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# THE FAIR WORK ACT: ITS IMPACT WITHIN AUSTRALIAN WORKPLACES

RESEARCH REPORT  
JANUARY 2012

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## ACKNOWLEDGEMENTS

The survey questions were developed and the compiling of data undertaken by a Deakin University research team consisting of Dr Keith Abbott, Ms Leanne Morris and Dr Kerry Saville.

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## BACKGROUND TO THE RESEARCH

Late in 2006, the Australian Human Resources Institute (AHRI) commissioned a longitudinal study into the operation of Federal industrial relations' legislation. This study was to involve the running of a series of on-line surveys seeking the views of AHRI members towards the workplace operation of such legislation. The first survey was conducted in mid-2007 and sought opinions relating to the Workplace Relations Amendment (Work Choices) Act 2005. This particular survey offered insight into workplace practices under what was then a contentious piece of legislation. The second survey was run in mid-2010, a year after the Work Choices legislation had been overturned by the Rudd Government in favour of new legislation in the form of the Fair Work Act 2009. The findings of this survey offered an early understanding of the problems and prospects confronting HR professionals as they sought to make sense of and manage labour under a new legislative regime. Whilst there was great benefits to be had from the information gained from these two surveys in their own right, direct comparisons between their findings was not possible because the legislation subject to investigation had changed over the interim, and changed quite dramatically.

The findings of the present report are gained from a third on-line survey in the series, this time reporting on the views held by HR professionals toward the Fair Work Act 2009 at the two year interval since it became operable. Because the present survey deals with the same Federal legislation as the second survey conducted in 2010, it allows for some emerging trends to be identified on the workplace impact of the Fair Work Act 2009. To this end, where applicable, the results of both the 2010 and present surveys are listed in the following report. Also reported are the Act's influence, as perceived by survey respondents, on the organisations they work for and the workplace practices they deploy when formulating, negotiating and concluding employment contracts, as well as on their role as HR professionals.

As professionals with direct and indirect responsibilities for the implementation of Federal legislation in Australian workplaces, AHRI members are uniquely placed to provide a first-hand perspective on the operational impact of the Fair Work Act 2009. The research contained in this report accordingly offers a unique and valuable contribution to discussions over the current and foreseeable operation of the Act.

## METHODOLOGY

Under a commission provided by AHRI, a research team from Deakin University's School of Management and Marketing led the design of the survey questions and a survey tool. The members of this team were Dr Keith Abbott, Ms Leanne Morris and Dr Kerrie Saville.

The current survey was delivered and coordinated in an online format by AHRI, was open between August and November 2011, and was distributed to AHRI's membership, which number around 18,000. By the closing date 691 valid responses had been received. Most of the questions asked in the current survey replicated questions asked in the 2010 survey, so that comparisons could be made between the two sets of data in any analysis undertaken outside the purview of the present report. A few points are worth noting in reading the data contained in the following. First, the percentages given in each entry are calculated in relation to the number of valid responses received for that question ( $n=x$ ). Second, in cases where no reference is made to the 2010 survey, the Table is referring to new questions asked in the current survey only. Third, there is an anomaly in a few questions where the list of entries differs across the 2010 survey and current survey. Typically an entry is simply missing. In such cases the entry concerned is flagged with 'not asked' (n.a), meaning that this entry was listed in the relevant survey. And finally, a written summation of the survey data is provided at the end of each section and refers to the questions contained in that section. The figures used in these summations 'round' up or 'round' down the figures they refer to in the associated Tables (e.g., 5.5 is 'rounded up' to 6, whereas 5.4 is 'rounded down' to 5). This is done for simple ease of reading and with no great injustice being done to the intended meaning sought to be conveyed in the summation.

No analysis of the data presented in this report is attempted. Nor is any explanation provided to account for the findings of the current survey or for the differences between the findings of this survey and the findings of the 2010 survey. What is given are the unmediated findings of both surveys, with supporting commentary summarising the key points.

# THE QUESTIONS

The present on-line survey, in line with its predecessor, is divided into five sections:

1. Your organisation and its workforce
2. The Fair Work Act and your role as an HR professional
3. The Fair Work Act and your organisation
4. The Fair Work Act and employment contracts
5. Your say on the Fair Work Act.

# KEY FINDINGS AT A GLANCE

- 63% of respondents report an increased level of record keeping under the Fair Work Act (58% reported that in 2010).
- 47% of respondents believe that operating under the Fair Work Act will decrease their organisation's willingness to employ people over the next three years
- 51% believe industrial relations costs will increase further in a year's time (37% believed that in 2010)
- 65% report it taking more time to formulate employment contracts (down marginally from 68% in 2010)
- 47% report spending more time bargaining over employment contracts (40% reported that in 2010).
- 46% report the negotiation of employment contracts is more difficult (38% reported that in 2010), but 38% also believe negotiating employment contracts will become more difficult in 12 months' time (25% believed that in 2010).
- 29% report productivity has decreased (13% reported that in 2010).
- 31% believe that allowing individual labour contracts, subject to a "better off overall" test, would either somewhat or greatly improve productivity
- 31% believe allowing a choice between union and non-union negotiated agreements would somewhat or greatly improve productivity.
- 40% believe greater flexibility in use of contractors and labour hire firms would positively impact productivity
- 47% report the importance of managing union relations has increased (39% reported that in 2010).
- 41% report the number of union visits to work sites has increased (29% reported that in 2010).
- 58% report labour costs have increased (45% reported that in 2010).
- 33% report the number of parent leave days allowed per annum has increased (20% reported that in 2010).
- 31% report the number of personal carer days allowed per annum has increased (20% reported that in 2010).
- 47% report that overall remuneration has increased (30% reported that in 2010)
- 42% report flexible employee working arrangements have increased while 18% report they decreased, with 38% reporting 'no change'. This question was not asked in 2010.
- 35% report that under the new unfair dismissal threshold it has been harder to make jobs redundant (26% reported that in 2010).

# YOUR ORGANISATION AND ITS WORKFORCE

**TABLE 1. IN WHAT INDUSTRIAL SECTOR DOES YOUR ORGANISATION OPERATE?**

	% (2010 n=983)	% (2011 n=683)
Agriculture, Forestry and Fishing	1.8	1.9
Mining	4.4	4.7
Manufacturing	9.1	11.0
Electricity, Gas, Water and Waste Services	2.6	2.2
Construction	3.4	4.2
Wholesale Trade	2.3	1.5
Retail Trade	4.1	6.3
Accommodation and Food Services	3.3	1.9
Transport, Postal and Warehousing	5.3	5.4
Information Media and Telecommunications	3.6	2.6
Financial and Insurance Services	7.6	8.5
Rental, Hiring and Real Estate Services	0.7	1.0
Professional, Scientific and Technical Services	10.3	n.a
Administrative and Support Services	2.1	n.a
Public Administration and Safety	6.1	5.6
Education and Training	8.6	7.8
Health Care and Social Assistance	11.2	12.3
Arts and Recreation Services	1.0	1.9
Other Services	12.5	21.2

**TABLE 2. WHAT CATEGORY BEST DESCRIBES THE STATUS OF YOUR ORGANISATION?**

	%	
	(2010 n=961)	(2011 n=684)
Private sector organisation	53.4	56.1
Publicly listed company	17.1	16.7
Government business enterprise/commercial statutory authority	7.6	7.7
Non-commercial statutory authority	2.1	n.a
Federal public service department	3.5	3.5
State public service department	3.9	3.2
Other non-commercial	8.8	10.4
Other commercial	3.4	2.4

