.
School of Economics, Finance and Marketing / College of Business

The AMMA Workplace Relations Research Project – A Survey Based Analysis

Report 6

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Executive summary

This is the sixth and final of the surveys conducted as part of the *AMMA Workplace Relations Research Project*, a collaboration between AMMA and RMIT University for the three years from 2010 to 2012. It is hoped that Australia's next Federal Government, the Opposition and other policy makers will use this body of research to assess how the current workplace relations (WR) legislation is performing its role of encouraging productivity growth in an environment that is fair for both business and employees.

The research project's comprehensive surveys of AMMA's membership have been conducted every six months since April 2010. The results reported here are for the six-month survey period ending on 30 September 2012, with survey responses collected from AMMA members up to March 2013.

There are few areas more important to the future prosperity of Australia than workplace relations. 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 business, there is also a crucial need to raise workplace productivity if enhanced living standards and job opportunities are to be achieved. Making sure the WR system encourages a sustained growth in productivity must be a central aim of any government.

What underscores the problems faced by the resource industry revealed in this latest survey is that it is becoming increasingly difficult for new projects to get under way due to obstruction by unions and our WR system. Australia is becoming an increasingly difficult place in which to invest and do business.

Areas covered by the survey

The latest survey results provide updated data for the four main areas that have been covered in each survey since the project's commencement:

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

The latest scores on the first three measures are well below the benchmark set during the first survey in April 2010, with those areas at the time still being buoyed by the previous legislation - the Workplace Relations Act. The significant falls thereafter have been maintained in the latest survey results, pointing to a far less productive WR environment under the Fair Work Act in the view of many resource industry employers than that which existed before.

At a time when greater flexibility and higher productivity are needed, we find less of both than the resource industry requires. It is increasingly evident that employers are being frustrated in their efforts to make positive changes at the workplace level that would increase productivity, and that

damaging union activity is becoming more difficult to deal with and/or avoid through good employment practices.

It also needs to be borne in mind that two major tranches of amendments to the Fair Work Act have now been enacted, with the most significant effects yet to be felt from changes that will take effect on 1 January 2014, including those which will further increase union access to workplaces.

The Fair Work Act was seen in a relatively positive light by the resource industry when it was first introduced in July 2009 despite key areas of concern flagged by AMMA and other business groups. There is now an increasing degree of disillusionment as greater familiarity with the Act has led to the realisation that many additional problems have been created for management.

Overall satisfaction with the workplace relations environment

Respondents to the project's surveys 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 reveal that the overall WR environment experienced by resource industry businesses continues to be rated at a significantly lower level than when the survey was first conducted in April 2010. Although the first survey results were obtained several months after the Fair Work Act had been introduced (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 WR system would have been an influencing factor.

Labour productivity

The need to raise labour productivity must be at the core of any WR 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 effective economic 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, particularly in the resource industry.

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

The latest survey shows that the index score for employers' perceptions of labour productivity fell in the latest survey.

It has been an issue of some importance that Australia's national productivity has become too low 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 WR framework remains an impediment to improving the situation.

Key findings from the survey

Significant findings from the latest survey include that:

- escalating labour costs are seen as the overwhelming factor harming the Australian resource industry's international competitiveness;
- almost half of respondents had wound back projects in the six months preceding the survey, which will have major long-term implications for the industry and the Australian economy;
- there continue to be major difficulties in finalising agreements at greenfield (new project) sites, causing major scheduling problems in a significant number of cases;
- more than half of all respondents (53.8%) indicated that unions had refused to make a greenfield agreement with them when such an agreement was sought;
- the vast majority of respondents (87.5%) had not negotiated any productivity offsets as part of their agreements under the Fair Work Act;
- unions are holding up bargaining by pursuing opportunistic and self-serving terms in enterprise agreements;
- the most commonly reported union-specific clauses being pursued during enterprise negotiations are those requiring contractors to pay site rates, as well as shop stewards' rights clauses, closely followed by trade union training leave clauses and clauses requiring employers to encourage participation in union activities;
- three-quarters of respondents (75.6%) believe their productivity levels have reduced because of the current WR legislation;
- agreement renewal under the Fair Work Act is a major area of concern for more than three-quarters (77.3%) of respondents;
- 20% of respondents said there had been a significant deterioration in the culture of the building and construction industry since the latest WR changes in that sector took effect in mid-2012, including the abolition of the proven watchdog the Australian Building & Construction Commission (ABCC);
- 90% of respondents had received an adverse action claim from former employees, while 40% had received claims from current employees; and
- there remains an ongoing need to recruit skilled labour from overseas, with 68% of respondents having previously had to recruit from overseas, despite it being the high-cost, high-risk option, because of the lack of skilled labour available within Australia.

Resource industry competitiveness and profitability

Respondents were asked for the first time in this survey what they would say to the Prime Minister about how to help increase the international competitiveness of the resource industry. The responses highlight key actions the resource industry would like the current Federal Government to take to increase the industry's international competitiveness include to:

Control labour costs

> *"Australia is now a high-cost and high IR risk environment. Other countries will now overtake us due to our restrictive and high-cost IR systems. We should benchmark Australia against other countries in terms of cost of productivity and industrial risk/threat to investors."*

> *"As a nation we have lost our credibility around wages and certainty of productivity. We cannot provide the market with either …"*

> *"The issues are around the cost of our labour as compared to overseas, the increase in union activity which is impacting on business i.e. unions now have greater power to disrupt business. Changes to the Fair Work Act [are needed] to facilitate fairer greenfields negotiations."*

> *"We need to tighten up the wastage. [There are] far too many over the top allowances being paid."*

Rein in union power

Another very strong theme that came through in comments respondents would make to the PM was concerns regarding abuses and excesses of union power:

> *"The resources boom won't last forever; unions and the government must soften their stance and think beyond limited self interest. Australian industry and companies recognise what's required on a global stage; the government and the unions (two entities which feel more one in the same) do not. A more strategic, long-term approach is required."*

> *"Pull back on the union power, abolish the carbon tax; improve the government processes for mining lease approvals."*

> *"Reduce the power of unions to dictate terms to employers. Focus on genuine pay for productivity reforms."*

> *"Control the power of the unions to ensure honest co-operation."*

> *"Unions traditionally are not commercially competitive organisations - they are too involved in mainstream business decisions now. Australia's cost profile is too high and becoming increasingly uncompetitive. Reintroduce some flexibility and options for agreement making."*

"The power of unions to pursue union agendas in the workplace needs to be reviewed and restricted. Pursuit of union agendas at the expense of the desires of local employees and employee/employer flexibilities can have negative effects on costs, work/life balance and productivity."

"You need to make Australia more appealing to invest in by managing unions, approvals and grants. Employee relations is an issue that each employer can deal with, however, not with the demands of unions. There is no negotiation or flexibility which will mean no investment."

Reduce over-regulation in the WR area

Another theme that strongly came through in the comments to the PM was to reduce over-regulation in the workplace relations area:

"Allow free negotiation and agreement between employer and employee where the wages are well above normal, without any right for union involvement or collective bargaining which is used to hold resources projects to ransom. e.g. if a wages and benefits package is assessed at greater than twice the award rate for the work, there should be no ability to collectively bargain. Employers will need to offer competitive packages to obtain employees, but unions cannot hold projects to ransom. This will eliminate many of the sleight-of-hand ways that union agreements have inflated costs - for instance putting in place rosters that make it impossible to work an average of 38 ordinary hours per week, resulting in employees working only 30 or so ordinary hours with the balance turned into overtime."

"Reduce/remove the costly, time-consuming and unproductive IR compliance framework."

"Stop trying to control the industry; over-regulation is unhealthy."

"Fix industrial relations - the mining industry should not be put into the same IR framework as the fast food industry - large mining employers who have demonstrated that they provide excellent conditions of employment and do not breach awards and agreements should be afforded special status."

"Focus on productivity ... and not just fancy economic modelling. There are ways companies can be productive and profitable and employees enjoy challenging and fulfilling careers. These drivers are not at cross purposes. There is a 'sweet spot'. This will drive innovation, profitability and more investment. The Fair Work framework is designed to be adversarial. It does not suit the finding of this 'sweet spot'. Although [tribunal] members perform their function with utmost integrity and independence, few have real 'site' experience to understand how to find this 'sweet spot'. Any debate south of the Tropic of Capricorn lacks understanding of the sector. Members with site experience would help the tribunal understand how to unlock this 'personal productivity'."

"Streamline project approval processes and re-structure IR laws to allow market drivers to govern employee remuneration structures."

Amend the WR legislation to introduce more workable agreements

Another key theme in the comments to the PM was to amend the WR legislation to introduce more workable agreements:

"Allow alternatives in greenfields agreement making."

"[We] need more flexibility with work arrangements."

"Review the IR laws to seriously assess proposed changes such as previously put forward by forums such as AMMA."

"Give us back individual agreements."

Ensure continued access to skilled labour domestically and from overseas

Another theme that emerged was for the PM to ensure the resource industry has continuing access to skilled labour both from within Australia and from overseas:

"Stop bowing to union pressure to protect privileged positions in certain industries (e.g. construction) by being more accommodating to companies seeking to employ guest workers. If this doesn't happen, industry will continue to be hamstrung until the skilled labour runs out. Then the Department of Immigration & Citizenship will be scrambling at the last minute to approve labour agreements, regional migration agreements and enterprise migration agreements to keep projects running, leaving companies little opportunity to make the most of the opportunities brought by major projects [that] serve the national interest."

"Retain and develop local workforce labour, giving incentives for local labour to study."

"Don't listen to union hysteria about the use of enterprise migration agreements."

"Better infrastructure [is needed], especially for the coal industry and iron ore. Make the process for skilled migrants entering the country quicker and smoother."

"Look at ways to improve labour productivity and in particular look at ways to improve family mobility to resources regions. We have had significant redundancies in Sydney in the past year, but few workers have shown any interest in opportunities within the company in resources regions generally due to the ties of their spouse and children in Sydney and the lack of family facilities in resources regions."

Review the level of industry-specific taxes

A lesser theme coming through in the comments to the PM was to review the level of industry-specific taxes:

> *"Lift [remove] the mining taxes and carbon taxes, our people are suffering out there, companies are closing or scaling down because of this."*

> *"Reduce taxes in order to lower labour costs."*

> *"The Living Away From Home Allowance [needs] to be addressed appropriately. The fact is, highly skilled people are overseas. The taxing in the resource sector (in short) has caused the downsizing of employment in Australia. Therefore, keeping skilled workers in Australia will not occur and they have to go overseas for work. Re-look at the taxing."*

What do you see as the threats, if any, to the international competitiveness of the Australian resource industry at the present time?

