure than men (Statistics New Zealand, 2008).<sup>8</sup> In addition, women were more likely than men to have a job tenure of less than six months (Statistics New Zealand, 2008).

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<sup>8</sup> This data covers self-employed people and respondents working for their employer in their main job.

## CONCLUSION

This review has explored a range of literature from the last five years on FWAs in selected countries. This review has specifically considered employee driven FWAs that provide opportunities for enhanced choices for employees that also meet employer's needs.

The formal and informal provision of both employer and employee driven FWAs was a significant part of the employment relations landscape well before the introduction of 'right to request' provisions in legislation in the UK, Northern Ireland, New Zealand and Australia. 'Right to request' legislation is a small part of the broader FWA landscape and establishes a backstop entitlement for people with caring responsibilities to access a 'process' for considering a request for FWAs.

In the New Zealand context, the Employment Relations Act does not limit any employee and employer negotiating flexibility on an informal basis or agreeing to a variation in an employee's terms and conditions of employment under Part 6 of the Act. This may extend beyond caring responsibilities to other forms of flexibility. Businesses are also still able to make choices about how work is organised with respect to numerical and functional flexibility provided they comply with the Employment Relations Act.

Given that 'right to request' legislation has been present for much longer in the UK and Northern Ireland, much of the literature focuses on these countries and provides some insight into the impact of the legislation. Overall, literature on the UK and Northern Irish experience reveals that the legislation is widely supported by employers and employees and there is general support for right to request legislation to be made available to all employees beyond those with caring responsibilities. The literature shows that businesses also generally perceive a range of business benefits from FWAs - which are consistent with business benefits emerging from wider work-life balance practices. In the UK, the economic crisis appears to have had little or no impact on the gradual extension of entitlements during the last two years - which may be testament to the legislation's wide support among employers and employees.

The presence of gender differences in the take up of FWAs whether statutory or otherwise, is a reflection of the differences of women's and men's overall labour market experiences, preferences and roles within families - particularly in relation to caring responsibilities. Caring responsibilities and facilitating women's participation in the labour market is the primary focus of FWA legislation in the countries covered by this review.

The most widely debated issue emerging from international literature is the risks and benefits of broader extensions of a 'right to request' to all employees beyond those with caring responsibilities. This has focused on whether a narrow right that relates to caring responsibilities reinforces gender divisions and the fairness of narrow provisions to other employees who are outside the scope of the legislation as well as relative benefits and burdens to businesses. In addition, the case is increasingly being made for taking a life-cycle approach beyond caring responsibilities to consider other work-force issues.

## **APPENDIX A: LEGISLATIVE PROVISIONS**

### ***Australia***

Legislation:	Fair Work Act 2009
Commencement:	1 January 2010
Eligibility criteria:	Employees with at least 12 months continuous service with the same employer. Casual employees with regular or systematic employment for a sequence of at least 12 months with the same employer, and have a reasonable expectation of ongoing employment.
Entitlement:	Rit to request FWAs in relation to the care of a child who is under school age or under 18 and has a disability
Procedural requirements:	Request must be made in writing with the change sought and reasons.  Employers are required to respond within 21 days in writing.  If a request is refused, the employer must provide reasons for refusing the request.
Grounds for refusal:	On "reasonable business grounds".
Other:	If State and Territory laws provide more beneficial entitlements, they continue to apply.

### **New South Wales**

Legislation:	Anti-Discrimination Amendment (Carers' Responsibilities) Act 2000 amending the Anti-discrimination Act 1977.
Entitlement:	An employer is required to accommodate, where possible, an employee's responsibilities as a carer. Employers are required to genuinely consider an employee's request to accommodate their responsibilities to provide care or support for another person.

### ***United Kingdom***

Legislation:	Employment Act 2002 amending the Employment Rights Act 1996, Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 SI No. 3236 and the Flexible Working (Procedural Requirements) Regulations 2002 SI No. 3207
Commencement:	April 2003

Eligibility criteria:	Employees with at least 26 weeks continuous service with the same employer.
Entitlement:	Right to request FWAs in relation to: <ul style="list-style-type: none"> <li>• the care of a child who is under 6 or under 18 and has a disability (since April 2003)</li> <li>• the care of other dependent adults (since 2007)</li> <li>• caring for children under the age of 17 (since April 2009)</li> </ul>
Grounds for refusal:	Grounds are: <ul style="list-style-type: none"> <li>• the burden of additional costs</li> <li>• detrimental effect on ability to meet customer demand</li> <li>• inability to re-organise work among existing staff</li> <li>• inability to recruit additional staff</li> <li>• detrimental impact on quality</li> <li>• detrimental impact on performance</li> <li>• insufficiency of work during the periods the employee proposes to work</li> <li>• planned structural changes</li> </ul>

### ***Northern Ireland***

Legislation:	Work and Families (Northern Ireland) Order 2006 and the Employment Rights (Northern Ireland) Order 1996.
Commencement:	April 2003
Eligibility criteria:	Employees with at least 26 weeks continuous service with the same employer.
Entitlement:	Right to request FWAs in relation to: <ul style="list-style-type: none"> <li>• the care of a child who is under 6 or under 18 and has a disability (since April 2003)</li> <li>• the care of other dependent adults (since 2007)</li> </ul>
Grounds for refusal:	Grounds are: <ul style="list-style-type: none"> <li>• the burden of additional costs</li> <li>• detrimental effect on ability to meet customer demand</li> <li>• inability to re-organise work among existing staff</li> <li>• inability to recruit additional staff</li> <li>• detrimental impact on quality</li> <li>• detrimental impact on performance</li> <li>• insufficiency of work during the periods the employee proposes to work</li> </ul>

- planned structural changes

## ***Republic of Ireland***

Legislation: No flexible work legislation other than the Carers Leave Act 2001. It provides for temporary leave for the full time care of someone in need of full time care and attention if an employee has worked for the same employer for at least 12 months. Leave of up to 104 weeks and job protection for the period of leave is available.

## ***Canada***

Legislation: No Federal legislation provides for FWAs, but some jurisdictions specifically refer to elements of FWAs in legislation such as compressed work weeks. In other jurisdictions, the legislation is silent and therefore nothing prevents the establishment of compressed work weeks.

## ***New Zealand***

Legislation: Employment Relations Act 2000 amended by the Employment Relations (Flexible Working Arrangements) Amendment Act 2007

Commencement: July 2008

Eligibility criteria: Employees with six months service with the same employer.

Entitlement: Entitled to make a request for FWAs if the employee has the care of any person and have not made a request under the Act in the previous 12 months.

Procedural requirements: Request to be in writing. The employer must deal with the request as soon as possible by no later than 3 months after receiving it and notify the employee whether the request has been approved or declined. If an employer declines an employee's request, they must state the ground/s for refusal and an explanation of the reasons for that ground.

Grounds for refusal: Grounds for refusal are:

- Inability to organise work among existing staff
- Inability to recruit additional staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficiency of work during periods the employee proposes to work
- Planned structural changes
- Burden of additional costs

- Detrimental effect on ability to meet customer demand

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