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The AMMA Workplace Relations Research Project – A Survey Based Analysis

Fifth Report – for the period from 1 November 2011 to 30 April 2012

A research report prepared by

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About this report

The analysis in this report is based on a survey of the IR/HR managers of companies operating in Australia's resource industry about the impact the Fair Work Act has been having on their operations since it was first introduced. The survey upon which this report is based was conducted in April 2012 by the Australian Mines and Metals Association (AMMA), the peak representative organisation for the resource industry dealing with industrial relations (IR) issues in Australia. It deals with the impact on AMMA members of various aspects of the Fair Work Act during the six-month survey period from 1 November 2011 to 30 April 2012.

The survey is the fifth in a series of six-monthly surveys looking into the IR environment in the industry. The surveys have been conducted as part of the *AMMA Workplace Relations Research Project*, an ongoing study of the impacts of the Fair Work Act on resource industry employers. The aim of the surveys is to monitor trends in workplace relations (WR) with the aim of, firstly, informing policy makers about problems with the legislation and, secondly, showing how improvements can be achieved via legislative and other means. With the assumption that governments, workers and employers all aim to achieve higher living standards that only a more productive workplace can create, the aim of this project has been to provide timely information that reveals industry concerns and identifies options to enact improvements in Australia's IR system.

The surveys have been constructed so that the results speak for themselves. Each one comprises a set of questions asked in a neutral manner to determine the circumstances 'at the coalface' at each point in time. The quantitative survey results have been supplemented by qualitative comments from those who responded to the survey questionnaire, helping to paint a more rounded and detailed picture of the difficulties associated with the Fair Work Act.

Each survey question has been designed in an open way to allow every possible perspective to be shown. The use of the survey questionnaire technique was chosen to ensure the analysis was recognised as being as objectively determined as possible.

In order that comparisons could be made between relatively complex data sets at different points in time, an index score has been used in some of the tables in this report, in particular those measuring respondents' satisfaction with:

1. The overall WR environment;
2. Levels of labour productivity;
3. Direct engagement with the workforce; and
4. Workplace flexibility.

The index weights each of the responses to particular questions to provide an index measure out of 100.0. If 100 per cent of respondents are clustered in the lowest category, the index measure would be zero. If 100 per cent are clustered in the highest category, the index measure would be 100.0. By arriving at a single index score in each of the above four areas in each six-monthly survey, both positive and negative movements can be clearly tracked.

Each survey covers a retrospective six-month survey period, with the initial results dating back to a survey period starting on 1 November 2009 and ending on 30 April 2010.

AMMA distributed the latest survey questionnaire among its membership in April 2012, receiving completed surveys from 132 of its member companies. The respondents to the survey are resource companies operating in every sub-sector of the industry and across the whole of Australia. It is a representative sample of the industry and of AMMA's diverse membership.

Industry sub-sectors covered

The following industry sub-sectors are represented in the latest survey:

- Oil and gas;
- Metalliferous mining;
- Construction;
- Coal mining;
- Oil and gas exploration;
- Dredging;
- Gold / silver mining;
- Maritime / shipping;
- Uranium mining;
- Transport / aviation / rail;
- Drilling;
- Mineral sands mining and processing;
- Earthworking;
- General mining;
- Engineering;
- Services to mining; and
- Maintenance.

The size of respondent companies

Around 63 per cent of respondents to the latest survey had a workforce of 200 or more people, including employees and contractors; 30 per cent had a workforce of between 20 and 199 people; and seven per cent had a workforce of fewer than 20 people. Workforce numbers ranged from just a handful to many thousands.

The conclusions reached in this report are based entirely on the stated experiences of those who are closely involved in IR practices in the industry.

Executive summary

There are few areas more important to the future prosperity of Australia than workplace relations (WR). It is not just the ability to limit the frequency and depth of industrial disputes that is of importance, which is often seen as the core issue of any WR system for businesses, but there is also a crucial need to raise workplace productivity if enhanced living standards are to be achieved. Without higher labour productivity, living standards cannot be raised. Making sure the WR system encourages a sustained growth in productivity must be a central aim of the government.

Five surveys six months apart of AMMA members have so far been conducted under this research project. It is hoped that the Federal Government, the Opposition and other policy makers will use these results to assess how well the current IR legislation is performing its role of encouraging productivity growth in an environment that is fair for both businesses and employees.

Areas covered by the survey

The latest survey results provide updated data for the four main areas that have been covered by the survey since its commencement:

- the current WR environment;
- perceived levels of labour productivity;
- direct engagement with the workforce; and
- workplace flexibility.

The data on the first three of the above measures are currently well below the benchmark set during the first survey results in April 2010, which were still being affected by the previous legislation - the Workplace Relations Act and the Work Choices reforms. The significant falls thereafter have been maintained in the latest survey results, pointing to a far less productive IR environment under the Fair Work Act in the view of resource industry employers than that which existed before.

At a time when greater flexibility and higher productivity are needed, we find there is less of both in the resource industry than required. It is increasingly evident that employers are being frustrated in their efforts to make positive changes at the workplace that would lead to increased productivity, and that damaging union activity is becoming more difficult to deal with.

The Fair Work Act was seen in a relatively positive light when it was first introduced. There is now a large degree of disillusionment that has become embedded as greater familiarity with the Act has led to the recognition of many additional problems for management.

It should also be noted that the number of AMMA member companies responding to these surveys has grown with each six-monthly survey period, nearly doubling from 69 respondents in the first survey in April 2010 to 132 in the latest survey in April 2012. This may indicate a growing level of interest in issues surrounding the operation of the Fair Work Act and an increased investment on the part of the resource industry in lobbying for necessary workplace change.

Overall satisfaction with the workplace relations environment

Respondents to the survey are asked every six months to rate their overall WR environment so that movements can be identified towards the positive or negative end of the scale.

The results of the latest survey conducted in April 2012 reveal that the overall WR environment experienced by resource industry businesses is rated at a significantly lower level of satisfaction than that measured when the first survey was conducted two years ago in April 2010. Although the first survey results were obtained several months after the Fair Work Act had been introduced (which was in July 2009 for most of the Act and January 2010 for the remainder), it was early enough so that the residual level of satisfaction from the previous workplace relations system remained the relevant benchmark.

The overall WR environment satisfaction index, which commenced at a reasonably high level of 75.9 out of 100 for the first survey in April 2010, is now more than 10 percentage points lower at 64.2 as of April 2012.