The responses to the above question almost unanimously identified escalating labour costs as a threat to our resource industry's international competitiveness, particularly given that productivity improvements often do not go hand-in-hand with increased labour costs. The particular threats identified by respondents are detailed below:

> *"Excessive capital costs will stop new projects."*

> *"Australian costs are too expensive and [there is a] shortage of flexible and skilled labour."*

> *"Our low productivity and high labour costs need to be looked at."*

> *"The cost of labour, in proportion to what is achieved in paid time, continues to be a key moderating factor in the viability of key development projects."*

> *"[There is an] inability to provide certainty around wages. [There are] major [wage] increases without productivity gains."*

> *"High labour costs and strike action."*

> *"Our high wages and endless paperwork which creates delays."*

> *"[There is a] low level of productivity in terms of output per plant hour."*

> *"Unsustainable wage rates, uncontrollable industrial action."*

> *"Wage escalation, a combative labour environment and declining productivity."*

"The highly visible nature of protracted disputes is a concern and must be addressed. Australia has an unsustainable level of wages and conditions."

"[The] current upward trend in labour costs [is] pushing production costs higher."

"If projects are not delivered on time or on budget, there is no doubt major investors will look to alternative sources of energy and resources. Australia's reputation as a take-take economy will outweigh its relatively low sovereign risk when these decisions are made."

"High costs and dropping productivity; reluctance of government to facilitate overseas workers; commercial interference by unions in business."

"The high Australian dollar and the freight costs experienced by exporters, particularly within Australia before products leave for overseas."

"High costs of operating in Australia, reducing competitiveness to international competitors against an ageing infrastructure and resource fields."

"Restrictive work practices."

"Wage levels and union greed."

"Inflexibility of working arrangements."

"Changes to tax rules, high cost of doing business, and slow / expensive approval processes."

"Union control of industrial agreement making … which results in more costly rosters, allowances and rates of pay. High-cost environments which provide unions with significant access and control over projects. Increasing risks associated with high-cost labour availability and a reluctance to allow international labour as required."

In addition to the threats to our competitiveness from high labour costs, the following international and domestic factors were identified:

"Lack of foreseeable strategic planning by Australia and other countries bending over to encourage project development."

"Economic factors such as the high Australian dollar are having negative impacts on the mining industry. Uncertainty about the future IR landscape is causing concerns."

"The slowdown in the Chinese economy and not having stronger ties to India."

"The multinationals will reassess their decisions around allocating capital in Australia versus opportunities in other countries. The tax regime is not as competitive.'

In the past six months, has your organisation decided to wind back any of its projects?

	% of respondents
Yes	48.7
No	51.3

This is an extraordinary result. Almost half of respondent firms – 48.7% – had wound projects back in the six months preceding the survey. This major winding back of projects in the resource industry will have major long-term implications for the industry and the Australian economy. The following comments were received about the reasons behind decisions by AMMA members to wind back projects:

Client-driven decisions and economic factors

"Global commodities prices - not cost-effective to construct projects."

"[It has been] client driven - production levels [have] decreased."

"We are extending our underground production and opening a separate open cut section, so we have cut back our tonnage and let go a number of casuals. But in 6 to 9 months we will ramp back up again."

"Major mining companies cutting back on their exploration drilling budgets."

"Financing placed on 'go slow'."

"Uncertainty amongst our client base."

"Project slowdown due to funding."

Escalating costs

"In non-resource sectors we have reduced operations in some regions as our union EBA pay rates became non-competitive in some markets. In the resources sector, we reduced plans due to ongoing difficulty in managing projects from an industrial and operational perspective."

"Cost, cost, cost."

"Cost overruns on current projects."

Workplace relations issues

"Difficulty in managing IR issues of blue and white-collar workers between resources and commercial areas of the business; cultural differences between the two areas."

Slow government approvals processes

"Restrictive government processes for mining lease approvals. Low uranium prices, high Australian dollar exchange rates."

The current workplace relations environment

The question below has been asked in all six surveys in the *AMMA Workplace Relations Research Project* and is designed to record changes in the overall sentiment in relation to WR conditions within the resource industry.

In each survey, respondents were 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 survey period.

If the index score is rising, overall operating 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**
Oct 2012	0.0	6.5	10.9	19.6	30.4	28.3	4.3	**62.7**

The table above shows that at the time the first survey was conducted in April 2010, 92.6% 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-and-a-half years after the first survey was conducted, only 59.6% of respondents rated their WR environment within those top three categories. Based on the survey evidence, the WR environment for many resource industry employers has become significantly more difficult over the past three 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. In the first full six-month survey period after the Fair Work Act had been introduced in its entirety (October 2010), there was an immediate fall in this index from 75.9 to 65.1. This deterioration has been more or less maintained since, with the index score now at 62.7 out of 100.

Respondents to this survey were asked to describe their current workplace relations environment in words.

As one might expect from the data, there were mixed comments, with some reporting a good WR environment while others reported a very difficult one. The below were typical of the comments made by those who found their current WR environment difficult:

"Unions continue to make excessive claims in agreement negotiations and are able to cause significant disruption both legal and illegal to achieve agreement or other desired outcomes, with little consequence to themselves."

"[The WR environment is] in danger of deterioration due to the ease in which employees/ex-employees can access unfair dismissal, adverse action and workers' compensation claims."

"[It is] at the mercy sometimes of unions, where they choose to push an issue."

"[It is] currently a bit subdued due to the recent quietening down in resources. Generally though [it is] characterised by little appetite for productivity improvements, but an expectation of 5% year-over-year pay increases."

"On the project it could be better. We have had over 110 formal right of entry requests inside a year and we are barely onsite. Also, we are a growing company and need to get the culture right."

"[It is] in disarray due to the downturn in contractual arrangements due to a repressed market and the need to downsize employee numbers."

"The current workplace environment is very restrictive and limits companies' abilities to utilise best practice approaches. The union movement via the federal government has ensured that the vast majority of industrial agreements are controlled by the union movement."

"[It is] stable but not in a mature give and take relationship."

"[There is a] lack of employee engagement with business goals."

"[It is] deteriorating and more difficult to build a direct relationship with employees."

Responses from AMMA member companies who found their WR environment less difficult to deal with were largely from those who had minimal union presence at their worksites:

"We have next to no union involvement onsite; we are drafting new policies and training staff on the best practices. We now have a full-time HR presence on site."

"Our culture is one of management/employee cooperation and engagement. We tend to have positive interaction and a culture of 'best answer wins' - leading to high levels of employee involvement."

"[A] direct relationship with employees is well established. [One particular union] has sought to get a presence on one site via 150 right of entry applications, but to date has not had any success in terms of membership."

"[Our] employees are all good team players, they try hard to please and work hard. Everyone is comfortable to speak up if there are any issues, safety or otherwise."

"[It is a] great place to work, all employees [are] treated fairly, [and there is] training and development in place.

"Twenty per cent of the workforce is covered by a workplace agreement, with the remainder under common law contracts. Union relationships are stable and the workforce is not a militant workforce. Amongst our engineering, procurement and construction contractors, they have collective agreements in place and are [in] a more active blue-collar construction environment where there are more issues but nothing of major significance or risk to our organisation."

"We have a good team of employees on board. Our policies and processes are in line with current employment law and we have no lost time from industrial action."

"[It is] generally a good environment with some cracks appearing from time to time and some areas could be improved."

"[It is] very positive - no history of action and none anticipated."

"[It is] effective without many issues. [We have] predominantly a non-union workforce and there seems to be a level of frustration when the union tries to impose their agenda."

"[We are] maintaining a constructive, positive workplace relationship with employees and contract staff."

"[It is] stable and non-organised."

Has there been a noticeable change in your WR environment over the past six months?

	% of respondents
Yes, it is much improved	6.7
Yes, it is somewhat improved	8.9
No, there has been no change	53.3
Yes, it is somewhat deteriorated	28.9
Yes, it is much deteriorated	2.2

The results in the table above show a deterioration in the WR environment at 31.1% of respondent workplaces. The initial hopes that as parties became more familiar with the Fair Work Act there would be an overall improvement in the WR environment have not been borne out.

The following comments were made to support the answers to this question. Most of the problems cited related to dealings with unions or the difference it made to workplaces where unions were absent. The comments highlighted the noticeable changes being encountered in the preceding six months by some resource industry businesses:

"Unions are demanding unsustainable EBA outcomes with no recognition of [the] financial pressures on employers in the construction sector. Employees are listening to unions and being more militant in the belief as advised by unions that their employers can afford to pay more when that is not the case."

"Recent decisions re enterprise agreements have made it more difficult to put in place an employee-voted agreement for a prospective workforce when manning numbers are low. You cannot vote up an agreement when a job is in the mobilisation stage as the Fair Work Act requirements for each employee to have the notice of representational rights for 21 days make this impossible. You are forced to vote up an agreement at peak workforce = logistical nightmare."

"While there is more focus on the slowdown in the industry resulting in redundancies, it has not resulted in a change to the WR environment."

"General morale and leadership has been lacking."

"More unfair dismissal claims have been submitted."

"[There has been] very little change – [one union] was involved in EA negotiations but did not play a lead role at all. The 150 right of entry applications have been very time consuming."

"From a construction perspective, the unions are becoming more militant in relation to claims."

"[There have been] greenfields agreement delays."

"Yes, the agreements we have had with unions and other stakeholders have deteriorated and also the alignment with stakeholders is getting tested."

There were, however, some respondents who noted improvements in their WR environment in the six months leading up to the survey, mainly arising from successful direct engagement strategies and investment in extra training for supervisors and managers:

"Employees [are] happy to negotiate directly with [the] employer."

"There is a new senior HR advisor onsite who has rolled out training to managers on how to deal with poor performance, discipline and termination. There is a better process followed now for investigations and staff are no longer allowed to do the wrong thing with no ramifications. Staff understand that bullying, harassment and any other similar process is unacceptable. Managers feel more empowered to do their job confidently knowing that if they follow a process they will be fine."

"[There is a] more professional approach to employee relations and performance management making the dismissal process fair."

What are your biggest workplace relations concerns at present?

Respondents were asked to list their biggest workplace relations concerns at that particular point in time. Key themes arising in this area included:

Concerns with increased union control and interference at their worksites

"[The] union is in control and has caused various issues on our rig operations. The union does not understand the situation and [is] not willing to listen as they think their members are always right. Unions should have their own handbook for their members on what can be addressed and the do's and don'ts."

"Union involvement in management decisions; spending way too much time in Fair Work Australia on unimportant issues or challenging managerial prerogative; too legalistic."

"[Union] interference via emails being sent to our employees with incorrect information, which we've had happen during the last 12 months. Also [the union] rep ringing us wasting our time trying to influence us and turn us against our current clients."

Concerns about increased union access to workplaces

Several respondents rated union access to worksites as one of their biggest WR concerns during the six-month survey period:

"Managing the role of unions in our workplace - while there is very little involvement, the right of entries are required to be managed tightly."

"Consistent visits by [one particular union] to projects on a weekly basis. Also, the current employee collective agreement up for renewal in May 2013."

"Ease of [union] access to site and a willingness to use an alleged safety issue as an industrial tool."

"Right of entry notifications are given to the occupier of premises for union visits. Given our employees work on other companies' sites to undertake construction activity, these notices are given to parties other than the employer. Some principals manage this well and ensure we are notified and involved in visit management, however, others aren't, leading to detrimental impacts on our business. In my view, such notices should be required to be lodged with the employer, or both occupier and employer."