**TABLE 3. IN WHICH STATE OR TERRITORY IS YOUR HEAD OFFICE REGISTERED?**

	%	
	(2010 n=982)	(2011 n=690)
New South Wales	28.8	30.7
Victoria	27.4	28.7
Queensland	13.8	10.4
South Australia	8.8	9.0
Western Australia	9.2	8.7
Tasmania	2.7	2.5
Australian Capital Territory	5.4	4.8
Northern Territory	1.4	1.3
Another country	2.3	2.9
Other	0.1	1.0

**TABLE 4. APPROXIMATELY HOW MANY EMPLOYEES ARE EMPLOYED BY YOUR ORGANISATION?**

	%	
	(2010 n=975)	(2011 n=689)
Less than 20 employees	7.6	8.6
Between 20 and 49 employees	8.6	5.4
Between 50 and 99 employees	9.1	9.7
Between 100 and 499 employees	34.3	33.1
Between 500 and 1,000 employees	10.4	12.6
Over 1,000 employees	29.9	30.2
Don't know	0.1	0.4



**TABLE 5. WHAT PERCENTAGE OF YOUR ORGANISATION'S WORKFORCE ARE WOMEN?**

	%	
	(2010 n=986)	(2011 n=690)
Zero	1.0	0.7
More than 0% but less than 10%	5.1	5.4
Between 10-19%	9.8	11.3
Between 20-29%	9.6	9.3
Between 30-39%	10.2	8.4
Between 40-49%	12.8	14.6
Between 50-59%	20.0	18.5
Between 60-69%	11.6	9.7
Between 70-79%	9.1	9.3
Between 80-89%	4.4	6.7
Between 90-100%	3.7	4.1
Don't know	2.7	2.1

**TABLE 6. WHAT PERCENTAGE OF YOUR ORGANISATION'S WORKFORCE COULD BE CATEGORISED AS PHYSICALLY AND/OR MENTALLY DISABLED?**

	%	
	(2010 n=982)	(2011 n=686)
Zero	26.1	26.1
More than 0% but less than 10%	59.4	61.3
Between 10-19%	4.1	3.6
Between 20-29%	1.5	0.9
Between 30-39%	0.3	0.3
Between 40-49%	0.3	n.a
Between 50-59%	0.2	0.1
Between 60-69%	0.3	0.1
Between 70-79%	0.2	n.a
Between 80-89%	n.a.	n.a
Between 90-100%	n.a	0.1
Don't know	7.6	7.1

**TABLE 7. WHAT PERCENTAGE OF YOUR ORGANISATION’S WORKFORCE HAS A NON-ENGLISH SPEAKING BACKGROUND?**

	%
	(2011 n=690)
Zero	9.9
More than 0% but less than 10%	34.3
Between 10-19%	17.5
Between 20-29%	12.6
Between 30-39%	8.4
Between 40-49%	4.6
Between 50-59%	3.0
Between 60-69%	1.7
Between 70-79%	1.0
Between 80-89%	0.4
Between 90-100%	0.1
Don't know	6.2

**TABLE 8. WHAT PERCENTAGE OF YOUR ORGANISATION’S WORKFORCE IS COVERED BY A UNION OR UNIONS?**

	%
	(2011 n=689)
Zero	26.0
More than 0% but less than 10%	15.4
Between 10-19%	7.4
Between 20-29%	4.9
Between 30-39%	4.2
Between 40-49%	3.0
Between 50-59%	3.8
Between 60-69%	5.5
Between 70-79%	6.5
Between 80-89%	8.2
Between 90-100%	10.5
Don't know	4.5

**TABLE 9A. WHAT PERCENTAGE OF YOUR 'AWARD' WORKFORCE DO YOU ESTIMATE ARE UNION MEMBERS?**

	%	
	(2010 n=937)	(2011 n=676)
Zero	28.6	27.5
More than 0% but less than 10%	22.1	22.2
Between 10-19%	7.8	8.9
Between 20-29%	8.1	7.5
Between 30-39%	5.5	6.8
Between 40-49%	3.6	3.7
Between 50-59%	3.4	4.4
Between 60-69%	3.0	3.7
Between 70-79%	3.0	3.6
Between 80-89%	3.1	3.3
Between 90-100%	2.6	3.1
Don't know	9.2	5.3

**TABLE 9B. WHAT PERCENTAGE OF YOUR 'NON-AWARD' WORKFORCE DO YOU ESTIMATE ARE UNION MEMBERS?**

	%	
	(2010 n=837)	(2011 n=669)
Zero	51.0	49.8
More than 0% but less than 10%	24.7	31.6
Between 10-19%	4.7	5.7
Between 20-29%	3.2	1.5
Between 30-39%	1.0	0.9
Between 40-49%	0.5	0.4
Between 50-59%	1.1	0.4
Between 60-69%	0.7	0.3
Between 70-79%	0.5	0.6
Between 80-89%	0.8	0.3
Between 90-100%	2.4	0.4
Don't know	9.4	8.1

The data contained in the Tables included in this section are broadly consistent across the 2010 and present surveys. The two exceptions are data listed in Tables 7 and 8, where the associated survey questions figure in the present (2011) survey only. The early Tables are essentially about establishing what types of organisations are represented by survey respondents.

Tables 1 to 3 closely reflect the make-up and location of Australian industry, with the distribution of respondents being broadly in accord with the well documented distribution of organisations across production and services, public and private sectors, and states and territories.

Table 4 indicates that the largest percentage of respondents are employed by middle-sized organisations employing between 100 and 499 employees (33%), closely followed by a sizable minority employed by large organisations with 1,000 or more employees (30%).

Table 5 shows the employment of women as a percentage of the workforce. The distribution represented by respondents in this particular Table equates closely to a usual population bell curve, with the bulk of respondents (15% + 19%) congregating around organisations with 40% to 60% of women making up their workforces.

Table 6 indicates that the greatest percentage of respondents (26% + 61%) are from organisations that have between 0% and 20% of their workforces with some form of disability, whilst Table 7 suggests they are predominantly (34% + 17%) employed by organisations that have between 1% and 20% of their workforce made up of people from non-English speaking backgrounds.

Table 8 shows the percentage of respondents is highest from organisations where between 0% and 30% of the workforce has union coverage, the next highest claiming their workforces have between 80% and 100% coverage.

Tables 9a and 9b ask questions relating to the percentage of award and non-award workforces that are estimated to be union members. In the case of the 'award' workforce, the greatest percentage of respondents (28% + 22%) are from organisations where between 0% and 10% of the workforce are estimated to be union members. In the case of non-award workforces, the greatest percentage (50% + 32%) is from similar organisations represented in the 0% to 10% range, but in far larger measure.

The point to be taken from this section is that the survey respondents are broadly representative of the full panoply of Australian industry, with no obvious bias being evident towards a given industrial sector or a specific segment of the labour market. The data they provide in answering the survey questions can thus be said to offer a broadly based insight into the day-to-day management of labour under the Fair Work Act 2009.