Labour productivity

The need to raise labour productivity must be at the core of any IR system. The workplace is where the goods and services that comprise our standard of living are produced. There are many other aspects of working life but the reason for having a workplace at all is production.

Moreover, we live in a highly competitive world. Australian goods and services must compete with the goods and services produced in other countries. Maintaining an ability to compete keeps our living standards at the high level we have been able to achieve over many years of previous productivity growth. And it is not just production but well-paying jobs that are created and preserved by our ability to compete.

This survey looks closely at perceived movements in labour productivity that are thought to be influenced by the current IR system.

The latest survey shows that the index score for employers' perceptions of labour productivity fell by around eight percentage points between April 2010 and April 2012, from 66.7 out of 100 to 58.8.

It should be noted that even the original benchmark index level of 66.7 was already low but this score has now dropped even further. It has been an issue of some importance that Australia's productivity growth has become too minimal to raise living standards across the board. The resource industry thus shares a national problem in having low rates of productivity growth and, as the data outlined in this report show, Australia's IR framework remains an important impediment to improving the situation.

Industrial agreements currently in force

Respondents to the latest survey indicated that the following types of agreements were currently in force at their worksites. The number of respondents identifying that a particular type of agreement

was in place at their worksites does not mean that only one such agreement was in operation, but potentially numerous:

- Common law contracts (52 respondents had one or more of those types of agreements in place);
- Fair Work Act non-greenfield agreements (42 respondents);
- Fair Work Act greenfield agreements (33 respondents);
- Workplace Relations Act employee collective agreements (32 respondents);
- Modern award based terms and conditions (15 respondents);
- Australian Workplace Agreements (nine respondents);
- Workplace Relations Act union collective agreements (eight respondents);
- Workplace Relations Act union greenfield agreements (three respondents);
- Individual Transitional Employment Agreements (three respondents);
- Old Industrial Relations Act agreements (three respondents).
- Workplace Relations Act employer greenfield agreements (two respondents); and
- Enterprise award based terms and conditions (one respondent).

The bulk of the industry's agreements, including many AWAs, expire in 2013 and 2014.

Key findings

As mentioned, the main findings from the latest survey show a continued deterioration in the overall WR environment as well as in employer perceptions of levels of labour productivity and direct employee engagement under the current IR system.

Significant findings from the survey include:

- the WR environment has deteriorated for many resource industry employers in the two years since the survey was first conducted;
- 19% of respondents that tried to negotiate a greenfield agreement with unions under the Fair Work Act had encountered a union refusal to make an agreement;
- 40% of those that had managed to negotiate a greenfield agreement under the current system indicated it took longer to do so than it took to negotiate other types of agreements under the current system. A number of respondents reported greenfield negotiations taking twice as long as other types of agreements, with some respondents noting greenfield negotiations had taken up to 12 months;
- The uptake of individual flexibility arrangements (IFAs) in the resource industry has been negligible and has had minimal, if any, impact on increasing industry flexibility;
- 32.3% of respondents said IFAs were of 'no value' for their operations; and
- On a positive note, 75% of those that had granted requests for flexible working arrangements to staff in order to care for a child reported either that the benefits of granting such arrangements outweighed the costs, or that the impact of granting such requests was neutral on their operations.

The current workplace relations environment

The question below has been asked in every survey in the *AMMA Workplace Relations Research Project* to date and is designed to record changes in the overall sentiment in relation to WR conditions within the resources industry.

The question is designed to elicit how respondents are feeling about the overall WR environment within which they are operating at each particular point in time.

Respondents are asked to describe their current WR environment on a scale ranging from a low of 1 ('extremely poor') to a high of 7 ('excellent'). The results are then converted into an overall index score out of 100 for each six-month survey period. On this scale, the higher the score, the better the WR environment in each period.

If the index score is rising, overall conditions are estimated to have improved; where the index has fallen, conditions have shown a measured deterioration.

How would you describe your current workplace relations environment?

Survey date	Extremely poor (%)	Poor (%)	Less than acceptable (%)	Acceptable (%)	Better than acceptable (%)	Good (%)	Excellent (%)	Index score out of 100
April 2010	0.0	0.0	2.9	4.4	38.2	42.6	11.8	**75.9**
Oct 2010	1.4	1.4	4.2	29.2	31.9	26.4	5.6	**65.1**
April 2011	0.0	4.2	9.9	29.6	28.2	23.9	4.2	**61.7**
Oct 2011	1.2	1.2	10.5	25.6	25.6	30.2	5.8	**64.5**
April 2012	0.0	3.0	11.1	26.3	26.3	24.2	9.1	**64.2**

The table above shows that at the time the first survey was conducted in April 2010, 92.6 per cent of respondents rated their WR environment in the top three categories of 'better than acceptable', 'good' or 'excellent'. The managers of virtually every resource industry workplace surveyed were largely content with the industrial environment in which their businesses were asked to perform.

In the latest survey period, the contrast is quite stark. Two years after the first survey was conducted, only 59.6 per cent of respondents rated their WR environment within the top three categories of 'better than acceptable', 'good' or 'excellent'. Based on the survey evidence, the IR environment for many resource industry employers has become more difficult over the past two years.

In April 2010 when the survey was first conducted, conditions at the workplace were still largely structured around the Workplace Relations Act although the Fair Work Act had taken effect. With the first full six-month survey period under the Fair Work Act in its entirety, there was an

immediate fall in this index in October 2010 from 75.9 to 65.1. This deterioration has been more or less maintained ever since, with the index score now recorded at 64.2.

Labour productivity

The issue of labour productivity is of vital importance for the resource industry as it is for all sectors of the economy. For individual businesses and the economy as a whole, it is essential that productivity remains as high as possible, particularly in an industry as important to the economy as the resource industry. Improvements in productivity are also the key to non-inflationary growth.

Labour productivity for the purposes of this research is defined as the ratio between output at a particular site or organisation and the total input of labour required to achieve it. While other factors will impact on productivity, this research is concerned only with labour productivity. The survey is based on employers' perceptions of changes in labour productivity which in their view are attributable to the IR framework.

Respondents are asked every six months to rate their perception of current levels of labour productivity at their worksites on a scale ranging from 'extremely low' at one end to 'extremely high' at the other. This is then converted into an index score out of 100. The higher the index score, the more positive the perception of labour productivity. The results are shown in the table below.