Concerns about the threat of protected industrial action

Several respondents ranked the threat of protected industrial action by employees as a big concern. In particular, expectations of escalating wage costs backed by damaging industrial action were highlighted:

"Increased industrial risk unless a union-friendly agreement is reached. Time and costs associated with reaching agreements. Increased ability of unions to seek involvement in an organisation's core business. Fair Work legislation reinforcing union involvement and collective bargaining. Inability to strike non-union agreements and to utilise individual agreements."

"EBA negotiations begin for the major enterprise agreement in 2013. Of most concern are the expectations of the workforce in relation to wage outcomes versus the company's capacity and willingness to pay. Amongst the engineering, procurement and construction contractors our main concern is that it remains a stable environment, almost free of major disruptions so that project continuity can be achieved … The current agreement is a four-year agreement made under the old Workplace Relations Act so the new agreement will be the first made under the Fair Work Act."

"[The threat of] unprotected industrial action and the increase in union involvement in the south west."

"There should be a more rigorous system in place for people who earn above the upper threshold. The inability to have statutory individual arrangements with personnel who earn above $AUD180,000 [is a concern]. There should be an option to have individual certified agreements with personnel who are above the upper threshold. The upcoming expiry of the maritime agreements in 2013 [is a concern]."

"Union willingness to take significant action to obtain well above CPI outcomes for employees already paid well above workers of similar skills in other companies. Union demands for EBA clauses which significantly increase their power and reduce productivity, such as subcontractor and labour hire clauses, union delegates' rights clauses, etc."

"The pending MUA EBA negotiations and how this may impact our scheduled offshore work in late 2013."

Concerns about the potential for adverse action and unfair dismissal claims

The threat of adverse action and unfair dismissal claims was another major workplace concern for several respondents who cited the following:

"… Many people are submitting claims for 'unfair' dismissal where they were being performance managed. The time taken to have to address each issue has risen and caused other areas of importance to take a back seat."

"First and foremost is the ease with which the unions and/or anyone for that matter can apply for adverse action for dismissal matters. The fact that a person/union/law firm can make unsubstantiated accusations claiming adverse action is a very significant concern. In addition, the cost of defending such actions is prohibitive regardless of the merits of the claim."

"Unfair dismissals and genuine redundancies. In particular, the uncertainty in relation to the extent that an employer must consult with employees and consider redeployment opportunities."

"The time taken to dismiss personnel for intentional safety breaches. Fatigue management for the fly in/fly out workforce."

Concerns re difficulties in finalising greenfield (new project) agreements with unions

Among the concerns cited by AMMA members in this area were:

"Difficulty in getting a greenfields agreement in place to commence new construction work. The ability of unions to simply say 'no'. The Fair Work legislation and the Fair Work Ombudsman's office appear to be an extension of the union movement. Unacceptable industrial risk due to union involvement in mainstream business/commerce."

Labour productivity

The issue of labour productivity is of vital importance for the resource industry. For individual businesses and the economy as a whole, it is essential that productivity be as high as possible, particularly in an industry as important to the economy as this one. Improvements in productivity are also the key to non-inflationary growth and securing major project investments in Australia.

While other factors will impact on overall productivity, this survey is concerned mainly with labour productivity. The survey question below is based on employers' perceptions of changes in labour productivity which in their view are attributable to the current WR 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.

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**
Oct 2012	0.0	5.6	19.4	41.7	19.4	11.1	2.8	**53.2**

The benchmark here is the first survey conducted in April 2010 shortly after the Fair Work Act was introduced when the index score was 66.7. 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.

The most recent survey has seen a further deterioration, with the index now sitting at 53.2. This is well down on the initial index score of 66.7 and is well below the level needed for a large and sustained lift in productivity.

How important are each of the following factors in limiting improvements in labour productivity at the present time?

	No effect (%)	Slight effect (%)	Limited effect (%)	Moderate effect (%)	Large effect (%)	Very large effect (%)	Extremely large effect (%)	Index score out of 100
Commodity prices	5.7	14.3	8.6	20.0	11.4	17.1	22.9	**60.0**
WR legislation	2.7	13.5	8.1	27.0	21.6	21.6	5.4	**56.3**
Infrastructure issues	19.4	11.1	11.1	25.0	16.7	11.1	5.6	**44.0**
Building and construction industry regulation	30.6	13.9	8.3	13.9	16.7	13.9	2.8	**37.5**
Shipping and maritime regulation	47.2	8.3	2.8	11.1	11.1	16.7	2.8	**31.9**
International terms of trade	38.9	8.3	5.6	36.1	5.6	5.6	0.0	**29.6**

After converting the answer to this question into a weighted index score for each factor in the table above, the fall in commodity prices was revealed as the most decisive factor in limiting improvements in labour productivity of all the factors listed.

However, almost as important was the effect of WR legislation which was seen to have a ‘large’, ‘very large’ or ‘extremely large’ effect on productivity by 48.6% of the firms in the sample.

If one then includes the additional 27% of firms that said the WR legislation has had a ‘moderate’ effect on limiting productivity improvements, the results indicate that 75.6% of firms have found their productivity reduced in some way because of the current WR legislation.

Direct engagement with the workforce

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

Direct engagement is defined as employers' 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 a workforce is seen by employers as critical to maintaining high levels of productivity.

A productive workplace is dependent upon 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 WR environment that employers and employees can operate most effectively within.

In each survey, respondents are asked 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**
Oct 2012	0.0	5.7	14.3	22.9	17.1	34.3	5.7	**62.9**

As the table above shows, the majority of respondents to the latest survey (80%) said the level of direct engagement they had with their workforce under the Fair Work Act was 'acceptable' or better. Nevertheless, the latest results show a downwards shift in the index compared to the previous survey while still above the low seen in October 2011. It is important to remember that the current index score of 62.9 remains significantly below the benchmark set in April 2010 of 69.5 and is low overall. It is also important to note that the proportion of respondents rating direct engagement with their workforce as "low" rose from 3.1% in April 2010 to 14.3% in October 2012. The level of engagement described as "low" or "quite low" is now found in one workplace in five.

These results confirm there has been a deterioration in direct engagement levels for resource industry employers over the past three years and that the more positive results recorded in April 2010 have fallen to a telling extent.

What are the most important factors affecting your organisation's ability to directly engage with your employees?

The following key themes emerged as key impediments to respondent businesses directly engaging with their workforce:

A culture of union involvement

> *"Interference from [union] officials. As an example, they threatened people who attended a workshop."*
>
> *"Increased union presence."*
>
> *"[The] union tends to dominate consultation and decision making processes, but this is due to low levels of trust in our management."*
>
> *"Culture and history in terms of union involvement for 30-plus years."*

Challenges associated with labour mobility

> *"Our workforce is spread over many sites. Traditionally, they are centred around an office and continuity of employment has enabled direct engagement and a strong relationship. With resources projects generally being more dispersed and the workers moving frequently between companies, direct engagement has proven difficult."*
>
> *"[There is a] lack of future employment security in a dynamic project environment that is on a knife's edge. Economic factors and lengthy project approval processes are equating to operating at a loss while waiting to access a new mining zone."*
>
> *"Longevity of employment."*
>
> *"The length of time that projects run for and having a transient workforce; union involvement."*

Remoteness of site / distance issues

Remoteness of location was also seen as an impediment to direct engagement by some respondents:

> *"Distance can make it difficult as our employees work offshore."*
>
> *"Distances to sites from major areas, the widespread distribution of employees' residences and site resources."*
>
> *"HR time and geographical distance."*

Leadership and supervisory issues

Leadership and supervisory issues also play their part in direct engagement, with the following impediments cited in that area:

"Quality and competence of front line supervision."

"Leadership ability; management skill."

"Quality of supervisors and managers - ongoing training and development."

"Communication; skill of frontline leadership to identify and deal with issues before they arise. This organisation is quite good at both."

"Management capability and the lack of resolve because of their concern about getting the union involved in discussions."

"Lack of current structured programs to engage, communicate and involve employees. Heavily reliant on frontline supervisors and operational managers to engage employees on behalf of the organisation."

"[There is a] shortage of skilled and experienced 'supervisors and leaders'."

Cultural challenges

"Primarily [it] is our company culture [that works well], as it encourages and rewards employee involvement. Additionally, our flat management structure and productivity-based incentives encourage engagement with the business at a fundamental level."

"[We are a] small company at the moment and are able to spend face to face time at the sites."

"We have recently gone from a 14/7 to an 8/6 roster in the mill and processing area which makes up 70% of our workforce. This has helped employee morale immensely. We talked through the full process with employees and engaged them as part of the transition."

"Individual contracts (common law); regular performance reviews and reward systems; shared vision and values; individual reward based on results; team performance."

"[The] ability to enter into one-on-one performance management, target setting and reviews of achievements is critical. These are performed on a 100-day cycle. The ability for individual and team performance to be reviewed and rewarded. The current Fair Work legislation makes this more difficult for award-covered employees."

How would you describe the current level of difficulty in directly managing your workforce due to union activity?

	% of respondents
Unions are currently posing no difficulties to our ability to directly manage our workforce	58.3
Unions are making it somewhat difficult for us to directly manage our workforce	33.3
Unions are making it extremely difficult for us to directly manage our workforce	8.3

As the table above shows, union activity at the workplace is making the management of resource sector projects more difficult in 41.6% of respondent firms, with 8.3% indicating that union activities are making it 'extremely difficult' to directly manage their workforces.

Comments revealing the nature of the specific difficulties include:

"It varies regionally. On resources projects and in Queensland generally, I would say unions are making it extremely difficult."

"The construction and metals unions are generally pre-occupied with protecting outdated work practices and myriad benefits of 'old school' type enterprise agreements in our industry. An example would be 'inclement weather' which is used to slow down jobs to extend the job or increase overtime. The ability of unions to interfere with the making of greenfields agreements is a particularly difficult issue, which will become worse as many employee collective agreements expire in mid-2014."

"It is always easier to oppose than justify a position. If you try to manage an outcome not to the unions' liking they can always find reasons to oppose the outcome which will appeal to employees, even if not related to the actual cause of opposition by the union. For instance, if you oppose the provision of substantial paid training leave for union delegates in an EBA, they may look at other issues around rates of pay, meal break provisions, etc, to generate opposition to the EBA by general employees."

"[One union] was seeking to get relevance on one of our sites but since the enterprise agreement has been settled they have stopped seeking right of entries."

"This will become 'extremely difficult' once we start to employ award-based employees."

"Generally, it is through veiled threats around adverse action which is just another distraction for supervisors and managers in being able to handle their employees."

"Local [union] reps are very influential and resist change initiatives."

"… The need to reach greenfields agreements with a union prior to commencing work is a significant issue."

"There are increased site visits and we have the impending renewal of our enterprise agreement."

"Unions are only part of the problem with contractors on our project managing their workforce."

Some respondents noted there was still very little union activity on their sites:

"Union involvement in bargaining is muted generally. Where interaction with unions is necessary, those interactions have been for the most part cordial and productive."

"The unions have been party to a collective agreement that covers 20% of our workforce and are there to represent our employees/their members."

"Currently, there is no union involvement within our company."

"There has been no union activity onsite since I have been here from January 2012 and very little before that."