## THE FAIR WORK ACT AND YOUR ROLE AS A HR PROFESSIONAL

This section begins by identifying the position held by the respondents. The figures set out in Table 10 are consistent across the 2010 survey and the present survey, with the vast majority of respondents being practising HR professionals. The percentage holding HR positions in the 2010 survey was ('operational level practitioner' 15% + 'middle level practitioner' 23% + 'executive level practitioner' 32% + 'consultant' 10% + 'IR practitioner' 4% + 'IR consultant' 2%=) 86%, whereas in the current survey the percentage, respectively, is (16% + 20% + 39% + 7% + 3% + 2%=) 87%.

**TABLE 10. WHAT IS THE CURRENT POSITION YOU HOLD IN YOUR ORGANISATION?**

	%	
	(2010 n=985)	(2011 n=691)
Managing Director/CEO	5.4	6.2
HR Practitioner at operational level	14.5	15.5
Middle level HR Practitioner	23.2	20.4
Executive level HR Practitioner	32.2	38.8
HR Consultant	10.6	7.4
Academic	0.8	6.0
Student	0.4	0.1
IR Practitioner	3.5	3.3
IR Consultant	2.3	2.0
Other	n.a	5.4

Table 11 refers to where legal advice is principally sourced. The highest percentage of respondents listed external legal advisors (38%) as the principal source, followed by a combination of internal and external legal advisors (23%) and employer associations (18%). These figures do not show any notable difference with the percentages recorded in the 2010 survey.

**TABLE 11. WHEN DEALING WITH LEGAL ISSUES RELATING TO YOUR ROLE, WHAT SOURCE DO YOU MOST RELY UPON FOR LEGAL ADVICE?**

	%	
	(2010 n=986)	(2011 n=690)
External legal advisors	36.9	37.5
Internal legal advisors	10.6	7.3
Both internal and external legal advisors	20.0	23.3
Employer association	17.2	18.2
Self-reliant	12.6	11.6
Not applicable to your organisation	0.3	1.0
Not applicable to your role	1.8	0.1
Other	0.5	1.0

Table 12 suggests that the vast majority of respondents come from organisations that fall within the jurisdiction of the Fair Work Act 2009, registering 96% of respondents, which is slightly higher than the 92% recorded in the 2010 survey.

**TABLE 12. DOES YOUR ORGANISATION FALL WITHIN THE JURISDICTION OF THE FAIR WORK ACT ?**

	%	
	(2010 n=985)	(2011 n=691)
Yes	91.9	96.1
No	4.3	2.6
Don't know	3.7	1.3

Table 13 asks a general question about the Fair Work Act 2009 and its impact on the respondents' role as HR professionals. The key finding here is that the majority of respondents claim that the Act was making their job 'more difficult'. Those asserting this view in the 2010 survey constituted 57% of respondents, a figure that has increased to 65% in the current survey.

**TABLE 13. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON YOUR JOB?**

	%	
	(2010 n=862)	(2011 n=684)
It has made it easier	8.6	8.8
No change	31.0	24.1
It has made it more difficult	57.3	64.7
Not applicable to your role	0.9	1.8
Don't know	2.2	0.6

From here the next series of Tables refer to the impact the Fair Work Act 2009 has had on various industrial relations practices. Tables 14 to 17 refer to the 'time' and 'costs' associated with dealing with industrial relations issues as a result of the Act. These tables suggest that the trend is one of diminishing confidence across these indicators. Tables 14 and 16 show there has been a small increase in the percentage of respondents reporting that the time devoted to dealing with industrial relations issues as a result of the Act has increased, from 66% in 2010 to 67% in the current

survey, with a larger increase in the percentage of respondents reporting that it now costs more to do so, from 53% in 2010 to 62% in the current survey.

Tables 15 and 17 see far fewer respondents speculating that this will be the case in one year's time. Here there has been a significant increase in the percentage of respondents speculating that the Act will cause more time to be devoted to industrial relations issues in the future, rising from 37% in 2010 to 47% in 2011. The percentage of respondents speculating that it will cost more to do so in one year's time also increased significantly, from 37% in 2010 to 51% in the present survey.

**TABLE 14. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE TIME YOU DEVOTE TO INDUSTRIAL RELATIONS ISSUES?**

	%	
	(2010 n=892)	(2011 n=687)
It takes more time	66.0	67.0
No change	26.6	26.3
It takes less time	3.4	3.4
Not applicable to your role	2.7	2.5
Don't know	1.3	0.8

**TABLE 15. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON THE TIME YOU DEVOTE TO INDUSTRIAL RELATIONS ISSUES?**

	%	
	(2010 n=892)	(2011 n=687)
It will take more time	37.1	46.6
No change	38.5	40.2
It will take less time	16.3	7.1
Not applicable to your role	1.6	1.7
Don't know	6.5	4.4

**TABLE 16. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE COSTS ASSOCIATED WITH INDUSTRIAL RELATIONS ISSUES?**

	%	
	(2010 n=885)	(2011 n=690)
It costs more	53.1	62.2
No change	35.0	27.2
It costs less	2.4	2.6
Not applicable to your role	3.3	2.9
Don't know	6.2	5.1

**TABLE 17. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON THE COSTS ASSOCIATED WITH INDUSTRIAL RELATIONS ISSUES?**

	%	
	(2010 n=873)	(2011 n=689)
It will cost more	37.2	51.4
No change	43.4	35.8
It will cost less	7.3	3.9
Not applicable to your role	2.9	2.4
Don't know	9.2	6.5

Tables 18 to 23 refer to the 'time' (i.e., more, less or no change) respondents spend on formulating, bargaining and managing employment contracts, both presently and in one year's time. These Tables suggest that a significant percentage of respondents in the current survey find formulating and managing employment contracts takes 'more time' as a result of the Fair Work Act 2009. The trend across the 2010 and present surveys is nonetheless one of a slight decline. The percentage of respondents suggesting that it takes 'more time' to formulate employment contracts eased from 68% in 2010 to 65% in 2011, whilst the percentage stating it takes 'more time' to manage employment contracts declined from 61% in 2010 to 56% in 2011.

The exception to these relatively stable figures is the time devoted to bargaining over employment contracts. Here there was an increase in the percentage of respondents claiming that it takes 'more time' to bargain, increasing from 41% in 2010 to 47% in 2011. The trend in speculating on the extent of time that will be devoted to formulating, bargaining and managing employment contracts in one year's time is consistent across the Tables. The percentage of those speculating that 'more time' will be spent on formulation grew from 30% in 2010 to 37% in 2011; on bargaining from 31% in 2010 to 42% in 2010; and on managing from 26% to 38%.