What is your perception of the current level of labour productivity at your worksite(s)?

Survey date	Extremely low (%)	Quite low (%)	Low (%)	Acceptable (%)	High (%)	Quite high (%)	Extremely high (%)	Index score out of 100
April 2010	0.0	4.6	7.7	16.9	30.8	33.8	6.2	**66.7**
Oct 2010	0.0	0.0	8.8	38.2	30.9	20.6	1.5	**61.3**
April 2011	0.0	2.9	20.0	28.6	32.9	14.3	1.4	**56.7**
Oct 2011	1.2	3.5	11.6	31.4	31.4	15.1	5.8	**59.5**
April 2012	1.0	5.0	14.0	28.0	27.0	22.0	3.0	**58.8**

The benchmark here is the first survey conducted in April 2010 shortly after the Fair Work Act was introduced. The table above shows the index for employers' perceptions of labour productivity dropped in the second and third surveys in October 2010 and April 2011. The index fell a full ten points from 66.7 in the first survey to 56.7 one year later in the third survey.

In the most recent survey, there was a further small deterioration following a slight, one-off improvement, with the index now sitting at 58.8. This is still well down on the initial index score of 66.7 in April 2010 and is below the level needed for a large and sustained lift in productivity.

Direct engagement with the workforce

This section seeks to identify changes in employers' levels of direct engagement with their workforces in each six-month survey period.

Direct engagement is defined as an employer's ability to engage with employees at the workplace without the interference of third parties. As with many other facets of a WR system, direct engagement with their workforce is seen by employers as critical to maintaining high levels of productivity.

A productive workplace is dependent on building and maintaining harmonious relationships between management and employees. To the extent that the Fair Work Act becomes an obstacle to that, the greater the difficulty will be in achieving the kind of IR environment that employers and employees can operate most effectively within.

In this question, respondents are asked every six months to describe their current levels of direct engagement with their workforce. The higher the index score out of 100, the more satisfied employers are with the level of direct engagement at their worksites.

How would you describe the current level of direct engagement with your workforce?

Survey date	Extremely low (%)	Quite low (%)	Low (%)	Acceptable (%)	High (%)	Quite high (%)	Extremely high (%)	Index score out of 100
April 2010	0.0	1.6	3.1	29.7	20.3	32.8	12.5	**69.5**
Oct 2010	0.0	1.5	4.5	34.3	19.4	32.8	7.5	**66.7**
April 2011	0.0	2.8	7.0	35.2	29.6	19.7	5.6	**62.2**
Oct 2011	1.2	1.2	8.5	32.9	29.3	26.8	0.0	**61.4**
April 2012	0.0	2.0	7.0	25.0	35.0	24.0	7.0	**65.5**

As the table above shows, the majority of respondents to the latest survey (91%) said the level of direct engagement they had with their workforce under the Fair Work Act was 'acceptable' or better. The latest results show an upwards step in the index compared to the previous two surveys. But the current index score of 65.5 is still below the benchmark set in April 2010 of 69.5, a figure which was already too low.

The data indicate that there has been a deterioration in direct engagement levels for resource industry employers over the past two years.

Workplace flexibility

The ability to make workplace changes in order to contain costs and increase production is one of the most critical factors in raising workplace productivity. An IR system that is flexible enough to adapt to an industry like the resource industry where unique arrangements are the norm is crucial to the success of any project.

This research has tracked respondents' satisfaction with levels of workplace flexibility every six months since the project began in April 2010. Respondents are asked to rate their satisfaction on a scale ranging from a low of 1 ('totally dissatisfied') to a high of 7 ('totally satisfied'). The data are then used to derive an overall index score out of 100. The higher the index score, the greater the satisfaction level.

How satisfied are you with the current level of workplace flexibility at your enterprise(s)?

Survey date	Totally dissatisfied %	Moderately dissatisfied %	Somewhat dissatisfied %	Neither satisfied nor dissatisfied %	Somewhat satisfied %	Moderately satisfied %	Totally satisfied %	Index score out of 100
April 2010	8.3	6.7	20.0	51.7	6.7	5.0	1.7	**44.0**
Oct 2010	1.5	12.1	18.2	40.9	16.7	7.6	3.0	**49.0**
April 2011	2.8	9.9	11.3	22.5	29.6	15.5	8.5	**57.8**
Oct 2011	3.6	4.8	7.1	35.7	23.8	22.6	2.4	**58.1**
April 2012	1.0	10.0	13.0	15.0	30.0	27.0	4.0	**60.0**

Although working from a low base and remaining at a fairly low level, the table above shows an improving level of employer satisfaction with the degree of workplace flexibility experienced in the latest six-month survey period compared with previous surveys.

Fewer respondents to this survey were dissatisfied with their level of workplace flexibility, with more expressing satisfaction with the available arrangements.

However, this result must be balanced against the results detailed in the later chapter on 'individual flexibility arrangements' (IFAs), which reveals there has been a very low take-up of and level of satisfaction with the flexibility able to be achieved under IFAs.

As the table above shows, nearly a quarter of respondents are still indicating some level of dissatisfaction with their levels of workplace flexibility, which is evidence of an ongoing problem.

Enterprise bargaining and agreement making

The questions in this section relate to the experience of employers with bargaining and agreement making over the entire period of operation of the Fair Work Act rather than the latest six-month survey period.

The need for such a time horizon is due to employers only needing to negotiate new industrial agreements every few years and therefore only having had experience with bargaining once if at all during the two-and-a-half-year life of the research project to date. A comparison between individual six-month survey periods on a range of bargaining indicators will therefore be of less relevance than looking at the entire period of operation of the Fair Work Act in assessing employers' experiences with the bargaining and agreement making regime.

At the core of the current IR system is good faith bargaining. During bargaining, each party must come to the table recognising the importance of supporting the ongoing viability and expansion of the business and the need to increase wages and other forms of compensation as far as profitability and long-term economic considerations allow.

The issue of importance, therefore, is whether employees and their bargaining representatives are realistic in their claims and willing to recognise the economic issues faced by the businesses they deal with in enterprise negotiations. A sympathetic understanding by each party of the concerns of the other makes it possible to reach a productive and enduring agreement that meets the needs of both sides.

This next set of questions seeks to ascertain the extent to which this sort of give and take is occurring as employers engage in bargaining for different types of agreements under the Fair Work Act. This chapter has a particular emphasis on their experiences in negotiating greenfield agreements under the Fair Work Act where union involvement is mandatory.