"[There is] no impact at present. [We are] concerned for the future though."

In what situations, if any, are union demarcation disputes (ie rivalries between competing unions) arising at your worksites and what effect are these disputes having on your operations?

While union demarcation disputes were not a major factor at the majority of respondents' worksites, where they did occur they had significant impacts as revealed in the comments below:

"Yes, these are occurring in the construction space: AWU vs CFMEU, AMWU and CEPU."

"[There has been no] effect on operations, however, competing unions' interests [are] costing us money in the courts."

"We generally have one union with a strong presence as opposed to many, and usually if there is more than one union present they side together."

"[This happens] rarely and is limited to greenfields agreements where opposing unions have tried to take a lead position."

"[Three unions] are pushing strongly for a 3 on, 1 off construction roster. This is viewed as inefficient and costly by the project."

"With one union onsite there are no issues between unions, however, there are some issues between the union and non-union groups due to the union trying to pursue the union agenda at the expense of employee sentiment."

Is bullying by union officials and/or unionists a feature of any of your worksites?

	% of respondents
No, it is not a feature on our worksites	72.2
Yes, it is a minor feature on our worksites	25.0
Yes, it is a significant feature on our worksites	2.8

The data in the table above indicate that bullying by union officials and/or unionists is a feature in over one quarter of the businesses surveyed. In 25% of workplaces, union bullying was described as a "minor" feature while at 2.8% of businesses it was seen as a "significant" feature.

Comments in relation to the issue of union bullying included:

"[There has been] standing over employees to conform such as to not attend company functions."

"[The incidence of this is] minor but increasing. It is perhaps in some areas an issue of perception - i.e. a worker may feel that they will be persecuted for opposing the union position and will keep silent without any union bullying having occurred."

"Occasionally, some union officials' behaviour is out of order; the right of entry rules keep this pretty much in check. I'm not certain about freedom of association though; not sure how much pressure there is on employees to be members of a union."

"The project is in the early stages of development and to date there has been limited union activity. This is likely to change as the project moves forward."

"[We have] no union activity; the benefits of being a very small fish."

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. A WR 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 project has tracked respondents' satisfaction with levels of workplace flexibility every six months since April 2010. Respondents to each survey are asked to rate on a scale ranging from a low of 1 ('totally dissatisfied') to a high of 7 ('totally satisfied') their satisfaction with current levels of workplace flexibility. The results are then used to derive an overall index score out of 100.

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**
Oct 2012	0.0	11.8	20.6	20.6	14.7	29.4	2.9	**56.3**

Working from a low base and remaining at a fairly low level, the table above shows a deterioration of satisfaction with workplace flexibility in the latest survey period compared with the three previous surveys.

In the latest survey, respondents reported a greater level of dissatisfaction with current levels of workplace flexibility, with more employers expressing dissatisfaction with the available arrangements.

As the table above shows, nearly one third of respondents (32.4%) indicated some level of dissatisfaction with their current levels of workplace flexibility.

What is your opinion of a proposal that would require employers to hold a discussion with an employee every time they make a request for an extra 12 months of unpaid parental leave unless employers agree to that request?

	% of respondents
We would strongly support it	5.9
We would support it	38.2
We would be neutral about it	35.3
We would oppose it	17.6
We would strongly oppose it	2.9

The above survey question was in response to a Fair Work Act review panel recommendation to require a discussion every time an employer declined a request for extra unpaid parental leave on top of the 12-month entitlement.

While this recommendation has not been enacted into law, comments given by respondents included that this was already a feature in some workplaces as a way to foster direct engagement with employees but did not need to be legislated:

"A 'requirement' to have a discussion is precedent to moving towards a requirement to agree to the leave, unless the employer can provide valid reasons not to approve it. This in turn is a totally unacceptable imposition on the company's ability to manage. We have employees in remote locations and this would present issues. In principle, we would be opposed to it because it is legislating to interfere with the normal process of employees and line managers communicating with each other."

"The obligation to force the employer to have the discussion would be unnecessary. People already have a right to have [an initial 12-month period of] unpaid parental leave. To force a discussion is impeding on the employer/employee relationship unnecessarily."

"Whilst the proposal would be seen as helpful to some employees, there are significant questions around productivity and costs for businesses."

"It would seem logical that a discussion of some degree would occur when such a request is declined. However, my concerns would be 1) what substantiation requirements (red tape) would result; and 2) it concerns me that placing these requirements around declining leave or other such requests creates a perception that the government is trying to make it hard for employers to do anything but agree to employee requests."

What is your view of a proposal to introduce a national long service leave standard?

	% of respondents
We would strongly support it	24.2
We would support it	42.4
We would be neutral about it	27.3
We would oppose it	6.1
We would strongly oppose it	0.0

The above question is in response to a Fair Work Act review panel recommendation to introduce a national long service leave standard.

As the table above shows, there is strong support among AMMA's membership for introducing a national long service leave standard, with 66.6% of respondents supporting it depending on what it would look like (24.2% expressing strong support). Just 6.1% said they would oppose the introduction of a national long service leave standard.

As to what features AMMA members would like to see in a national standard, the below comments provide further insights for policy makers:

"It would be good to move to a single uniform arrangement. Our scenario is somewhat complicated by state-based long service leave boards which fund in varying ways the long service entitlement of construction workers. These state-based funds would need to be reviewed as part of the arrangement. Personally, I see no reason for long service leave to remain, and perhaps it should be eliminated in return for an increase in annual leave entitlements."

"The current system is outdated and needs to be looked at and for companies that have a regional base in one city and operations in another state it is uncertain for employees. Also, the migration of employees between states for the same employer over a 10-year period is increasing."

"Whether we support it depends on its form. It should prevail over state LSL legislation. Compliance with the standard should be sufficient - no regard to state LSL legislation should be required by national system employers."

"We already extend the long service leave provisions to all of our employees under South Australian legislation which is the most generous."

"[There should be] the ability to cash out, ability to maximise flexibility in taking leave, no cost impost."

"The only condition is providing that the current arrangements are not lifted to the highest common denominator. Employees should be able to cash out pro rata LSL once they have qualified if they like, especially given the rosters they work."

"What I wouldn't like to see is that all long service was modelled on the coal industry as that would certainly be the aim of the unions. That would create a significant impost on business."

"As long is it's a consistent standard across the industry spectrum, we'd would support this change."

"People should be able to access it earlier, say after five years."

"[It should be made] 5 years for pro rata and 7 years for long service leave."

"[There should be the] ability to cash out after 7 years. The ability to take long service leave in small manageable chunks e.g. four weeks at a time."

Enterprise bargaining and agreement making

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

The need for such a time horizon is due to the fact that bargaining parties will only negotiate new industrial agreements every few years and will therefore only have experience with bargaining once on average during the three-year research project. A comparison between individual six-month survey periods on a range of bargaining indicators would 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.

The results in this section are confined to those AMMA members that have engaged in bargaining under the current WR system since 1 July 2009 and in particular those that have tried to negotiate greenfield agreements under the current system.

Is agreement renewal a major area of concern for your organisation under the Fair Work Act?

	% of respondents
Yes	77.3
No	22.7

Agreement renewal under the Fair Work Act was cited as a major area of concern by 77.3% of respondents. Agreement renewal is a key risk exposure under any WR system, but the concerns detailed below show a perceived heightened level of risk associated with renewing agreements under the Fair Work Act:

> *"Currently, we operate very harmoniously under our old Workplace Authority approved collective agreement (2009) and have never had any union involvement. It is my understanding that when this is due for renewal in 2014 we are required to invite at least one relevant union official to be a party to the new agreement via an agreement making process. If not for this requirement, we would just consult with staff, make minor changes as per their request and implement the new agreement. Union involvement will bring a high risk of unknown factors and a major cause for concern."*

> *"While some of our employees are covered by enterprise agreements under the Fair Work Act, they are all transitional agreements. The dominant agreement for all of our employees are employee collective agreements. When they all expire in 2014, we will have exposure to all the issues with the Fair Work Act."*

"[The process is] time consuming, lengthy, requires a lot of management and leadership time and effort and … other than securing industrial harmony once the agreement is agreed and knowing what your labour costs are, there are limited productivity tradeoffs."

"Our business is primarily a skilled labour hire business, however charging often fixed prices for an outcome rather than an hourly rate. Cost of labour is critical to the viability of the business and when a fixed-price project is on-hand with a fixed delivery date the business has little choice but to agree to union demands, however outrageous, to avoid liquidated and other damages for non-completion."

"Like any agreement, renewal it has risk."

"[This will have a] significant impact on operations."

"Significant project risk due to the damage that protected and unprotected activity can have on a project's viability and delivery."

Have you finalised an industrial agreement under the Fair Work Act since 1 July 2009?

	% of respondents
Yes	60.6
No	39.4

The data above show that 60.6% of respondents have finalised an industrial agreement under the Fair Work Act since 1 July 2009 but there is still a proportion of the industry that has not yet finalised an agreement under the new rules.

The following information reveals the types of agreements being made by AMMA members since 1 July 2009.

Did the agreements relate to a greenfields site?

	% of respondents
Greenfield site	26.8
Non-greenfield site	73.2

Approximately one quarter of agreements (26.8%) finalised by respondents under the Fair Work Act related to greenfield (new project) sites, with nearly three-quarters (73.2%) relating to non-greenfield sites.

Were these agreements made where unions were present in the workforce?

	% of respondents
Unionised	70.0
Non-unionised	30.0

As the table above shows, 70% of agreements finalised by respondents under the Fair Work Act were made with unionised workforces.

Were there productivity offsets negotiated as part of the agreement?

	% of respondents
Productivity offsets	12.5
No productivity offsets	87.5

In the overwhelming majority of cases (87.5% of agreements reached), no productivity offsets were part of final agreements under the Fair Work Act. This is particularly significant given that the resource industry is the most highly-paid industry in the economy.

What was the duration of the agreement?

	% of respondents
One year	0.0
Two years	2.4
Three years	56.1
Four years	41.5

The overwhelming majority of agreements under the Fair Work Act last for three or more years, with the most common agreement duration being three years (56.1% of agreements) with a further 41.5% coming to a four-year agreement.

As to extra terms and conditions that were included in agreements in addition to annual pay rises, the following matters were cited by respondents:

- Increased income protection insurance;
- Increased loyalty payments;
- Increased site allowances;
- Increased severance pay;
- Cashing out of personal and carer's leave;

- Increased general allowances;
- Increased superannuation contributions;
- Increased payments to redundancy trusts;
- Construction industry allowances;
- Restructuring of classifications;
- Retention bonuses;
- New, more generous rotation schedules; and
- Payment for wet weather.

Are you currently bargaining for a replacement or new agreement at any of your enterprises?

	% of respondents
Yes	28.0
No	72.0

The data in the table above show that just over a quarter of respondents, 28%, were as of October 2012 bargaining for a replacement or new agreement for at least one of their enterprises.

During enterprise bargaining under the Fair Work Act, have union bargaining representatives pursued any of the following types of clauses for inclusion in agreements? Tick all that apply.