**TABLE 18. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE TIME YOU SPEND FORMULATING EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=886)	(2011 n=686)
It takes more time	67.7	64.9
No change	23.4	25.8
It takes less time	4.2	4.7
Not applicable to your role	3.7	3.8
Don't know	1.0	0.8

**TABLE 19. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON THE TIME SPENT FORMULATING EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=872)	(2011 n=689)
It will take more time	29.6	36.7
No change	46.6	47.8
It will take less time	16.4	9.0
Not applicable to your role	3.1	3.0
Don't know	4.4	3.5

**TABLE 20. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE TIME SPENT BARGAINING OVER EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=884)	(2011 n=668)
It takes more time	40.5	46.7
No change	41.8	39.8
It takes less time	2.9	3.7
Not applicable to your role	10.5	7.7
Don't know	4.3	2.1

**TABLE 21. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON THE TIME SPENT BARGAINING OVER EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=862)	(2011 n=679)
It will take more time	31.4	42.4
No change	44.4	40.4
It will take less time	7.1	6.5
Not applicable to your role	8.7	6.5
Don't know	8.4	4.2

**TABLE 22. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE TIME SPENT MANAGING EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=875)	(2011 n=689)
It takes more time	61.4	55.7
No change	30.3	34.8
It takes less time	3.3	5.5
Not applicable to your role	3.1	2.6
Don't know	1.9	1.4

**TABLE 23. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON THE TIME SPENT MANAGING EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=885)	(2011 n=688)
It will take more time	25.6	38.1
No change	54.0	50.4
It will take less time	7.4	5.7
Not applicable to your role	6.1	2.2
Don't know	6.9	3.6



Tables 24 to 27 refer to the degree of 'difficulty' respondents found in negotiating employment contracts and managing workplace disputes. Here there have been some sizable shifts, with all the indicators suggesting the Fair Work Act 2009 is creating difficulty for a growing number of organisations. The percentage of respondents claiming the Act has made negotiating employment contracts 'more difficult' has increased from 39% in 2010 to 46% in 2011, with the percentage of those speculating that such negotiations will become 'more difficult' in the coming year increasing from 26% in 2010 to 38% in 2011. In the case of managing industrial disputes, the percentage of respondents reporting that the Act made this task 'more difficult' grew from 30% to 50%, whereas those speculating that it will be 'more difficult' in the future grew from 25% to 41%.

**TABLE 24. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE NEGOTIATION OF EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=860)	(2011 n=680)
It has made it more difficult	38.5	45.6
No change	46.4	41.6
It has made it easier	5.1	5.9
Not applicable to your role	6.6	5.0
Don't know	3.4	1.9

**TABLE 25. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON NEGOTIATING EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=885)	(2011 n=682)
It will make it more difficult	25.6	37.8
No change	54.0	49.1
It will make it easier	7.4	4.7
Not applicable to your role	6.1	4.1
Don't know	6.9	4.3

**TABLE 26. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON HOW WORKPLACE DISPUTES ARE MANAGED?**

	%	
	(2010 n=852)	(2011 n=681)
It has made it more difficult	29.5	50.7
No change	53.9	35.7
It has made it easier	7.7	9.3
Not applicable to your role	3.6	2.6
Don't know	5.3	1.7

**TABLE 27. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON HOW WORKPLACE DISPUTES WILL BE MANAGED?**

	%	
	(2010 n=887)	(2011 n=684)
It will make it more difficult	25.0	41.4
No change	55.3	46.3
It will make it easier	7.8	5.3
Not applicable to your role	3.3	2.0
Don't know	8.6	5.0

Tables 28 to 36 contain a mixture of items.

Tables 30, 31 and 32, respectively, refer to the impact of the Fair Work Act 2009 on determining the content of employment contracts, the complexity of employment arrangements and the importance of managing union relations. In relation to the first, the percentage of respondents stating that the impact of the Act made determining the content of employment contracts 'more difficult' changed only slightly across the two surveys, from 54% in 2010 to 53% in 2011. In relation to the second, the percentage of respondents stating that the Act had created 'more complexity' in employment arrangements increased from 49% of respondents in 2010 to 56% in 2011. And in relation to the third, the percentage of respondents stating that the Act had made the management of union relations 'more important' increased from 39% in 2010 to 47% in 2011.

Tables 28, 29, 33, 35 and 36 refer to the use of outside agencies in the conduct of industrial relations.

Table 28 finds a sizeable percentage of respondents listing the Fair Work Act 2009 as having 'increased the need' for legal advice, a percentage that remained relatively steady across the two surveys, with 74% being recorded in 2010 and 77% being recorded in 2011. The trend listed in Table 29 shows that the percentage of respondents believing the Act will 'increase the need' for legal advice over the coming year increased considerably, from 40% in 2010 to 51% in 2011. Table 33 finds the percentage of respondents believing the Act caused an 'increased use' of private mediators almost doubled across the two surveys, but from a very low base, recording 13% in 2010 and 22% in 2011. The majority of respondents recorded no change in this regard at around 60%.

Table 35 indicates the percentage of respondents who held the Act had increased the use of services provided by employer associations remained relatively stable, recording 48% in both the 2010 and 2011 surveys.

Table 36 indicates a marginally higher percentage of respondents drawing on the services of AHRI as a result of the Act, with the figures remaining relatively constant at 22% in 2010 and 24% in 2011.

Overall the figures in these Tables show no real change, with large percentages of respondents listing 'no change', the only exception being the case of employer associations, where their increased use as a result of the Act dominated across the two surveys.

Table 34 refers to the impact the Act has had on organisational status of HR professionals. Here the allocation of respondents across the listings has remained broadly the same across the 2010 and 2011 surveys, with a slight increase in the percentage of respondents indicating that it has 'increased' their status, from 42% in 2010 to 45% in 2011. The 'no change' entry remains the dominant choice of respondents.

**TABLE 28. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE NEED FOR LEGAL ADVICE?**

	%	
	(2010 n=872)	(2011 n=690)
It has increased the need	74.1	76.5
No change	18.3	17.6
It has decreased the need	4.6	4.2
Not applicable to your role	1.6	1.0
Don't know	1.4	0.6

**TABLE 29. IN ONE YEAR'S TIME, WHAT IMPACT DO YOU IMAGINE THE FAIR WORK ACT WILL HAVE ON THE NEED FOR LEGAL ADVICE?**

	%	
	(2010 n=877)	(2011 n=689)
It will increase the need	40.1	50.7
No change	41.5	38.1
It will decrease the need	10.7	7.4
Not applicable to your role	1.6	1.0
Don't know	6.0	2.8

**TABLE 30. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE CONTENT OF EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS?**

	%	
	(2010 n=849)	(2011 n=683)
It has made it more difficult	53.5	52.9
No change	28.6	32.1
It has made it easier	10.7	10.0
Not applicable to your role	4.1	2.9
Don't know	3.1	2.1

**TABLE 31. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE COMPLEXITY OF EMPLOYMENT ARRANGEMENTS?**

	%	
	(2010 n=866)	(2011 n=687)
It has made it more complex	49.2	56.2
No change	32.3	31.9
It has made it less complex	12.6	9.8
Not applicable to your role	2.8	1.5
Don't know	3.1	0.6

**TABLE 32. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE IMPORTANCE OF MANAGING UNION RELATIONS?**

	% (2010 n=842)	% (2011 n=665)
It is more important	38.8	47.2
No change	42.6	35.9
It is less important	0.5	0.6
Not applicable to your role	13.8	13.4
Don't know	4.3	2.9

**TABLE 33. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE USE OF PRIVATE MEDIATORS TO SETTLE WORKPLACE DISPUTES?**

	% (2010 n=835)	% (2011 n=662)
It has increased their use	13.1	22.1
No change	62.4	58.0
It has decreased their use	2.3	3.6
Not applicable to your role	10.9	8.9
Don't know	11.4	7.4

**TABLE 34. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE STATUS OF HRM PROFESSIONALS WITHIN THE ORGANISATION?**

	% (2010 n=871)	% (2011 n=683)
It has increased	42.3	45.4
No change	52.1	47.1
It has decreased	1.1	3.4
Not applicable to your role	1.3	2.3
Don't know	3.2	1.8