The results in this section are confined to those firms that have engaged in bargaining under the current IR system since 1 July 2009 and in particular those that have tried to negotiate a greenfield agreement under the current system.

Has your organisation engaged in good faith bargaining under the Fair Work Act since it was introduced on 1 July 2009?

	% of respondents
Yes	61.5
No	38.5

In the previous survey in October 2011, the proportion of firms that had engaged in good faith bargaining under the Fair Work Act was around 48.1%. This has grown to 61.5% in the latest survey sample indicating that, as one would expect, an ever larger proportion of businesses has now

engaged in bargaining under the Fair Work Act as previously-made agreements come up for renewal.

Moreover, the bulk of AMMA members have agreements that are due to expire in the next 12 to 18 months. However, because many pre-Fair Work Act agreements are still in force, including AWAs and ITEAs, it will be essential to monitor the effects of these negotiations as the agreements come up for renewal.

Has your organisation attempted to negotiate a greenfield agreement for a start-up project under the Fair Work Act since it was introduced on 1 July 2009?

A greenfield agreement is an agreement for a new project that is yet to hire any employees. Under the Fair Work Act, employers can only negotiate a greenfield agreement with a union. There are no other options if employers and their clients want to get a greenfield agreement in place.

	% of respondents
Yes	36.2
No	63.8

The table above shows that around one-third of firms (36.2%) that have engaged in bargaining under the Fair Work Act since 1 July 2009 have tried to negotiate a greenfield agreement.

As an example of the types of greenfield agreements respondents have sought to negotiate, the following comments shed some light:

> *We have negotiated multiple times with four unions.*
>
> *As a project-based organisation, most of our sites are greenfields.*
>
> *A number of greenfields have been negotiated with the AMWU, AWU, CFMEU and CEPU.*
>
> *We negotiate greenfield agreements when requested to do so by the client as part of project requirements.*
>
> *As part of our entry into offshore, we have greenfield agreements with the three maritime unions.*
>
> *We are part of the industry group co-ordinated by AMMA for the diving greenfields agreement.*

Given that unions have mandatory involvement in greenfield negotiations under the Fair Work Act (unlike under the previous WR regime) unions have the power to refuse to come to an agreement. In such situations, a project must start up with no security of terms and conditions in place and no protection against industrial action.

Has a union refused to make a greenfield agreement with your organisation under the Fair Work Act when you have sought to reach one?

	% of respondents
Yes	19.0
No	81.0

As the table above shows, approximately one in five (19.0%) of respondents that had tried to reach agreement reported a union refusal to make a greenfield agreement with them as the employer.

Does it take longer to negotiate greenfield agreements than other types of agreements under the Fair Work Act?

	% of respondents
Yes	40.0
No	60.0

Of those respondents that had made a greenfield agreement with a union since 1 July 2009, 40% said it took longer than negotiating other types of agreements under the Fair Work Act. It is important to remember, however, that the length of time taken to negotiate a greenfield agreement is not the only indication of imbalances in the current system. Some agreements may be finalised swiftly but only because employers know they have no choice but to agree to union claims in order to get the project up and running. As one respondent put it:

> *Greenfield agreements are not 'negotiated'. It is a take it or leave it scenario. Therefore, if you agree to the terms, the process is relatively quick. Depending on the availability of the parties, it could be a matter of weeks.*

It should, of course, be noted that the respondents to this part of the survey are those that have in the end decided to go forward with such arrangements. Those that do not, therefore, have not participated in this part of the survey.

How long does it take from start to finish to negotiate greenfield agreements compared to other types of industrial agreements under the Fair Work Act?

In terms of the length of time taken to negotiate a greenfield agreement compared to other types of agreements, comments from respondents included the following:

> *[It takes] 6 to 12 weeks.*
>
> *It can be months.*
>
> *Two to six months.*

In some cases it has taken up to six months.

Six to 12 months.

In some cases it took twice as long.

As we established standard ongoing agreements the process was relatively smooth.

It varies depending on the project.

One week longer than other agreements.

We are comparing weeks to months.

Several months.

Two or three weeks typically.

It can take less time [than other agreements], however, in some circumstances it may take more time depending on the union and demarcation disputes between unions. Normally, it takes two to three weeks for a greenfields agreement to be negotiated.

What these results reveal is that the process of negotiating greenfield agreements under the Fair Work Act is more vexed than negotiating other types of agreements and also far more difficult than making greenfield agreements under the previous IR system.

Individual flexibility arrangements (IFAs)

The Fair Work Act changed the rules about the kinds of flexible working arrangements that could be agreed between employers and employees, specifically by abolishing new Australian Workplace Agreements (AWAs) and introducing mandatory 'flexibility' clauses in all enterprise agreements and modern awards.

The stated aim of flexibility clauses was to enable individual flexibility arrangements (IFAs) to be negotiated between employers and individual employees to vary specific agreement and award terms to achieve added flexibility.

However, as has become clear from the survey results to date, employers have encountered difficulties in achieving workplace flexibility via IFAs since the Fair Work Act was introduced, with a consequently very low uptake of IFAs being reported amongst AMMA's membership.

Since the Fair Work Act began, has your organisation negotiated flexibility clauses with bargaining representatives for inclusion in enterprise agreements, or have you decided to include Fair Work Australia's model flexibility clause to satisfy the requirements of the Act?

	% of respondents
Negotiated clause	26.7
Model clause	51.1
Both	22.2

The above table shows that 26.7% of respondents that have bargained for an enterprise agreement under the Fair Work Act have negotiated a flexibility clause rather than using the model clause. This means the flexibility available under the clause can potentially be limited by union involvement. Around half the respondents (51.1%) have used Fair Work Australia's model flexibility clause, which allows terms in agreements to be varied including arrangements about when work is performed, overtime rates, penalty rates, allowances, and leave loading.

The remaining 22.2% of respondents have used both negotiated clauses and the model flexibility clause depending on the agreement they have negotiated and who they have negotiated with.

If you negotiated a flexibility clause rather than using the model clause, were you satisfied with the flexibility provided in the clause you ended up with?

	% of respondents
Yes	56.5
No	43.5

While just over half the respondents (56.5%) indicated they were satisfied with the flexibility provided by a clause they negotiated with other bargaining parties, it is important to note that 43.5% were not.