	% of respondents
The requirement for contractors to pay site rates	77.8
Shop stewards' rights clauses	77.8
Trade union training leave	66.7
Paid union meetings	55.6
The requirement for employers to encourage employees to participate in union activities	55.6
Payroll deductions of union fees	44.4
Preferred lists of labour	44.4
Union picnic days	22.2
The requirement to have a union office onsite	22.2
Trade union training levies	22.2
Other	11.1

As the table above shows, the most commonly reported union-negotiated clauses from the list supplied that were being pursued during enterprise negotiations in the resource industry were

clauses requiring contractors to pay site rates and shop stewards' rights clauses. These were closely followed by trade union training leave clauses, clauses requiring employers to encourage employees to participate in union activities and clauses allowing for paid union meetings.

This is indicative of trade union bargaining campaigns becoming increasingly inward-focused and centring on the rights and interests of trade union officials rather than their employee members.

When are you next due to renew an enterprise agreement?

	% of respondents
None planned	22.2
2012	18.5
2013	25.9
2014	22.2
2015	3.7
2016 or beyond	7.4

The results in the table above show that approximately one quarter of respondents expected to be renewing an enterprise agreement in 2013 and almost as many expected to be doing so in 2014.

When are you next due to negotiate a greenfield agreement?

	% of respondents
None planned	72.4
2012	13.8
2013	6.9
2014	6.9
2015	0.0
2016 or beyond	0.0

The results in the table above show that 6.9% of respondent firms were expecting to negotiate a greenfield agreement in each of 2013 and 2014. If incentives for major project investment were stronger, including through the WR system, doubtless even more companies would be intending to pursue such agreements.

Are there any matters in enterprise agreements that you believe should be specifically outlawed?

'Contractor' clauses and labour hire clauses were a key matter that many respondents believed should be prohibited, along with all purely union-centric clauses aimed at entrenching union power at the enterprise.

Any clauses seeking to control where labour was sourced were seen as warranting prohibition, as were clauses making demands about the pay rates of third parties known as 'site rates' clauses.

Clauses giving preference to the hiring of union members were also seen as having no place in enterprise agreements, as were clauses allowing for paid days off for training union delegates and compulsory union training and clauses allowing unions to post on company noticeboards:

> *"Unions are automatically a bargaining agent [if] they have a member amongst the employees. Given this position, they should not be able to negotiate for anything from which they may receive a benefit, and all benefits they receive should be disclosed.*
> *For instance, construction agreements contain redundancy funds; in some states unions obtain significant income from the earnings of these funds and therefore they are conflicted when they argue for increases to fund contributions compared to wage increases. Similar issues arise with income protection insurance, and whilst superannuation funds are heavily regulated it is concerning to see industry super funds having their logos (presumably due to sponsorship in some way) on pro-union shirts being worn by workers at rallies. If modern awards are supposed to be a reasonable level of pay and conditions, it would be good to see that there is a cap on the outcome an EBA can have or perhaps [a ban on] the ability to take protected action in support of an EBA that goes beyond that cap - for instance 150% of award total pay."*

> *"All the things which were previously prohibited under the federal code of practice for the construction industry but which are now permitted again."*

> *"Labour hire clauses, [clauses relating to] employment numbers, matters that are not directly related to the employment relationship."*

> *"Compulsory union training, especially for offshore rosters. The guys are already only on the worksite for 40% to 50% of the year; to have compulsory training in work time reduces that even further for the employer."*

> *"Any controls on where labour is sourced from. Mandatory union provisions."*

> *"Contractor clauses."*

> *"Yes, those matters which were prohibited content under the previous legislation."*

> *"Union involvement in commercial activities of the enterprise. They wear no risk and can cause significant damage and harm if they don't get their way."*

> *"All issues with a third party in the negotiation or agreement."*

Are there any changes you would like to see made to the Better Off Overall Test (BOOT) as applied by the Fair Work Commission to enterprise agreements?

The following answers were received to the above question in terms of what changes AMMA members would like to see made to the BOOT:

"There seems to be a tendency to reinterpret Better Off Overall as 'Better Off in Each Element'. I would hate to see this trend continue."

"The BOOT should be tested against the productivity of the enterprise and the industry. Otherwise, the only way is up which means higher costs and lower productivity."

"The BOOT does not have any reference point (as far as I am aware) to the commercial viability of the enterprise or indeed Australia's productivity rates and international competitiveness. Perhaps it should?"

"[There should be a requirement] for productivity gains."

Individual agreements

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) in 2008 and introducing mandatory 'flexibility' clauses in all enterprise agreements and modern awards in 2009 and 2010 respectively.

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 significant difficulties in achieving any workplace flexibility via IFAs since the Fair Work Act commenced, with a consequently very low take-up of them being reported by AMMA's membership. Unions have deliberately sought to restrict the flexibility available under IFAs, including flexibility for family and personal reasons.

As the survey data reveals, aside from common law contracts, there are virtually no viable individual agreement making options under the current system.

Does your organisation currently use any of the following individual agreement making options under the Fair Work Act? Tick all that apply.

	% of respondents
Individual flexibility arrangements	4.3
Common law contracts	95.7

Overwhelmingly, the data show that common law contracts are the most used form of individual agreement, with 95.7% of respondents that used individual agreements using this form of agreement. A tiny percentage (4.3%) of respondents used IFAs, reflecting their extremely low usefulness to the industry generally. However, it is important to note that common law contracts are often only suitable for non-award, never-unionised, white-collar staff.

What, if anything, would make the above options more attractive to your organisation?

Most of the comments received in answer to this question related to what could be done to make IFAs more attractive as a form of individual agreement:

> *"[If IFAs are able to be] negotiated directly with the employee, [they] can ensure a standardised position which is not possible when dealing with site agreements or state-specific agreements due to project or union differences. Only used for clerical and supervisory positions."*

> *"IFAs - have them for a fixed term of at least 3 years with no exit provision during their term."*

"Make [IFAs] simple to implement."

"The ability for [IFAs] to be available on an ongoing basis. It is the preferred arrangement for our employees, but will not be available from mid-2014 when our employee collective agreements expire."

"IFAs should be agreed and remain in force for the duration of the employment arrangement."

"Automatic protection from industrial action [in IFAs]."

"Contracts of employment which provide for no industrial action (original common law rules)."

"Broaden the context in which [IFAs] apply."

"Ability to have one-on-one discussions and to provide individual rewards for top performers."

"Individual employee choice to enter into either an enterprise agreement or an individual contract (which extinguishes the enterprise agreement conditions)."

"[Make IFAs] less restrictive and so they do not need to be renewed."

What would be the benefits to your organisation, if any, of individual flexibility arrangements being able to be offered and agreed before employment commences?

Respondents highlighted benefits including increasing the percentage of women in the workplace and the ability to tailor roles to attract and retain the best performers:

"Attraction and retention of star employees would increase, which would lift the performance of the organisation as a whole."

"Individual performance varies significantly within organisations. An organisation and an individual should be able to decide to enter into an individual contract based on a win-win relationship. If an organisation wants to attract the best performers then they should be able to offer those people 'high results - high rewards' contracts of employment."

"It would break the herd mentality that exists within the unionised workforce, highlighting the fact that each employee is individual and should be able to agree on specific arrangements accordingly."

"It would be useful as it would enable the working arrangements and conditions to be discussed and agreed at the recruitment stage rather than after the event."

"[It would] give [the] employer time to make work arrangements ahead [of time]."

"This would provide a benefit in part but they can be cancelled with 28 days' notice so this nullifies any benefit of having the flexibility terms agreed prior to employment."

"Increase in percentage of females in the workplace."

"For our wages workforce it would only be beneficial if the IFA over-rode the employee collective agreement."

"[We] could tailor some roles better to get the right person."

What other individual agreement making options would you like to see?

Respondents would be keen to see individual options that would override the collective agreement:

"Individual agreements for personnel who earn above the upper tax threshold of AUD$180,000."

"AWA type individual agreements."

"Contracts are flexible enough, but it would be nice to be able to write out some working conditions in a contract that you can do with an EBA."

"Ability for employees to choose between an enterprise agreement or an individual contract that extinguishes the enterprise agreement."

"Choice and not a 'one in all in' treat them all the same mentality."

"No restrictions; 100% use of common law contracts."

What is your view of a proposal that would require employers to notify the Fair Work Ombudsman's office in writing whenever you make an IFA with an employee, including providing the start date of the arrangement, the name of the employee and the agreement or award under which the arrangement was made?

	% of respondents
We would strongly support it	3.4
We would support it	6.9
We would be neutral about it	13.8
We would oppose it	37.9
We would strongly oppose it	37.9

There was very strong opposition to this Fair Work Act review panel proposal for employers to have to notify the Fair Work Ombudsman's office in writing whenever an individual flexibility arrangement was made with an employee, including providing the start date of the arrangement, the name of the employee and the agreement or award under which it was made. The table above shows that 37.9% of respondents would "oppose" such a requirement and a further 37.9% would "strongly oppose" it. In total, 74.8% of all respondents opposed the recommendation, which has not at this stage been taken up by the Labor government.

Key themes emerging in comments from respondents included the onerous administrative and bureaucratic burden the recommendation would entail for employers and the potential for prolonging the approval process via third party involvement:

"[It would be an] administrative nightmare."

"[It would be] bureaucratic nonsense."

"[It would be] onerous and needless for the high-paying mining industry. [It would] possibly [be] necessary for low-paid industries / positions."

"What is the point of an individual flexibility arrangement if it isn't individual?"

"This is not reasonable and an administrative burden especially when the current rules are taken into consideration."

"[It would be] too difficult to manage."

"We work in a time-sensitive industry - any need for prolonged approval processes by third parties would damage our ability to recruit."

"Why would you need to do this? Are they thinking that an employee might be disadvantaged with a flexibility arrangement and might be forced to sign it?"

"No experience with them, however, again it concerns me that the red tape is always placed onto the employer."

"This would be supported only if the agreement was to act more akin to a statutory agreement like AWAs; otherwise it is overly bureaucratic."

"[This would] add burden and [the] cost would deter organisations from working with the employee to agree on flexible arrangements."

"If this were the case, we wouldn't use them so [would] have no opinion."

"This move would rope in the Fair Work Ombudsman as a pseudo union recruitment centre."

"[It would entail] unnecessary bureaucracy. Why would / should a company have to do that? [It] should be between an individual and an employer."

"[It should remain a] private arrangement."

"Too much paperwork, plus who are we trying to protect? As long as it is auditable then it shouldn't need to go external to the company."

Greenfield agreements

The successful making of a greenfields agreement is a crucial aspect of resource industry investment since new projects are by definition one of the key areas where the expansion of the industry takes place. This section of the survey looks at the problems encountered by employers in securing a greenfield agreement under the current system in which negotiating with unions is the only option available.

Has your organisation attempted to negotiate a greenfield agreement with a union or unions under the Fair Work Act since 1 July 2009?

	% of respondents
Yes	30.0
No	70.0

Almost one respondent in three has attempted to negotiate a greenfields agreement with a union since the Fair Work Act began, a sure indication of how crucial this area of agreement making is to the future viability of the resources sector.