**TABLE 35. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE USE OF SERVICES PROVIDED BY AN EMPLOYER ASSOCIATION?**

	% (2010 n=871)	% (2011 n=683)
It has increased	47.7	48.3
No change	38.1	38.6
It has decreased	1.5	2.2
Not applicable to your role	6.9	6.6
Don't know	5.8	4.3

**TABLE 36. WHAT IMPACT HAS THE FAIR WORK ACT HAD ON THE USE OF SERVICES PROVIDED BY THE AUSTRALIAN HUMAN RESOURCE INSTITUTE (AHRI)?**

	%	
	(2010 n=851)	(2011 n=641)
It has increased	21.9	23.7
No change	65.0	70.7
It has decreased	0.2	1.2
Not applicable to your role	2.9	4.4
Don't know	10.0	n.a

Before leaving this section it is worth noting the following statement from the 2010 survey under this section:

Many of the questions about present practice were followed by an identical question about the respondents' expectations in a year's time. In general, the answers to those questions suggested that respondents thought the implementation of the Fair Work Act in their workplaces would be less complex or difficult, require less time, less external advice, and be less expensive than it is now.

Some of the most sizable movements across the 2010 survey and the present survey have been in those categories of question that speculate about the future, with the results recorded moving in the opposite direction to those referred to in the above quote. Respondents, with another year of experience about how the Fair Work Act 2009 operates, appear to hold less favourable expectations, believing it will make the management of labour 'more complex' and 'more difficult', and the management of industrial relations and employment contracts requiring 'more time' and 'more expensive' than is presently the case. Hence the confidence of respondents in dealing with the workplace ramifications of the Act appears to be waning.

## THE FAIR WORK ACT AND YOUR ORGANISATION

Table 37 leads this section and refers to a wide range of industrial relations issues that are open to influence by the Fair Act 2009. The elaboration of this Table in the 2010 survey concluded that 'change as a "direct consequence" of the Act had been far from pervasive, with most respondents stating "no change" had occurred across the listed [entries].' The same comment can be applied to the data presented in Table 37 in the present survey. In all but five entries (v labour costs; vi labour flexibility-financial; xvi level of record keeping; xxix overall remuneration; xxxii flexible working arrangements), the percentage of respondents claiming no change had occurred as a result of the Act was 50% or more. There is however a significant trend of decline in the 'no change' criteria across all but one entry (ix annual leave loading). (Note: entry number xxxii flexible working arrangements is only asked in the 2011 survey and is not considered here). In other words, the percentage of respondents claiming that no change had occurred across the listed entries declined in almost all cases between the 2010 and 2011 surveys. This is a curious finding, for it suggests more change has occurred between the first and second years of the Fair Work Act 2009, than between the preceding Work Choices Act 2005 and the establishment of the current Act.

The following compares the 2010 and 2011 survey figures set out in Table 37, identifying the significant movements (10% or more) in the percentage of respondents claiming an increase or decrease had occurred in the listed entries as a direct result of the Fair Work Act 2009.

(ii) 'cashing out' of annual leave had increased – 23% of respondents in 2010 to 33% of respondents in 2011.

(To elaborate on how to read the above entry and others like it below: In the 2010 survey, 23% of respondents stated that the practice of 'cashing out' annual leave had increased as a result of the Fair Work Act 2009. In the 2011 survey, 33% of respondents claimed this practice had increased as a result of the Act. Hence the number of respondents claiming this outcome rose by 10% across the two surveys).

(v) labour costs had increased – 45% of respondents in 2010 to 59% of respondents in 2011.

(vi) labour flexibility-financial (i.e. flexibility to determine pay rates) had decreased – 25% of respondents in 2010 to 35% of respondents in 2011.

(vii) labour flexibility - functional (i.e. flexibility to determine the allocation of labour) had decreased – 21% of respondents in 2010 to 32% of respondents in 2010.

(x) level of absenteeism had increased – 13% of respondents in 2010 to 26% of respondents in 2011.

(xiii) level of direct negotiation over pay and conditions between management and (groups of) employees had increased – 22% of respondents in 2010 to 32% of respondents in 2011.

(xv) level of industrial disputes had increased – 23% of respondents in 2010 to 36% of respondents in 2011.

(xvii) level of union involvement in bargaining had increased – 29% of respondents in 2010 to 39% of respondents in 2011.

(xx) level of workforce morale had decreased - 17% of respondents in 2010 to 27% of respondents in 2011.

(xxv) number of parental leave days allowed per annum had increased – 20% of respondents in 2010 to 33% of respondents in 2011.

(xxvi) number of personal carers' days allowed per annum had increased – 20% of respondents in 2010 to 31% of respondents in 2011.

(xxviii) number of union visits to work-sites had increased - 29% of respondents in 2010 to 41% of respondents in 2011.

(xxix) overall remuneration had increased – 31% of respondents in 2010 to 47% of respondents in 2011.

(xxxi) productivity decreased – 13% of respondents in 2010 to 29% of respondents in 2011.

**TABLE 37. HAS YOUR ORGANISATION EXPERIENCED EITHER AN INCREASE OR DECREASE IN THE FOLLOWING OUTCOMES THAT, IN YOUR VIEW, HAS DIRECTLY DUE TO THE INTRODUCTION OF THE FAIR WORK ACT?**

(i) 'averaging out' of employee hours	%	
	(2010 n=788)	(2011 n=610)
Increased	19.5	23.4
Decreased	3.8	3.8
No change	69.5	67.0
Don't know	7.1	5.8

(ii) 'cashing out' of annual leave	%	
	(2010 n=768)	(2011 n=625)
Increased	23.4	33.3
Decreased	6.6	6.9
No change	67.2	56.8
Don't know	2.7	3.0

(iii) average hours worked by employees	%	%
	(2010 n=767)	(2011 n=609)
Increased	9.8	14.1
Decreased	8.0	13.0
No change	80.1	70.8
Don't know	2.2	2.1

(iv) employment numbers	%	%
	(2010 n=750)	(2011 n=608)
Increased	6.5	12.7
Decreased	9.1	16.8
No change	82.4	67.1
Don't know	2.0	3.4

(v) labour costs	%	%
	(2010 n=760)	(2011 n=626)
Increased	45.3	58.5
Decreased	1.1	2.2
No change	50.7	35.9
Don't know	3.0	3.4

(vi) labour flexibility-financial (i.e. flexibility to determine pay rates)	%	%
	(2010 n=757)	(2011 n=617)
Increased	14.4	16.0
Decreased	24.7	34.5
No change	58.8	46.2
Don't know	2.1	3.3

(vii) labour flexibility - functional (i.e. flexibility to determine the allocation of labour)	%	%
	(2010 n=750)	(2011 n=613)
Increased	12.7	12.4
Decreased	21.3	32.0
No change	62.9	51.9
Don't know	3.1	3.7

(viii) labour flexibility - numerical (i.e. flexibility to determine employment numbers)	%	%
	(2010 n=740)	(2011 n=596)
Increased	7.8	10.1
Decreased	13.5	20.3
No change	75.9	65.4
Don't know	2.7	4.2

(ix) labour turnover	%	%
	(2010 n=740)	(2011 n=597)
Increased	9.1	17.1
Decreased	2.7	5.9
No change	84.9	71.7
Don't know	3.4	5.4