Comments by employers about their experiences with negotiated flexibility clauses confirm unions' opposition to allowing them to be genuinely flexible:

> *Unions have sought to negate the flexibility. I would prefer to have the model flexibility clause become mandatory.*
>
> *What the unions ended up agreeing to was very limited levels of flexibility.*
>
> *In most agreements, we have negotiated very narrow flexibility clauses with unions in return for consultation clauses that are narrower than the model consultation clause.*
>
> *Flexibility is limited to agreements about annual leave in single day absences.*

If you used the model flexibility clause, were you satisfied with the level of flexibility it allowed for?

	% of respondents
Yes	60.0
No	40.0

The table above shows slightly more respondents (60%) were satisfied with the flexibility offered by the model clause compared with a negotiated clause (56.5%). But the important aspect here is that 40% of respondents were unsatisfied, even with the potential flexibility offered by the model clause. It is also important to note that the inclusion in an agreement of a sufficiently flexible clause does not guarantee that any individual flexibility arrangements will flow from it. It is a two-pronged process. First, employers need to have inserted into an enterprise agreement an agreed clause; second, they need to use that clause to negotiate an IFA with an individual employee. As one respondent pointed out:

> *It is difficult to get a meaningful clause in the agreement, then it is difficult getting an IFA in place. Plus there is the risk it can be cancelled with 28 days' notice at any time by the employee.*

Are there cases where IFAs have been asked for but not agreed to?

	% of respondents
Yes	9.8
No	90.2

In the overwhelming majority of cases where IFAs were asked for by either party, they were agreed to by the other. In just under 10% of firms, IFAs had been asked for but not agreed, presumably because they could not be supported operationally, as the below comments reveal:

> *We refused an employee wanting to shorten their FIFO roster which would have added significant cost to the business.*
>
> *It was refused because it did not fit into the work required.*
>
> *We refused one request within a department area staffed by two people on a 5/2 roster. Operationally, the request for an IFA for a nine-day fortnight could not be supported.*
>
> *The initial request for an IFA may be varied based on operational requirements from the nature of the original request, however, we have not refused an IFA.*

In one case, a union was the obstacle to an employer agreeing to an IFA, with one respondent employer commenting:

> *It was refused because it was outside the provision negotiated with the union in the enterprise agreement. An employee sought to work greater than the work cycle without penalty.*

If and when IFAs are entered into, who tends to initiate the making of IFAs?

	% of respondents
The employer	21.1
The employees	36.8
Both the employer and employees	42.1

The table above shows that in 21.1% of cases, the employer initiates the making of IFAs, and in 36.8% of cases it is the employees who initiate. Around 42.1% of respondents noted IFA requests had been initiated by both employers and employees.

Where they are used, are IFAs establishing new workplace practices or formalising existing ones?

	% of respondents
Establishing new workplace practices	31.6
Formalising existing ones	47.4
Both	21.1

Rather than providing new modes of flexibility, almost half of the relevant respondents (47.4%) said IFAs were merely being used to formalise existing workplace practices rather than to create new ones, which again makes IFAs of less potential value to employers, even when they are able to be agreed between the parties.

Comments in this regard included:

> *Informal arrangements were in place with certain departments and individuals. The IFA has put structure around the arrangement with a clearer understanding for both parties of the requirement to cease the arrangement.*
>
> *[IFAs] were limited to peripheral matters only that did not give genuine flexibility or productivity.*

Where IFAs have been entered into, how have they left employees 'better off overall' as required by the legislation, and what processes do you use to ensure that is the case?

Comments as to how IFAs left employees better off overall where they were used included:

> *Better roster arrangements for the employee; more time off; compressing the ordinary hours into a shorter on-duty period.*
>
> *The location might be closer to home or entitle them to additional payments.*
>
> *We work backwards against all benefits under current arrangements to seek 'total remuneration' to ensure the current/suggested arrangement is more beneficial than the base. Also, employees are always given a choice to agree to new arrangements or leave them as they are.*
>
> *We only have three – which just made the arrangements as they were beforehand formalised.*
>
> *Workers retain all their other entitlements including public holidays under this IFA. Improved work/life balance – due to the remoteness of the site these employees now have a regular business day as an RDO to complete personal business and attend appointments.*

In your experience, what is the value of IFAs in achieving genuine workplace flexibility?

	% of respondents
IFAs are of significant value	6.5
IFAs are of some value	32.3
IFAs are of very little value	29.0
IFAs are of no value	32.3

At the end of the day, the core issue is whether IFAs are of enough value to employers in creating genuine workplace flexibility.

The results in the table above show this is not generally the case for resource industry employers. In only 6.5% of instances did respondents indicate IFAs were of 'significant value'. In 29.0% of cases, IFAs were seen to be of 'very little value' and in 32.3% of cases they were seen as being of 'no value'.

Please describe the effect of IFAs on your business to date

Comments in this regard paint a fairly negative picture of the usefulness of IFAs for resource industry employers:

> *IFAs have the potential for significant value but union attempts to limit the scope of matters has deprived the employer of the opportunity to maximise the potential.*
>
> *They have had virtually no impact.*
>
> *Generally no effect to date.*
>
> *Completely and utterly useless.*
>
> *IFAs are not binding on the individual as they are able to change them at any time. This does not foster the confidence to plan ahead based on those changes. This limits the value of IFAs and undermines the employer and employees' ability to utilise them as a means to effectively make significant changes in the long term.*
>
> *Because unions can restrict the IFA to nothing in a negotiated clause, the IFA should be a set provision rather than one that a union can make irrelevant.*
>
> *We have not attempted to process these as individual variations are of no value, and trying to get genuine improvements via negotiations with the unions is almost impossible.*
>
> *It is difficult to say as they have not yet been used.*

One positive comment in this regard was:

> *For the purposes for which we have used IFAs, this has been accepted very well by the workforce and has been able to be supported operationally.*

How could the operation of flexibility clauses and IFAs be improved to benefit your organisation?

Comments here confirmed a desire on the part of employers to see IFAs operate for longer fixed terms and to be terminated earlier than that only by mutual agreement. Making the model flexibility clause the minimum mandated level of flexibility also had support:

If there was a genuine ability to mutually vary provisions in EBAs (and satisfy the better off overall test) then it would significantly improve relevance and application. At the moment, it's a fairly notional topic as shown by the low implementation level.

They could be made mandatory through a standard clause rather than allowing the unions to interfere with employee access to genuine flexibility.