If so, has a union refused to make an agreement when you have sought to reach one?

	% of respondents
Yes	53.8
No	46.2

The result shows that a very high 53.8% of AMMA members that have tried to make greenfield agreements under the Fair Work Act have found that unions have refused. This is an astonishing number and is indicative of the harm done by the Fair Work Act in this area in favour of the unions it has artificially empowered.

Respondents were then asked to provide details of the problems encountered while attempting to achieve a greenfield agreement. When looking at the comments below, it becomes obvious that a common industrial tactic used by unions is to withhold a greenfield agreement (where unions have a monopoly) until an employer concedes to demands on a separate 'brownfield' or existing project agreement:

> *"They have refused to make a greenfields agreement until agreements covering other established operations have been agreed to their satisfaction."*

> *"Unions were bold enough in two instances to make it clear in meetings that they would block our agreement, to give an advantage to another contractor who would accede to their demands for a closed shop, nominated labour, union-appointed supervisors and safety reps."*

"Unions refused to sign contractor agreements over issues unrelated to this project and outside the control of us."

"[The union] refused to make a greenfields agreement when agreement was still to be reached for brownfields agreements covering existing operations."

"The [three unions involved] have refused to negotiate unless the industry reduces the construction roster from 4 (weeks) on 1 off to 3 on 1 off."

Respondents were asked to describe their experience of negotiating with unions for greenfield agreements under the Fair Work Act:

"Appalling." …*"Slow."*

"…Bottom line is that if a union doesn't want to do a deal then they don't have to. This can place projects at significant risk."

"More than ever the range of issues on the table is immense. The unions are not commercially minded which results in poor commercial outcomes for the enterprise and Australia."

Not all AMMA members' experiences have, however, been negative in this area of agreement making:

"We have copied agreements made by others for the sites, so other than the unions' refusal to make an agreement when other agreements were not agreed with them, it has been fairly easy."

"It has gone smoothly and has not gone off track thus far; all parties have been able to come to an agreement without Fair Work Australia involvement in this process."

"Against my previous negative experience, in this matter it was consultative and consensus was achieved. Importantly, there were timing and logistical matters which impacted on employees and the unions were forced to cooperate to achieve an outcome for members."

Has union conduct during greenfield negotiations had an impact on the scheduled mobilisation or start-up dates for projects?

	% of respondents
Yes, union conduct has caused major delays	20.0
Yes, union conduct has caused some delays	20.0
No, union conduct has had no impact	53.3
Yes, union conduct has caused some improvement	6.7
Yes, union conduct has caused major improvement	0.0

Of those AMMA members negotiating greenfield agreements, 40% said unions' conduct had caused some delays on scheduled mobilisation and start-up dates. Half of those indicated the delays had been major.

Respondents were then asked to provide details, including any financial impacts associated with the delays:

> *"A construction project in the Bass Strait was significantly delayed, resulting in Federal Court action against the relevant union by our client, for costs of delays."*

> *"Clients are generally not willing to award a project until they know the EBA is in place. As a result, we have suffered significant delay in being formally awarded projects, and these delays have impacted on project commencement from our perspective and negatively impacted delivery."*

> *"Refusal to negotiate by some unions has caused the project some delays and significant commercial risk concerns."*

What impact would it have on your organisation if you were required to notify all eligible unions of your intention to make a greenfield agreement rather than just a single union or unions of your choice?

This question is in response to a Fair Work Act review panel recommendation to require employers intending to negotiate a greenfield agreement to 'take all reasonable steps' to notify all unions with eligibility to represent relevant employees, not just the union or unions entitled to represent the majority of employees as is currently the case. This Fair Work Act review panel recommendation has not been taken up by the government at this stage.

Key themes that emerged in response to this question included the potential for even further delays as well as concerns with the increased bureaucracy that would be associated with greenfield agreement making:

> *"This would be a disaster once we have lost the protection of our current employee collective agreements, as these allow us to revert to common law contracts when unions obstruct*

agreement making. This would become much worse once it is evident we don't have an alternative. Our clients are encouraging us at this point to use common law contracts because of delays caused by the Fair Work [Act] with regard to greenfields agreements."

"A negative impact with the siding of unions leaving less bargaining power for the organisation / more requests to take into account meaning a longer turnaround time with an increased process duration to come to an agreement."

"More problems." … "This would have an impact."

"Bureaucratic nonsense." … "[It would] delay the process even longer."

"[This would make it] more difficult to negotiate; possible demarcation issues."

"It would be overly restrictive and cause delays."

"[It would] add complexity to the bargaining process."

"Even worse commercial outcomes would result due to increased conflict and time taken to reach an agreement."

"An added level of complexity which would highly likely adversely affect the outcome. If we have to negotiate with the union then it should be an employer's choice as to who they want to do a deal with. The law is crippling enough as it is."

"[This would have a] significant impact - places more control of commercial outcomes into the hands of the unions."

What are the risks involved in starting up a new project without a greenfield agreement in place?

Key themes arising here included a lack of certainty around terms and conditions, wages costs and continuity of supply due to the potential for protected industrial action by the workforce if no agreement was in place when the project started:

"This is possibly a show-stopper for all major projects. IR disruption is a significant risk and investors would be unlikely to provide capital on this basis."

"A new project is at significant risk without greenfields agreements (for all contractors and subbies). The risk is significant enough to stall or kill off projects."

"Given increasing union militancy, commencing or even pricing a project without having fixed labour rates via a binding agreement would be extremely risky."

"Our clients would not support work without an enterprise agreement or steps to implement one in place."

"For us it would be contract rather than project. Given slender margins, you would be giving the unions the ability to hold you to ransom at risk of bankrupting the business."

"No certainty around terms and conditions, labour costs, etc."

"We may literally not be able to submit a complying tender to our clients."

"Protected industrial action, no certainty of costs."

"All risks that you could possibly think of in terms of industrial action and breaches."

"Schedule delay and budget blowout."

"It was a much better system when you could have a greenfields agreement without the union. It gave you a number of years to work with your workforce minus the union influence."

Industrial action

When the Fair Work Act took effect on 1 July 2009, it changed the rules governing protected industrial action, including the circumstances under which employees could take such action and the rules the federal industrial tribunal had to apply before approving it.

This section of the survey sought information on not only how prevalent industrial action is at resource industry workplaces under the Fair Work Act but also how often the threat of industrial action is used as a bargaining tactic. Again, this set of questions covers the whole term of operation of the Fair Work Act in recognition of the fact that parties will only be exposed to protected industrial action every couple of years during bargaining unless it relates to genuine safety concerns.

Was protected industrial action threatened, taken or neither during bargaining negotiations?

	% of respondents
Industrial action threatened but not taken	12.5
Industrial action taken	12.5
No industrial action threatened nor taken	75.0

The table above shows that industrial action was a factor in a quarter of the agreements made by AMMA members under the Fair Work Act. In 12.5% of the agreements made, industrial action was taken before the final agreement was completed.

What specific changes would you like to see made to the Fair Work Act to ensure that protected industrial action is only available as a last resort?

"Industrial action should not be permitted where the total value of offered agreements is above a set multiple of the award - say two times. As I say, an employee can always choose to leave if they are not happy with their rates and conditions."

"Protected action should not be permitted where the claims being pursued don't satisfy the public interest test e.g. size of wage claim, impact on the economy. [There] needs to be majority support."

"Protected industrial action should be analysed on its cost-benefit to the enterprise and the Australian economy. At present, the unions can hold the enterprises and Australia to ransom. This is hardly commercially sensible or sustainable."

"A requirement that for protected action to be approved it has been determined by an independent party as being in support of a reasonable outcome. That could be determined as an outcome versus the modern award (e.g. total pay and benefits worth no more than 150% of the award), or alternatively versus an expiring agreement if there is one (e.g. outcome no more than 50% above inflation without productivity offsets)."

"The JJ Richards precedent is a particularly disturbing turn of events. Being able to apply for a protected action ballot order before bargaining has commenced is an absurd situation."

"Stricter restrictions on unions for right of entry reasons and bbqs in car parks; stricter enforcement. Tougher penalties for employees in terms of taking industrial action."

"There should be a more robust requirement for personnel earning above 180k per year not to take protected industrial action."

"[There should be] compulsory mediation prior to strike action."

"Protected industrial action must be justified by a breakdown in negotiations and not just for incidentals."

"Protected industrial action should only be available after bargaining has commenced and a stalemate is demonstrated."

"The reasonable test for good faith needs a good hard look at it for both sides."

"Demonstrate bargaining in good faith, ensure suitable time expended before it becomes an option."

What specific changes would you like to see made to the Fair Work Act to make it easier for you as an employer to apply to suspend or terminate protected industrial action?

"Industrial action should require employee re-approval periodically rather than the current provision that once commenced it can continue indefinitely. Currently, action may lose employee support but they will be bullied by a small minority into participating in ongoing action."

"[It should be prohibited] where it is causing significant economic harm, endangering life or causing significant harm to third parties."

"Compulsory mediation before industrial action is taken."

"A test as to the cost-benefit of the proposed protected action against the enterprise, the community and the Australian economy should be applied."

"An increased focus by Fair Work Australia on the economic cost-benefit of the proposed industrial action. For example, an enterprise that may lose $5m per day could be held to 'ransom' over an additional week's leave by employee representatives. This would unlikely be in the community's or Australia's interests."

"Notices of action need to be followed through with (ie not just threatened), otherwise the right to take action [should be] suspended."

"Once notified, industrial action must go ahead to avoid the common scenario that last-minute cancellation of action is used to inconvenience the employer without loss of pay to employees, or the other strategy of notifying action every day and then choosing which ones to actually carry out - in effect bypassing the notification requirements. [However] a protected action ballot should only approve action for a fixed window of say two weeks, with a further ballot required to continue action. This ensures that employees still support the action, which in drawn-out disputes may well not be the case."

What is your view of the proposed requirement for employers to have to continue to provide accommodation to workers during periods of protected industrial action?

	% of respondents
We strongly support it	0.0
We support it	12.0
We are neutral	24.0
We oppose it	24.0
We strongly oppose it	40.0

This question is in response to a Fair Work Act review panel recommendation to require employers to continue to provide accommodation to employees who were engaged in industrial action. The recommendation followed two court rulings that found employers were prohibited from providing accommodation to striking workers as it was in effect "strike pay". Those rulings have since been overturned by the High Court.

The review panel recommendation was, not surprisingly, opposed by 64% of respondents and supported by only 12%. Those 12% could be those that consider it less damaging to continue to provide accommodation during periods of industrial action than to have to fly workers back home then back onsite again after the action ceases.

Reasons provided by respondents to support their responses to the above question included:

"It is not right that an employer is financially subsidising the cost of action against it. There is already a similar issue not addressed to date on issues such as periodic payments which cover a period which includes industrial action, and whether they should be reduced pro rata etc. For instance, an EBA requires $25 per day in fares, $80 per week in redundancy, etc. If there is a four-hour stoppage, should these amounts be reduced?"

"I think the employer should have the choice to provide the accommodation, provided the employee would be liable for all costs for that accommodation for any day in which industrial action occurs. The employer should have the option of revoking accommodation."