(x) level of absenteeism	%	%
	(2010 n=745)	(2011 n=607)
Increased	13.3	25.9
Decreased	1.9	3.6
No change	80.0	64.9
Don't know	4.8	5.6

(xi) level of annual leave loading	%	%
	(2010 n=746)	(2011 n=599)
Increased	12.2	12.0
Decreased	5.0	4.0
No change	80.6	81.3
Don't know	2.3	2.7

(xii) level of direct communication and consultation between management and employee	%	%
	(2010 n=778)	(2011 n=619)
Increased	39.2	40.5
Decreased	3.2	7.4
No change	56.9	49.9
Don't know	0.6	2.1

(xiii) level of direct negotiation over pay and conditions between management and (groups of) employees	%	%
	(2010 n=750)	(2011 n=600)
Increased	22.3	32.2
Decreased	5.2	8.5
No change	70.8	57.3
Don't know	1.7	2.0

(xiv) level of direct negotiation over pay and conditions between management and (individual) employees	%	%
	(2010 n=759)	(2011 n=602)
Increased	22.1	26.2
Decreased	8.6	15.0
No change	68.1	57.0
Don't know	1.2	1.8



(xv) level of industrial disputes	%	%
	(2010 n=740)	(2011 n=608)
Increased	23.1	36.3
Decreased	1.9	2.0
No change	72.7	59.7
Don't know	2.3	2.0

(xvi) level of record keeping	%	%
	(2010 n=779)	(2011 n=631)
Increased	58.0	63.4
Decreased	1.2	1.1
No change	39.4	33.8
Don't know	1.4	1.7

(xvii) level of union involvement in bargaining	%	%
	(2010 n=714)	(2011 n=600)
Increased	28.9	38.7
Decreased	0.8	2.1
No change	67.6	55.7
Don't know	2.7	3.5

(xviii) level of union involvement in dispute resolution	%	%
	(2010 n=716)	(2011 n=598)
Increased	27.1	33.4
Decreased	0.8	1.3
No change	68.7	60.9
Don't know	3.4	4.3

(xix) level of union involvement in settling employee grievances	%	%
	(2010 n=715)	(2011 n=596)
Increased	26.4	33.9
Decreased	1.0	2.9
No change	69.0	59.4
Don't know	3.6	3.8

(xx) level of workforce morale	%	%
	(2010 n=755)	(2011 n=613)
Increased	7.3	7.5
Decreased	17.2	26.6
No change	72.5	59.7
Don't know	3.0	6.2

(xxi) level of overtime	%	%
	(2010 n=759)	(2011 n=599)
Increased	9.4	17.5
Decreased	11.1	13.2
No change	77.5	65.5
Don't know	2.1	3.8

(xxii) number of annual leave days allowed per annum	%	%
	(2010 n=759)	(2011 n=596)
Increased	5.5	7.1
Decreased	0.8	1.1
No change	92.9	88.9
Don't know	0.8	2.9

(xxiii) number of dismissals	%	%
	(2010 n=752)	(2011 n=598)
Increased	7.4	11.9
Decreased	3.5	8.9
No change	87.5	75.4
Don't know	1.6	3.8

(xxiv) number of new appointments	%	%
	(2010 n=740)	(2011 n=599)
Increased	7.8	16.7
Decreased	6.2	11.2
No change	84.6	68.9
Don't know	1.4	3.2

(xxv) number of parental leave days allowed per annum	%	%
	(2010 n=756)	(2011 n=607)
Increased	20.1	33.4
Decreased	0.4	0.8
No change	77.5	62.6
Don't know	2.0	3.2

(xxvi) number of personal carers' days allowed per annum	%	%
	(2010 n=773)	(2011 n=605)
Increased	20.4	30.6
Decreased	1.6	0.3
No change	76.2	66.3
Don't know	1.8	2.8

(xxvii) number of sick days allowed per annum	% (2010 n=762)	
	% (2011 n=590)	
Increased	7.6	14.9
Decreased	2.4	0.8
No change	89.2	81.4
Don't know	0.8	2.9

(xxviii) union visits to work sites	% (2010 n=745)	
	% (2011 n=607)	
Increased	29.1	40.9
Decreased	0.8	1.2
No change	65.4	52.9
Don't know	4.7	5.0

(xxix) overall remuneration	% (2010 n=751)	
	% (2011 n=608)	
Increased	30.5	46.7
Decreased	1.9	2.5
No change	65.9	48.7
Don't know	1.7	2.1

(xxx) penalty rates for overtime	% (2010 n=749)	
	% (2011 n=593)	
Increased	24.7	30.5
Decreased	2.4	2.9
No change	71.4	64.1
Don't know	1.5	2.5

(xxxi) productivity	% (2010 n=752)	
	% (2011 n=604)	
Increased	4.4	5.6
Decreased	12.6	29.3
No change	78.2	61.1
Don't know	4.8	4.0

(xxxii) flexible working arrangements	% (2011 n=636)	
	Increased	42.5
Decreased	18.4	
No change	37.7	
Don't know	1.4	

Tables 38 to 47 and Question 45 are concerned with industrial action, and in particular authorised secret ballots and the use of 'section 418 orders' when action is taken without a ballot.

Table 38 leads off by asking what was the main institution turned to when industrial disputes were unresolved, with the order of percentages favouring private legal advisors (41% of respondents), followed by Fair Work Australia (29%) and employer associations (20%). These figures demonstrate a broadly consistent trend in relation to the percentages recorded in the 2010 survey.

Table 39 then refers to a question seeking to ascertain which respondents were involved in negotiating collective agreements. The percentage of respondents involved in such negotiations was 53%, which is a significant increase on the 42% recorded in the 2010 survey.

The remaining Tables refer to questions that are only asked in the present survey, so no trend can be determined. Of the respondents identifying themselves as having participated in the negotiation of a collective agreement, 30% stated that the process had involved industrial action being taken by employees (Table 40), and 44% stated that the action had involved an authorised secret ballot (Table 41). There is a quirk in the figures here, since there are more respondents saying that industrial action had taken place with or without a secret ballot (re: Table 41. 44% + 41% = 85% of n=238) than the number of respondents saying that industrial action had taken place (re: Table 40. 30% of n=358). This quirk can be linked in part to the set-up of the survey 'gates', and in part to a likely misreading of the Questions by survey respondents. If read correctly and answered accordingly, the quirk in the survey gate is less of a problem. If this is assumed, then Tables 42, 43 and 44 are at least indicative of the extent to which 'section 418 orders' are being used, and they appear to be used very little. Only four of the 107 respondents applied to Fair Work Australia for orders to have un-balloted industrial action stopped (Table 42); three of these four were granted a 'section 418 order' (Table 43), none of which were complied with by those taking industrial action (Table 44).