The allowable parameters could be extended.

There should be the ability to enter IFAs for set terms, with early termination only if mutually agreed.

IFAs need to have a specific time period that requires individuals and employers to be locked into the agreements. The time period needs to be relevant to the business's long-term strategies as well as short-term strategies. There should be no 'get out' clause.

There should need to be mutual agreement to terminate the arrangement rather than unilateral termination by one of the parties.

I think flexibility clauses need to actually provide some flexibility. They currently only allow minimal clauses within the agreement to be modified and are therefore of little value.

IFAs should be a set provision rather than one that a union can make irrelevant.

Unions should be excluded from having a controlling role.

Flexibility should not be able to be limited by unions.

They should have a broader scope.

There should be a minimum period before an IFA can be 'backed out of' by the employee.

The model clause should be mandated as a minimum and the notice period required to cancel an IFA should be extended.

Flexibility is a necessity in a world of constant change. It is essential that the mechanisms designed to improve productivity achieve the desired results. An absence of genuine flexibility in both flexibility clauses and resulting IFAs will limit the ability of the resource industry to adapt to new circumstances.

The right to request flexible working arrangements

Under the National Employment Standards (NES), an employee who is a parent or has responsibility for the care of a child under school age can ask their employer for a change in their working arrangements for the purposes of assisting them to care for their child.

Employers in turn have the right to refuse such requests on reasonable business grounds.

This survey seeks to track how often such requests are being made and how often they are being entered into under the relevant parts of the Fair Work Act that took effect on 1 January 2010. This chapter of the report excludes requests for an extra 12 months of unpaid parental leave, which are covered in the next chapter.

Has your organisation received any requests for flexible working arrangements from employees to assist in caring for a child since the National Employment Standards took effect on 1 January 2010?

	% of respondents
Yes	38.0
No	62.0

As the table above shows, 38% of respondents to the survey had received requests for flexible working arrangements from employees to assist in caring for a child.

Approximately how many requests for flexible working arrangements have been received since 1 January 2010?

As the table below shows, the most commonly cited number of requests by individual employees ranged from 'one to four' followed by 'five to 10'. Just one respondent said they had received more than 20 requests for flexible working arrangements under the NES since 1 January 2010, with another respondent saying they had received 11 to 15 requests and two respondents saying they had received 16 to 20 requests.

The following table shows the percentage breakdown of responses:

1-4	5-10	11-15	16-20	More than 20
65.7%	22.9%	2.9%	5.7%	2.9%

What types of changes to working arrangements have been requested by your staff in order to assist them in caring for a child? Tick all that apply.

As to the types of arrangements requested, as the table below shows, the most common were: the ability to work part-time; flexible working hours to accommodate childcare arrangements; and the ability to work from home.

	% of respondents
The ability to work part time	65.7
Flexible working hours to accommodate childcare arrangements	65.7
The ability to work from home	62.9
Changes to start and/or finish times	57.1
Reduced hours	48.6
A shorter working week	34.3
The ability to return to a different role following parental leave	20.0
Job sharing arrangements	17.1
Changes in work location	11.4
Rostered days off in exchange for accrued time in lieu	2.9
The ability to work 'split' shifts	2.9
Other	5.7

What sorts of flexible working arrangements have been agreed to? Tick all that apply.

	% of respondents
The ability to work part time	69.7
Flexible working hours to accommodate childcare arrangements	63.6
The ability to work from home	63.6
Reduced hours	54.5
Changes to start and/or finish times	51.5
A shorter working week	39.4
The ability to return to a different role following parental leave	18.2
Job sharing arrangements	18.2
Changes in work location	12.1
The ability to work 'split' shifts	3.0
Rostered days off in exchange for accrued time in lieu	0.0
Other	3.0

As the table above shows, the types of requests granted by employers are proportionate to the number of requests made. Again, the top three types of flexible arrangements granted included: the ability to work part-time; flexible working hours to accommodate childcare arrangements; and the ability to work from home.

What reasons have your staff given for requesting flexible working arrangements?

Limited availability and/or affordability of childcare was a factor in a substantial number of requests for flexible working arrangements as was the care of newborns and young children, as would be expected. Comments about the reasons given for employee requests were:

Work life balance, parenting commitments.

Child support and time to bond.

Care of children whilst other parent away.

Family care and flexibility.

Childcare requirements for a newborn.

The need to change times due to childcare arrangements.

Work-life balance to care for a new baby.

Sole provider to a disabled child under 10 years of age.

Family commitments (childcare); medical recovery (work from home); partner unable to assist with child pick-up.

Dropping kids off at school and picking them up; a child being sick at home; a more quiet environment to work in; to more efficiently complete tasks; work/life balance; no-one to look after the child whilst they are on school holidays.

Childcare and poor health.

To pick up a child from daycare.

Caring for a family member; pregnancy; health issues.

Limited availability of childcare.

Family commitments.

The need to work around childcare arrangements.

Approximately what percentage of requests for flexible working arrangements have been granted since 1 January 2010?

Of the 29 respondents that answered the above question, 23 said they had granted 100% of requests for flexible working arrangements received since 1 January 2010.

Five of the remaining six respondents said they had granted substantial proportions of requests, as shown below:

- 95%
- 87.5%
- 80%
- 60% and
- 50%.

Only one employer had acceded to fewer than half of the requests made, granting 35% of requests.

Has your organisation refused any requests for flexible working arrangements since 1 January 2010?

	% of respondents
Yes	21.2
No	78.8

Only 21.2% of respondents that had received requests for flexible working arrangements had refused any on reasonable business grounds.

For any requests that have been refused, what have been the reasons given for the refusal, ie the 'reasonable business grounds'?

Of those respondents that had exercised their right to refuse requests on reasonable business grounds, reasons cited by employers included:

> *Unable to accommodate part-time positions.*
>
> *It did not meet the requirements for the role.*
>
> *The extra increased business expenses.*
>
> *The proposed new roster / hours of work were not able to be implemented / not practicable.*
>
> *The request to work from home for the service provider was rejected due to the fact that the person needed to provide face-to-face interaction and training of staff on the business premises.*
>
> *Due to the requirements of the role, the requirements of the business, and the potential impact and disruption.*
>
> *Alternative work was not available.*

Has the refusal of any requests led to employees taking any further action, for example, bringing or threatening to bring a discrimination or adverse action claim?