"If you are refusing to work, the benefits of the work should not apply. Forcing employers to continue to provide benefits ties one hand behind the back of the employer and gives too large an advantage to the actions which may not be for legitimate (although legal) reasons."

"It is against the principle that you do not get paid for industrial action."

"It is illogical to have to pick up expenses for an employee who refuses to work and has a holiday in camp."

"You still need to mine during any negotiation period and no production helps nobody."

"It is a benefit and all wages / benefits should be suspended."

Union access to workplaces

The Fair Work Act changed the right of entry laws on 1 July 2009. Unions now have the right to enter a workplace based on their eligibility rules rather than whether they are connected to an agreement or award covering the site.

There is a formal procedure that must be followed to gain entry but the reality is that union visits have become more common under the new regime and there is pressure on employers to waive the rules that do apply in order to open up their worksites even further.

Further significant changes in this area will take effect on 1 January 2014 as a result of the passing into law of the *Fair Work Amendment Act 2013*, which means union access to workplaces is only going to become more difficult to manage for employers, particularly those on remote sites.

The following survey questions deal with union access to worksites under the Fair Work Act and any problems being experienced by employers.

Would you support Fair Work Australia having greater powers to resolve disputes about the FREQUENCY of union workplace visits?

	% of respondents
Yes	83.3
No	16.7

This question is in response to a Fair Work Act review panel recommendation to give the federal industrial tribunal greater powers to resolve disputes about the frequency of union workplace visits. This recommendation has since been taken up in the Fair Work Amendment Act 2013 and will become operative on 1 January 2014.

There was strong support for providing the federal industrial tribunal with greater powers to resolve disputes about the frequency of union workplace visits, presumably because it was seen by employers as a way of curbing excessive union site visits. Reasons provided by respondents for their support of this recommendation were mainly to do with disruptions caused by too frequent visits:

> *"Unions are using current laws to undertake membership drives and are greatly disrupting worksites."*

> *"It is a big disruption to productivity."*

> *"Making sure there is a genuine and bona fide reason for the unions to seek access to mitigate against the recalcitrant union official that just wants to disrupt the workplace."*

> *"This [power to resolve disputes] would seem to go both ways ... doubtfully the employer's way..."*

"Unions are visiting too frequently for non-valid reasons, which is disruptive. Weekly visits!"

"[There needs to be] some sort of objectivity and reasonableness to the process."

"[We are receiving] too many unnecessary visits."

"Any outside involvement of non-business related enterprises should be monitored."

"No, frequency should not be an issue if their visits are warranted. The underlying issue is the reasons that legally entitle them to visit."

"Right of entry should be balanced and unions should be accountable for their conduct. Greater emphasis should be put on unions to justify their entry."

"[There should be] an ability to intervene to prevent abuse by visits being driven by deliberately disruptive conduct rather than genuine purposes as outlined under the Act."

"The fewer powers [the Fair Work Commission] has, the better. The frequency of union workplace visits is naturally regulated to some extent by good workplace practices and culture (they will soon wear out their welcome), and to some extent the unions' resources."

Would you support Fair Work Australia having greater powers to resolve disputes about the LOCATION of union workplace visits?

	% of respondents
Yes	70.8
No	29.2

This question was asked in response to a Fair Work Act review panel recommendation to give the federal industrial tribunal greater powers to resolve disputes about the location of union workplace visits.

This recommendation was not taken up by the Labor Government, which implemented provisions that went much further than that and which will take effect on 1 January 2014. The new provisions will remove employers' current ability to designate reasonable meeting places for unions to hold discussions with employees.

As the results in the table above show, there was general acceptance of the federal industrial tribunal having greater power to resolve disputes about the location of union workplace visits. However, it is important to note that this was in the context of employers having a statutory right to designate reasonable meeting places in the first instance. The following comments were provided by respondents:

"It might assist in incidences when there is a disagreement where a meeting can be undertaken."

"Possibly, but to the extent that it clarifies that lunch/crib rooms are not a default location."

There were some AMMA members who definitely did not want the Fair Work Commission's power in this area increased:

"Precedent shows that they have sufficient if not too much say in this regard as is."

"Mature organisations and unions should be able to deal with this."

"Fair Work Australia doesn't need to get involved in everything."

During the past six months, how often did union officials visit your workplace(s)?

	% of respondents
Unions have not visited our worksites in the past six months	34.6
Occasionally (ie once or twice during the past six months)	26.9
Monthly	15.4
Weekly	23.1
Daily	0.0

As the table above shows, nearly a quarter of respondents (23.1%) received weekly visits by unions to their worksites.

Is the number of entry requests on the rise?

	% of respondents
Yes, the number of entry requests has increased significantly in the past six months	13.0
Yes, the number of entry requests has increased slightly in the past six months	26.1
No, the number of requests is pretty much unchanged	52.2
No, the number of entry requests has decreased slightly in the past six months	0.0
No, the number of entry requests has decreased significantly in the past six months	8.7

The table above shows an increase in the number of entry requests in 39.1% of respondent firms, with 13.0% indicating the number of visits had increased significantly. It is worth noting that while 52.2% of respondents had seen the number of entry requests unchanged from the previous six

months, that did not mean the number of visits was reasonable or that things had not changed since the Fair Work Act was first introduced. As one respondent said:

> *"Previously, when right of entry was determined by status under a workplace agreement, there were no visits."*

Do you believe your site managers have a sufficient understanding of union eligibility rules?

	% of respondents
Yes	50.0
No	50.0

It is notable that half of site managers were not seen to have a sufficient understanding of union eligibility rules to enable them to make decisions under the Fair Work Act as to which unions were eligible to enter their sites. This was much easier to determine previously when entry was tied to a union being covered by an agreement operating on the site. Respondents were asked to provide details to support their answers to the above question:

> *"[The] right of entry rules [are] too complex."*

> *"Our business is electrical so the ETU/CEPU is the union that we deal with and there are no concerns. We understand that our employees are eligible to join that union. However, in terms of right of entry and 'sham' safety disputes raised by unions to disrupt the worksite, our site managers do struggle with being abreast enough of such issues and generally it all occurs so quickly that the incident is over before advice can be provided."*

> *"This is a key issue that we will be providing training on in the new year."*

> *"All of our site managers and supervisors are trained in right of entry rules. We have established written procedures in our management system for managers and employees to refer to."*

Adverse action

The Fair Work Act significantly broadened the anti-discrimination and freedom of association provisions contained in the Workplace Relations Act by introducing the 'General Protections'. Under the General Protections, a person (including an employer) is prohibited from taking 'adverse action' against an employee, prospective employee or independent contractor because of an employee's 'workplace right'.

A workplace right can include: an entitlement to the benefit of an industrial instrument; the ability to initiate proceedings under a workplace law; or the ability to make a complaint or enquiry to seek compliance with a workplace law.

Where the adverse action is alleged to have been taken for a prohibited reason, an applicant has 21 days to bring a claim if dismissal was involved (reduced from 60 days), but six years to bring a claim where dismissal is not involved. This is a significant new cause of action that has been grafted onto Australia's workplace relations legislation.

Under the Fair Work Act, has your organisation received any adverse action / general protections claims from current, prospective or former employees or independent contractors? Tick all the groups you have received claims from.

	% of respondents
Current employees	40.0
Former employees	90.0
Prospective employees	10.0
Independent contractors	20.0

Of those respondents that had received adverse action claims under the Fair Work Act, an incredible 90% indicated they had received them from former employees and a further 40% indicated they had received claims from their current employees. This is an area of the WR environment that is clearly getting a firm grip and will likely rise to applications in plague proportions over the period ahead. Even prospective employees have lodged adverse action claims which is a circumstance identified by 10% of respondents.

Respondents were asked to share some examples of the types of adverse action claims that had been made against their organisations:

> *"Termination allegedly due to making a workers' comp claim. Following clear evidence this was not the case, the claim was amended to being non-provision of suitable duties due to making a workers' comp claim. Allegation of workplace bullying and alteration of duties and benefits following making a complaint."*

"We have only had one, and that was from a former payroll officer onsite. The ex-employee claimed that she resigned her post because of unfair treatment by her line manager, specifically favouritism shown to another employee. The claim was not successful. It was essentially a baseless claim, and the ex-employee was seeking a 'payout'."

"We were accused of not rostering on a diver because of his union involvement, when it was in fact due to poor performance. Decision was in our favour."

"An employee was terminated for safety issues, but this was not explained in the termination so the employee claimed that we terminated due to a temporary illness. We settled after conciliation."

"Allegation of bullying and harassment culminating in constructive dismissal. Allegation that due to a workers' compensation claim an employee was denied suitable duties, had personal leave requests declined and was terminated. I believe that the claims we are seeing are not the sort of disputes intended to be dealt with by the general protections legislation, but rather lawyers are trying to fit grievances into a general protections claim due to the better financial outcomes that are possible with this avenue."

Are these types of claims on the rise?

	% of respondents
Yes, significantly more so than in the past	22.2
Yes, somewhat more so than in the past	33.3
No, the levels are the same as in the past	44.4

More than half of respondents (55.5%) indicated that adverse action claims were on the rise in the latest survey period. Comments from respondents in this regard included:

"General protections claims took some time to gain broader understanding but we are now needing to consider the provisions when making decisions in relation to termination, redundancy, etc."

"Although we have not received this type of claim yet to the best of my knowledge, it seems as though they are on the rise in case research."

Are adverse action claims a major area of concern for your organisation?

	% of respondents
Yes	57.1
No	42.9

Adverse action claims are now a major area of WR concern in more than half of the firms surveyed (57.1%). Respondents provided details of their concerns as follows:

"It has almost come to the situation whereby if an employee puts in a claim it is automatically assumed that the employer needs to get their cheque book out because the costs of defending some of the pitiful complaints outweigh the costs of settling in mediation."

"The reverse onus of proof, potential for significant financial penalties and the almost impossibility of having legal defence costs reimbursed even for claims that approach being vexatious, mean these are a major risk."

"It seems to be a wide area for lawyers to pursue cases which are likely without merit, but the reverse onus to defend the matter makes them likely to result in settlement via go away money."

"Expense of defending claims with little or no merit."

"… it is a constant consideration in our disciplinary processes and decision making."

"There are areas which are untested and some scenarios which could give rise to potential claims are very broad. An offence could occur by accident without intention with situations possibly being an individual's subjective perception."

"Although none currently received, the emphasis is on the employer to disprove the claim rather than the claimant having to substantiate a possible legitimate claim first."

Wages

The cost of labour is one of the most important factors affecting the viability of any enterprise. Even in a highly capital-intensive industry such as the resource industry, the cost of labour can have a decisive impact on long-term profitability. Ensuring wages and labour-related forms of compensation reflect available productivity increases remains critical.

Labour cost movements in the resource industry can also be an important indicator of future movements in the rest of the private sector, so any potential increases here are likely to have flow-on effects elsewhere. The resource industry is the best-performing sector of the Australian economy at the present time. However, using the industry as a pace-setter for other industries' wages can create problems for the future that are best dealt with by policymakers sooner rather than later.