**TABLE 38. WHAT INSTITUTIONS DOES YOUR ORGANISATION PRINCIPALLY TURN TO (OR WOULD TURN TO) IF A DISPUTE CANNOT (OR COULD NOT) BE RESOLVED AT THE LEVEL OF THE WORKPLACE?**

	% (2010 n=805)	% (2011 n=667)
Fair Work Australia	25.5	28.6
Employer association	23.4	19.8
Private legal advisors	37.6	40.9
Private Dispute Resolution Provider	8.6	6.2
Don't know	3.6	2.5
Other	1.4	1.8

**TABLE 39. HAS THE ORGANISATION BEEN INVOLVED IN NEGOTIATING A COLLECTIVE EMPLOYMENT CONTRACT/LEGAL INSTRUMENT SINCE THE INTRODUCTION OF THE FAIR WORK ACT?**

	% (2010 n=818)	% (2011 n=690)
Yes	41.7	52.8
No	56.0	45.5
Don't know	2.3	1.7

**TABLE 40. DID INDUSTRIAL ACTION BY EMPLOYEES OCCUR DURING THE NEGOTIATION PROCESS?**

	%
	(2011 n=358)
Yes	29.6
No	69.3
Don't know	1.1

**TABLE 41. DID THAT INDUSTRIAL ACTION INVOLVE AN AUTHORISED SECRET BALLOT?**

	%
	(2011 n=238)
Yes	44.1
No	41.3
Don't know	4.6

**TABLE 42. DID YOUR ORGANISATION APPLY TO FAIR WORK AUSTRALIA FOR A 'SECTION 418 ORDER' TO HAVE THE INDUSTRIAL ACTION STOPPED?**

	%
	(2011 n=107)
Yes	3.7
No	93.5
Don't know	2.6

**TABLE 43. DID YOUR ORGANISATION GAIN FROM FAIR WORK AUSTRALIA FOR A 'SECTION 418 ORDER' TO HAVE THE INDUSTRIAL ACTION STOPPED?**

	%
	(2011 n=4)
Yes	75.0
No	25.0
Don't know	0.0

**TABLE 44. WAS THE 'SECTION 418 ORDER' GAINED FROM FAIR WORK AUSTRALIA COMPLIED WITH BY THOSE TAKING INDUSTRIAL ACTION?**

	%
	(2011 n=3)
Yes	0.0
No	100.0
Don't know	0.0

Question 45 is an open ended question asking respondents what action was taken for non-compliance with a 'section 418 order'. This question gained only a few responses, the sum of which are listed in the following (n=3):

- Return to Fair Work Australia x2
- Escalated the action by reference to the Federal Court

**QUESTION 45. WHAT ACTION DID YOUR ORGANISATION TAKE FOR NON-COMPLIANCE WITH THE 'SECTION 418 ORDER'?**

Nothing can be gained from Tables 46 and 47, which refer to the outcomes of secret ballots and their impact on negotiation processes. This is because any respondent answering 'yes' to industrial action involving an authorised secret ballot at Question 41, was automatically taken to Question 48, thereby passing the questions relating to these two Tables.

**TABLE 46. WHAT WAS THE OUTCOME OF THE BALLOT IN SUPPORT OF INDUSTRIAL ACTION?**

	%
	(2011 n=8)
The outcome supported industrial action	37.5
The outcome did not support industrial action	37.5
Don't know	25.0

**TABLE 47. HOW DID THE RESULT OF THE BALLOT IMPACT ON THE NEGOTIATION PROCESS?**

	%
	(2011 n=8)
It has no impact	25.0
It restarted the negotiation process	50.0
Don't know	25.0

Tables 48 to 51 are concerned with unfair dismissal laws.

Table 48 shows the percentage of respondents falling within the jurisdiction of these laws (i.e., workplaces employing over 15 employees) is high; recording 94% in the present survey, which is similar to the percentage (95%) recorded in the 2010 survey. The dominant figure across the remaining three Tables is the 'no change' entry. There have nonetheless been some sizable shifts (10% or more) in other entries.

Table 49 indicates that the percentage of respondents claiming that the number of unfair dismissal claims had 'increased' as a result of unfair dismissal laws has risen, from 16% in 2010 to 26% in 2011.

Table 50 shows that unfair dismissal laws are increasingly acting to discourage employment, with the percentage of respondents making this claim moving from 8% in the 2010 to 15% in 2011. Interestingly, this is quite a low number given the often damaging speculation made about these laws.

**TABLE 48. DOES YOUR ORGANISATION EMPLOY MORE THAN 15 EMPLOYEES?**

	% (2010 n=821)	% (2011 n=688)
Yes	95.0	93.5
No	5.0	6.5

**TABLE 49. IN TERMS OF UNFAIR DISMISSAL CLAIMS, WHAT HAS CHANGED AS A RESULT OF THE NEW THRESHOLD APPLIED IN UNFAIR DISMISSAL LAW?**

	% (2010 n=809)	% (2011 n=679)
It has diminished the number of unfair dismissal claims	0.9	3.1
No change	71.6	60.7
It has increased the number of unfair dismissal claims	16.1	25.8
Not applicable	6.2	6.8
Don't know	5.3	3.6

**TABLE 50. IN TERMS OF PROVIDING EMPLOYMENT, WHAT HAS CHANGED AS A RESULT OF THE NEW THRESHOLD APPLIED IN UNFAIR DISMISSAL LAWS?**

	% (2010 n=809)	% (2011 n=679)
It has encouraged the employment of more people	1.0	2.9
No change	82.8	72.5
It has discouraged the employment of more people	8.2	14.6
Not applicable	3.6	5.0
Don't know	4.4	5.0

**TABLE 51. IN TERMS OF MAKING JOBS REDUNDANT, WHAT HAS CHANGED AS A RESULT OF THE NEW THRESHOLD APPLIED IN UNFAIR DISMISSAL LAW?**

	% (2010 n=816)	% (2011 n=684)
It has made it easier to make jobs redundant	2.6	4.1
No change	64.7	53.3
It has made it harder to make jobs redundant	25.9	34.9
Not applicable	3.4	3.9
Don't know	3.4	3.4

The last two Tables refer to what might be considered as miscellaneous questions.

Table 52 shows a small decline in the percentage of respondents stating that their organisations provide managers and employees with information regarding their rights and responsibilities under the Fair Work Act 2009, with 88% being recorded in the present survey as opposed to 93% in the 2010 survey.

The question associated with Table 53 allowed for multiple responses to a question asking why no employment management practices had been changed since the introduction of the Fair Work Act 2009. This question is only asked in the present survey, so no trend can be determined. Most respondents to this question claimed the entries listed were 'not applicable' (61%) - in short, change had been implanted and so the question did not apply – or that there was 'no need for change' (22%). The next highest percentages on entries seeking substantive reasons for why changes have not been implemented were: 'waiting for the next round of bargaining' (7%) and 'Fair Work Act is too difficult' (6%).

**TABLE 52. DOES YOUR ORGANISATION PROVIDE INFORMATION TO MANAGERS AND EMPLOYEES ABOUT THE CHANGED RIGHTS AND RESPONSIBILITIES ARISING OUT OF THE FAIR WORK ACT?**

	% (2010 n=810)	% (2011 n=683)
Yes	92.8	87.8
No	5.8	9.3
Don't know	1.4	2.9

**TABLE 53. IF YOUR ORGANISATION HAS NOT IMPLEMENTED ANY CHANGES IN EMPLOYMENT MANAGEMENT PRACTICES SINCE THE INTRODUCTION OF THE FAIR WORK ACT, WHICH OF THE FOLLOWING BEST EXPLAINS WHY?**

	% (2011 n=555)
Waiting until after the next Federal election is settled	3.2
Waiting until the next round of bargaining negotiations	7.0
No need for change	22.3
Fearful of employee reaction	2.9
Fair Work Act is too difficult	5.9
Not applicable	60.9
Other	3.0



# THE FAIR WORK ACT AND EMPLOYMENT CONTRACTS

This section starts with Table 54, which lists the percentage of respondents involved in the negotiation and settlement of employment contracts. Here the percentages show a small increase, from 72% in 2010 to 78% in 2011.