	% of respondents
Yes	8.7
No	91.3

In only 8.7% of the small number of cases where employers had refused requests had any further action been taken by employees. As one respondent noted:

> *The employee complained to the union in writing but the issue was resolved through consultation with the union and employee.*

What have been the benefits/advantages to your business of any flexible arrangements granted?

Numerous benefits/advantages were cited by respondents in relation to granting requests for flexible working arrangements. They generally centred around retaining skilled employees in the business and keeping their workforces happy and engaged. Specific comments included:

Retention of skilled employees who may have otherwise chosen to leave work altogether.

Maintaining a skilled workforce.

A stronger work commitment and a happier work environment.

No litigation and an increase in employee retention and employees returning to work.

Retention of a valued worker.

Retention of employees and a potential positive image for the company.

Happier staff.

Retaining employees; employee satisfaction.

Keeping long-term employees.

Increased employee satisfaction and motivation; increased female participation in the workforce; maintaining knowledge in-house.

Employee engagement; employee retention.

Engaged staff; retention of talent.

Staff retention; positive morale.

Maintaining high quality staff.

Retaining our female workforce.

Knowledge kept; a happy and dedicated employee.

Retention.

Staff retention; uplifting staff morale.

Retained corporate knowledge; morale.

Retention of key skills and company knowledge.

A satisfied workforce.

The ability to retain skills, knowledge and experience within the company.

Increased productivity; happy employees and a happier working environment. Employees tend to be more efficient when they are working in flexible working arrangements. For ethical employees it's the trust that is embedded within the working arrangement that causes them to be more efficient.

On the negative side, some respondents made the following observations about benefits / advantages of granting requests for flexible working arrangements:

No perceivable benefits to the company.

None.

Not many advantages.

What have been the costs/disadvantages to your business of any flexible working arrangements granted?

As to the disadvantages and costs to business of granting requests for flexible working arrangements, respondents' comments tended to focus on perceived reductions in efficiency and productivity and a perceived inability to contact the person as required. In some cases, these disadvantages were seen as minimal or short-term costs. Comments described the costs and disadvantages in the following way:

Accommodating different working hours but overall cost/inconvenience minimal.

Not significant enough to worry about. It took time to review and deal with but was a good learning experience and opened up communication.

Reduced efficiency; increased labour costs.

The challenge of productivity and coordination of resources.

Salaries have not been affected by changes in working hours.

In some cases, workloads increased where additional resources were not approved to cover reduced hours, etc; time involved in administration.

Not available to take client calls; not available for client meetings; reduced work input; not available to supervise staff.

There was some frustration from senior management when they couldn't contact persons due to them working from home or leaving early.

Additional oncosts for jobshare arrangements, management of extra staff in jobshare arrangements, reshuffling of workloads across team members.

Having to hire additional staff; training costs.

The risks associated with working from home.

Minimal.

The granting of the two years' leave without pay has required hiring a replacement pilot.

Restructuring of departments and the role in order to accommodate the arrangement. A decrease in productivity / efficiency. Additional training costs.

It may lead to loss of productivity if the employees take working arrangement approvals for granted.

Lower productivity.

Having to hire additional staff to cover the workload.

Reduced productivity and reduced accessibility of the staff member concerned.

More time off to accommodate arrangements, particularly in the beginning until everything settled down, but all good now.

Increased headcount.

Losing an employee onsite and replacing the site position. Overheads, training costs increased. Increase of workload to support the arrangements.

Unable to solve issues when the person was not at work.

Difficulty in covering the loss of hours. Harder to monitor output for hours worked. A delay in action when having to wait for the incumbent to return to work to handle any pressing matters. Other team members receiving requests to handle urgent matters as the incumbent was still out of the office. The need to restructure / reassign tasks elsewhere to ensure the required work still gets done.

On the positive side, comments about the costs / disadvantages included:

Minimal.

None.

Little.

Nil.

How do the costs and benefits to your business of granting requests for flexible working arrangements stack up?

	% of respondents
The benefits of granting flexible working arrangements far outweigh the costs	17.1
The benefits of granting flexible working arrangements somewhat outweigh the costs	25.7
The costs and benefits of granting flexible working arrangements balance each other out	31.4
The costs of granting flexible working arrangements somewhat outweigh the benefits	22.9
The costs of granting flexible working arrangements far outweigh the benefits	2.9

A total of 25.8% of relevant respondents said the costs of granting flexible working arrangements outweighed the benefits for their business, while the remaining 74.2% indicated either the benefits outweighed the costs or the overall impact was neutral.

Comments from respondents in relation to how the costs and advantages balanced out included:

Recruitment is expensive and as a major engineering business we are seeking to increase the percentage of female participation in the workplace and this is one of the steps.

Minimal costs with minimal benefits.

Allowing flexibility means the staff are more satisfied and are more willing to work beyond their normal hours to ensure their work is done.

I think if you asked the managers of employees requesting flexible work arrangements this question they would respond by saying the costs outweigh the benefits because it makes life harder for them. As a person responsible for HR/IR within our organisation and a new mum myself, I think they pretty much balance out.

The requests for flexible working hours usually create a need to source more staff or change other existing employees' roles.

It's always good to keep loyal and experienced staff, however, it's hard and expensive to hire and train new staff.

The pilot in question has not worked for the past two years due to family commitments and requesting a further two years of leave without pay has caused dissent amongst his

colleagues and an accusation of favouritism. We have had to recruit another pilot and train them to the level of the pilot being replaced at a cost of over $100,000.

From a HR point of view, happier employees equals increased efficiency and increased productivity equals overall increase in reaching the organisation's goals.

This depends on the level of the employee making the request. We have one senior level technical employee who has gone part-time. This hurts his ability to fully contribute. Otherwise, the benefits slightly outweigh the risks.

Reduced productivity and reduced accessibility of the staff member concerned.

The employee gave up their full-time role and took up a part-time role in another department but at the same level of responsibility and pay (but part-time equivalent). This allowed us to fill the full-time role as needed and appoint a part-time role as required from within the organisation.

The movement of employees is increasing the workload for recruitment and training as we need to continuously replace site personnel.

If an employee is valued by the business then it is a lot easier to forecast the business needs and see if there is a match.

What changes would you like to see made to the provisions of the National Employment Standards relating to employee requests for flexible working arrangements in order to benefit your business?