As the results below indicate, the determination of wages and conditions in the resource industry is being driven in part by increased competition for skilled labour. However, union power under the current system has been able to further exploit labour market shortages and unsustainably drive the upwards movement in wages. Wage rates in the resource industry are rising rapidly and are expected to continue to do so.

Looking ahead to your next enterprise agreements, what is your expectation of the wage increases that will be included (i.e. the percentage change)?

	% of respondents
The rate of wage increase is expected to increase significantly	12.0
The rate of wage increase is expected to increase slightly	56.0
The rate of wage increase is expected to stay the same	20.0
The rate of wage increase is expected to decrease slightly	12.0
The rate of wage increase is expected to decrease significantly	0.0

There is an expectation of an upwards movement in the wage increases that will be granted in the next negotiating round by 68% of respondents, with 12% expecting significant wage increases to occur in their next agreements.

If there has recently been or you expect to see a significant movement in wage increases, either upwards or downwards, in your latest agreement, what do you put this down to?

"Unions holding employers to ransom as construction sub-contractors are generally exposed to business bankrupting damages claims should protracted industrial action occur, so employers will role over and pay an excessive outcome."

"Union militancy and a disconnect between market pay rates and those enjoyed by our employees where they have not been unemployed for some time."

"Economic factors putting pressure on revenue."

"The lack of availability of skilled labour is driving costs up."

"The labour market has been at boiling point in the resources sector, however, the pressure seems to be coming off over the past one to two months, which may ease upward wage claims."

"Skill shortage and the perception we can just oncharge our customers."

"Competition for labour."

Not all firms, however, expected wages to move up rapidly:

"Wages will be frozen for 12 months because we moved from a 14/7 [roster] to an 8/6 with no loss of wages, but a 20% loss of productivity."

"No major movement. Our employees agreed to a temporary reduction in wage escalation as payment for increased time off."

Which parts of your workforce have been able to negotiate the largest pay rises and why?

"Remote resources workers due to lack of employees willing to go to those locations, and unionised workforces where unions will use the fact we have fixed project delivery deadlines with large damages bills if missed (sufficient to bankrupt firms in the industry) to force unsustainable outcomes."

"Resources sector and major commercial construction projects - due to strong union influence."

"Professionals (such as geologists), tradespersons (electricians mostly) - previously due to the skills shortage and lack of candidates in the market."

"The hourly non-trade workforce due to industry precedents and scarcity of skilled labour."

"Staff, engineers, project managers, etc, perhaps welders, depending on how difficult they are to source."

"Anybody with a niche skill and who does work that requires high competency."

"Offshore oil and gas specialists."

"The professional employees. This tends to always be the case in mining as they are the hardest people to find with the hardest skills to replace."

"Front line. When there has been a labour shortage in skilled drillers."

"Stevedores - protracted industrial action."

"Jumbo operators and shift supervisors."

What do you think can be done to keep resource industry wage increases at a reasonable level?

Respondents to this question focused on the importance of reducing union power, encouraging greater labour mobility, and opening up the labour market to overseas workers:

"Reduce union power and strongly enforce penalties against unions for illegal activity such that they won't do it again - currently they happily take a slap on the wrist and wear it with pride."

"Ultimately, the market will determine the wage rates, however, in the short to medium term both government and the unions need to exercise some influence to restrict significant increases (e.g. MUA increases in hydrocarbons)."

"Restraint and leadership from the PM and government (e.g. the MUA increases were far too high)."

"Regulation in support of employers is an option, but obviously undesirable and some would argue that a market outcome should deliver the best result. Perhaps the issue is there is regulation to support employees but not employers, and reviewing and reducing this biased approach is warranted. To me it is notable that employees can collectively bargain for a price outcome but businesses cannot."

"A focus on productivity rather than entitlements. Education of the workforce on the impact of international commodity markets. Focus on opportunities for career progression and less focus on mandated increases."

"Increase government spending on infrastructure in regional areas to address mobility issues. With a more relaxed labour market, wage pressures will ease, however, increased flexibility to engage foreign workers will assist the industry."

"More skilled people and greater labour mobility and productivity."

"No short-term solution; we have to remain internationally competitive so paying internationally competitive rates will continue; increased supply of graduates and tradespeople/technicians."

"More education opportunities to improve the number of candidates in the market."

"Ensure an increase in general skilled labour entering the industry."

"Improve the availability of skilled labour so that competitive wage payments are not as necessary."

Building industry amendments

The Australian Building & Construction Commission (ABCC) was first established in October 2005 as a key recommendation of the Cole Royal Commission into the Building and Construction Industry. The ABCC ceased operating on 31 May 2012, with the new industry regulator, Fair Work Building & Construction (FWBC), commencing operation on 1 June 2012.

At the same time, the workplace relations legislation specific to the building industry, the Building & Construction Industry Improvement Act 2005, was repealed and replaced with the Fair Work (Building Industry) Act 2012.

In the move to the new legislative regime, many of the areas previously regulated by the Building & Construction Industry Improvement Act reverted to regulation by the Fair Work Act, while the remaining building industry-specific provisions left in the Fair Work (Building Industry) Act were watered down.

The questions in this part of the survey seek to reveal the impacts of those changes in the months after they took effect.

Which, if any, of the below areas of construction industry reform have had an impact on your organisation over the past few months since they were introduced?

	Major benefit (%)	Some benefit (%)	No effect (%)	Some harm (%)	Major harm (%)
Narrower definition of industrial action	0.0	5.3	78.9	10.5	5.3
Reduced scope for injunctions to stop unlawful industrial action	0.0	0.0	73.7	15.8	10.5
Reduced penalties for unlawful conduct	0.0	5.3	63.2	5.3	26.3
Weaker prosecutorial powers of the industrial regulator	0.0	0.0	68.4	21.1	10.5
Less effective compulsory information gathering power	0.0	0.0	83.3	0.0	16.7
Narrower definition of building work	0.0	0.0	84.2	5.3	10.5
Weaker anti-coercion provisions in relation to terminating, making, varying or extending an industrial agreement	0.0	0.0	84.2	10.5	5.3

According to the table above, the most important change was the reduced penalties for unlawful conduct, which was seen as doing 'major' harm by 26.3% of respondents.

> *"Individuals breaching these provisions are more inclined to do so because the penalties have been watered down. There have been some instances of brazen breaches of workplace law which may not be found so because of the diluted strength of the law."*

Have you noticed a change in culture in the industry as a result of these changes?

	% of respondents
Yes – there has been a significant deterioration in industry culture	20.0
Yes – there has been a slight deterioration in industry culture	10.0
No – there has been no noticeable difference in industry culture	70.0
Yes – there has been a slight improvement in industry culture	0.0
Yes – there has been a significant improvement in industry culture	0.0

The table above shows there has been a perceived deterioration in the culture of the industry experienced by 30% of respondents, with 20% indicating this deterioration had been significant:

> *"On the back of weaker regulation, the promotion of futile militancy by some union parties as a means of achieving outcomes has disillusioned some workers who just was to come to work, do a good job and get home safely."*

Skilled migration

The importance of being able to secure skilled employees when required is crucial if the resource and construction industries are to continue expanding and generating jobs. The absence of appropriate skills within Australia, particularly amongst those who are based in or would be willing to move to remote locations is of critical concern.

As the results in this section show, overseas recruitment is essential if resource activity is to optimise its value to the economy and create ongoing jobs during the operational phases of resource projects. At the same time, the results reveal this is a high-cost option and only utilised where the skills, often highly specialised, are not available domestically.

Does your organisation currently recruit skilled workers from overseas?

	% of respondents
Yes	68.0
No	32.0

The results in the table above show that more than two-thirds of respondents (68%) recruited workers from overseas during the survey period.

This indicates the importance of overseas recruitment in maintaining the health of the industry. The absence of a sufficiently large Australian skill base willing to move to mining and resources sector sites is highlighted in the written replies:

"[There is a] lack of local applicants." …"Couldn't find [labour] locally."

"There's not enough domestic availability of certain skills."

"[These are] specialised fields." … "Hard to source locally."

"Lack of skills within Australia." … "Shortage of skilled local employees."

"It is an exception rather than the rule. Usually, it is a known individual who we happily sponsor for the required visas."

"We don't actively recruit, but will hire on occasion."

"Technical staff e.g. engineers are difficult to attract locally."

Do you plan to recruit skilled workers from overseas in the next six months?

	% of respondents
Yes	20.0
No	56.0
Considering it	24.0

The data show that 20% of respondents were intending to recruit from overseas in the six months following the survey with a further 24% considering it. The comments about the reasons behind whether to recruit from overseas or not include:

"[We are seeing a] downturn in overall employee levels."

"Assuming more talent is now available."

"It depends on the availability of domestically skilled individuals."

"We would like to but are unable to as we are non-trade and can't take advantage of the 457 program."

"[Only for] high level technical skill and executive management."

Do you believe that labour agreements and/or enterprise migration agreements are a viable way to facilitate access to skilled workers from overseas?

	% of respondents
Yes	50.0
No	50.0

As the table above shows, half of the businesses surveyed believed that labour agreements and/or enterprise migration agreements were not a viable way to facilitate access to skilled workers from overseas:

"A way of getting workers, yes, a way of controlling excessive labour costs, no."

"Yes, but the costs and timeframes are incredibly time consuming and onerous."

"Yes, but at present it appears they exist only in principle. It is not possible in the current political environment to get one approved."

"Without any detailed knowledge they would seem a step in the right direction, though would seem weak and subject to excessive intervention by parties with other interests such as government."

About this report

The analysis in this report is based on a survey of the WR/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 between October 2012 and March 2013 of the members of the Australian Mines and Metals Association (AMMA), the peak representative organisation for the resource industry dealing with workplace relations issues in Australia. The survey on which this report is based covered the retrospective six-month survey period between 1 April 2012 and 30 September 2012.

The survey is the sixth and final in a series of six-monthly surveys looking into the WR environment in the resource 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 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 WR 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 each point in time. The quantitative survey results have been supplemented by quotes from those who responded to the survey questionnaire, helping to paint a more nuanced and detailed picture of the operation of 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% of respondents are clustered in the lowest category, the index measure would be zero. If 100% 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 period, 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 up until March 2013, receiving comprehensive, completed surveys from 52 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 represented in the survey

- Oil and gas / hydrocarbons;
- Metalliferous mining;
- Construction (onshore and offshore);
- Coal mining;
- Maritime (offshore and onshore);
- Transport;
- Mineral exploration;
- Commercial diving;
- Drilling;
- Mining equipment manufacturing;
- Mineral processing / smelting;
- Services to mining (ie catering, equipment supply);
- Maintenance; and
- Non-metallic mineral mining and quarrying.

The size of respondent companies

Around 38% of respondents to the latest survey had a workforce of 200 to 1,000 people, including employees and contractors; with 33% having over 1,000 employees. Around 27% of respondents having between 20 and 199 employees and one respondent having less than 20 employees.

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

Any queries in relation to this project can be directed in the first instance to AMMA Senior Workplace Policy Adviser, Lisa Matthews, on (03) 6270 2256 or at lisa.matthews@amma.org.au.