Most respondents seemed satisfied with the relevant provisions of the NES in their current form, particularly as employers have the right to refuse requests on reasonable business grounds. Employers would not like to lose that right. Comments about which aspects of the NES they would like to see changed include:

No specific changes but we would not want to see the obligations on employers in relation to responding to / accepting requests increased.

More security around working from home arrangements and some onus on the employee and not completely on the employer.

We have been able to utilise the 'reasonable business' argument but the parameters need to be more detailed.

Flexibility for a period of time if required, not permanent or a right to be permanent.

The right to request extra unpaid parental leave

Under the National Employment Standards (NES), an employee is entitled to take 12 months of unpaid parental leave following the birth or adoption of a child as long as certain pre-conditions are met. Eligible employees also have the right to request up to an extra 12 months of unpaid parental leave, bringing the total period of unpaid leave to 24 months.

As with other requests for flexible working arrangements in order to care for a child, employers have the right to refuse requests on reasonable business grounds.

Has your organisation received any requests for up to an extra 12 months of unpaid parental leave following an initial 12-month period since the National Employment Standards took effect on 1 January 2010?

	% of respondents
Yes	14.6
No	85.4

As the table above shows, 14.6% of respondents to the survey had received requests for an extra period of unpaid parental leave, compared with 38% of respondents that had received requests for other flexible working arrangements to care for a child.

Approximately how many requests for extra unpaid parental leave have been received since 1 January 2010?

Of the 13 respondents that answered this question, 11 of them had received between one and four requests for extra unpaid leave while two had received between five and 10 requests.

What types of extensions to unpaid parental leave beyond the initial 12-month period have been requested? Tick all that apply.

	% of respondents
Three-month extensions	42.9
Six-month extensions	21.4
Nine-month extensions	21.4
Twelve-month extensions	57.1

Of those requests for extra unpaid parental leave, the table above details the extra time period requested, most commonly three months.

What reasons have your staff given for requesting the extra unpaid parental leave?

Reasons cited by respondents for employees making the requests, not surprisingly, included:

> *Parenting commitments.*
>
> *Difficulty obtaining reliable childcare; health complications of the child; domestic situations.*
>
> *Extra time with baby whilst retaining the connection with the company. The position has been mutually agreed.*
>
> *Care of children / not yet ready to return to the workforce.*
>
> *To remain at home with their baby.*
>
> *Simply requiring more time at home to care for a child with health issues.*
>
> *To care for the first child; costs of childcare too high.*
>
> *To allow more time at home.*
>
> *Child rearing.*
>
> *Wanting to spend more time with the child.*
>
> *Wanting to spend time with their child; not yet ready to come back to work.*
>
> *Issues with childcare arrangements.*
>
> *To be with the child.*

Approximately what percentage of requests for extra unpaid parental leave have been granted since 1 January 2010?

Of the 13 respondents to this question, 11 had granted 100% of requests for extra unpaid parental leave.

Has your organisation refused any requests for extensions of unpaid parental leave since 1 January 2010?

	% of respondents
Yes	7.1
No	92.9

Only 7.1% of relevant respondents had refused any requests for extra unpaid parental leave. Reasonable business grounds for refusing those requests included:

> *Workload demands meant we needed somebody in that role.*

Has the refusal of any requests led to employees taking any further action, for example, bringing or threatening to bring a discrimination or adverse action claim?

	% of respondents
Yes	0.0
No	100.0

No refusal of requests for extra unpaid parental leave had led to any further action being taken by employees.

What have been the benefits/advantages to your business of any extensions of unpaid parental leave granted?

Comments in this regard included:

> *Employee retention and goodwill.*
>
> *We keep contact with a valued (and well-trained) employee.*
>
> *Employee retention.*
>
> *Keeping loyal and qualified staff.*
>
> *Retained employee.*
>
> *Retention of talent.*
>
> *The opportunity to provide extended development opportunities to current staff.*
>
> *Retention.*
>
> *Flexibility.*

What have been the costs/disadvantages to your business of any extensions of unpaid parental leave granted?

Comments in this regard included:

> *Uncertainty in resource planning; impact to others in the work team; increased labour costs.*
>
> *Increased costs where temporary labour was required to fill the role.*
>
> *The absence due to the birth coincided with our move to temporary care and maintenance, therefore there was minimal impact.*
>
> *There has been no significant cost/inconvenience.*
>
> *Uncertainty for the role and for the person filling the role.*
>
> *Having to hire contractors.*
>
> *Additional training cost; employee costs.*
>
> *The employee left. I think that by having extended parental leave they are more likely to not return to the workforce.*
>
> *Increased recruitment costs.*
>
> *No costs.*

How do the costs and benefits to your business of granting such requests stack up?

	% of respondents
The benefits of granting requests for extra unpaid parental leave far outweigh the costs	7.1
The benefits of granting requests for extra unpaid parental leave somewhat outweigh the costs	21.4
The costs and benefits of granting requests for extra unpaid parental leave balance each other out	50.0
The costs of granting requests for extra unpaid parental leave somewhat outweigh the benefits	21.4
The costs of granting requests for extra unpaid parental leave far outweigh the benefits	0.0

As the table above shows, 83.3% of respondents said employees who were granted an extra period of unpaid parental leave generally returned to their employ afterwards.

Comments in this regard included:

> *We would have granted the extra leave under normal circumstances for this individual.*
>
> *Minimal cost versus minimal benefits.*
>
> *I don't think there are any benefits and the managers find it frustrating as they have to maintain the role for the person.*
>
> *The costs to look after those roles are expensive and time-consuming with the extra training involved.*
>
> *I think that employees who take extended parental leave are more likely to resign but it also forces training and recruitment leading to workforce development.*

Do employees who request and are granted additional unpaid parental leave generally return to your employ afterwards?

	% of respondents
Yes	83.3
No	16.7

Comments in this regard included:

> *This has not yet been tested. However, contact between the employer and the employee is continuing and if she returns to the workforce I would expect her to rejoin our team.*
>
> *This is unknown – the two we have provided it to are still on unpaid leave.*
>
> *Not all, but most do.*

The next survey in the project

The next survey in the AMMA Workplace Relations Research Project will be completed by AMMA members in October 2012 and reported by Dr Steven Kates from RMIT University in late 2012 / early 2013.

Any queries in relation to this project can be directed in the first instance to AMMA senior workplace policy adviser Lisa Matthews on (02) 9211 3566 or at lisa.matthews@amma.org.au.