**TABLE 54. ARE YOU DIRECTLY INVOLVED IN THE NEGOTIATION AND SETTLEMENT OF EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS IN YOUR ORGANISATION?**

	%	
	(2010 n=785)	(2011 n=676)
Yes	72.2	77.7
No	24.2	20.6
Not applicable	3.6	1.7

Tables 55 to 57 are concerned with the type of employment contracts being used by organisations.

Tables 55 and 57 refer to the type of employment contracts used before and after the Fair Work Act 2009 became operable, with respondents allowed to choose multiple responses to the various entries listed. By making this allowance the possibility of comparing percentages across the two surveys is negated. This is because the 2010 survey asked respondents to list the principal employment contract only. Also making for difficulty in comparing figures across these two tables is the different types of agreements on offer. That said, some indicative measures can be discerned. Across the two tables the highest percentage of respondents centred on 'common law contracts', recording 63% before the Act passed into law and 55% after. These common law contracts co-exist with other entries listed by respondents. If awards prior to the Act are considered to have their counterpart in modern awards after the Act, then one of the more significant findings is that there has been a considerable increase the number of organisation using them. Here the percentage of respondents claiming their use has risen from 34% prior to the Act, to 64% after.

Table 56 yields uncertain information since it is referring to the 'principal' employment contract not identified in Question 55, which allowed for multiple responses.

**TABLE 55. WHAT TYPE OF EMPLOYMENT CONTRACT/LEGAL INSTRUMENT WERE USED IMMEDIATELY PRIOR TO THE FAIR WORK ACT BECOMING OPERABLE? (MORE THAN ONE OPTION WAS ALLOWED)**

	%(2011 n=651)
Federal award (transitional or otherwise)	33.8
State award ('notional or otherwise')	32.7
State award or certified agreement (or enterprise bargaining agreement)	15.0
Union negotiated certified agreement (or enterprise bargaining agreement)	38.4
Non-union negotiated certified agreement (or enterprise bargaining agreement)	16.7
Union negotiated greenfields agreement	3.5
Non-union negotiated greenfields agreement	2.5
Multi-employer certified agreement	1.7
Australian workplace agreement	26.1
Common law contract	62.7
Other	2.0

**TABLE 56. IS THE SAME PRINCIPAL EMPLOYMENT CONTRACT/LEGAL INSTRUMENT STILL OPERATING?**

	%	
	(2010 n=549)	(2011 n=659)
Yes	76.1	64.6
No	23.3	31.9
Don't know	0.5	3.5

**TABLE 57. WHAT TYPE OF EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS NOW USED WITHIN YOUR ORGANISATION HAVE COME INTO OPERATION SINCE THE FAIR WORK ACT BECAME OPERATIVE?**

	%
	(2011 n=367)
Modern award	64.1
Modern enterprise award	13.0
Single-enterprise agreement	13.5
Greenfields agreement	3.7
Multi-enterprise agreement	6.1
Workplace determination	1.9
Common law contract	54.5
Other	8.8

Tables 58 and 59 refer to the various 'orders' issued by Fair Work Australia to settle the provisions of employment contracts.

In Table 58 the percentage of respondents stating that such orders were part of the negotiation process rose from 8% in 2010 to 13% in 2011.

In Table 59, the dominance of 'good faith bargaining' orders in the process is apparent, recording 44% of respondents in 2010 and 46% in 2011. Two things are worth noting from the figures. The first is the far larger number of respondents in the 2011 survey by comparison to those in 2010 survey; this is in spite of the smaller 2011 total sample size. The second is the curious and unusually high percentage of respondents who 'don't know' which orders were used in negotiation processes to which they were presumably a party.

**TABLE 58. WERE FAIR WORK AUSTRALIA 'ORDERS' PART OF THE NEGOTIATION PROCESS USED TO SETTLE THE PROVISIONS IN THESE CONT EMPLOYMENT CONTRACT/LEGAL INSTRUMENTS?**

	%	
	(2010 n=112)	(2011 n= 411)
Yes	8.0	12.9
No	83.0	77.1
Don't know	8.9	10.0

**TABLE 59. WHICH 'ORDERS' WERE APPLIED AS PART OF THE NEGOTIATION PROCESS?**

	%	
	(2010 n=9)	(2011 n= 48)
Scope orders	22.2	10.4
Majority support orders	11.1	10.4
Good faith bargaining orders	44.4	45.8
Don't know	22.2	33.4

Tables 60 to 62 looked at National Employment Standards.

Tables 60 and 61 questioned respondents about what practices listed in the National Employment Standards 'applied' in their organisation before the Fair Work Act 2009 became operable, and what practices applied once these Standards became law. Here the greatest movement in the percentage of respondents answering the various entries relate to the 'information statement', with 47% being recorded before the Act became law, and 82% after. The next greatest movement is in relation to 'requests for flexible working arrangements', from 47% prior to the Act, to 76% after, followed by 'community service leave', from 47% to 72%.

Table 62 sought information about how widely 'used' these Standards were by employees. Here the percentage of respondents suggest that the most widely used Standards were 'parental and related entitlements' (84%), followed by 'requests for flexible working arrangements' (83%) and public holidays (80%). The least used standards were 'community service leave' (59%) and 'hours of work' (71%) (Note: One of the ten Standards was not listed in these Tables for some inexplicable reason - i.e., personal/carer's leave and compassionate leave, so its place in the percentages cannot be reckoned.)

**TABLE 60. PRIOR TO THE FAIR WORK ACT BECOMING LAW, WHICH OF THE FOLLOWING 10 NATIONAL EMPLOYMENT STANDARDS WERE CONTAINED IN YOUR ORGANISATION'S PRINCIPAL EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS? (MORE THAN ONE ANSWER WAS ALLOWED)**

	%
	(2011 n= 664)
Hours of work	82.8
Requests for flexible working arrangements	46.8
Parental leave and related entitlements	71.8
Annual leave	83.1
Personal/carer's leave and compassionate leave	data not collected
Community service leave	46.5
Long service leave	89.9
Public holidays	85.4
Notice of termination and redundancy pay	86.1
Information Statement	46.7

**TABLE 61.** SINCE THE FAIR WORK ACT BECAME LAW, WHICH OF THE FOLLOWING 10 NATIONAL EMPLOYMENT STANDARDS ARE CONTAINED IN YOUR ORGANISATION'S PRINCIPAL EMPLOYMENT CONTRACTS/LEGAL INSTRUMENTS? (MORE THAN ONE ANSWER WAS ALLOWED)

	% (2011 n= 657)
Hours of work	89.0
Requests for flexible working arrangements	75.5
Parental leave and related entitlements	85.4
Annual leave	90.0
Personal/carer's leave and compassionate leave	data not collected
Community service leave	72.1
Long service leave	91.3
Public holidays	86.9
Notice of termination and redundancy pay	91.3
Information Statement	82.3

**TABLE 62.** SINCE THE FAIR WORK ACT BECAME LAW, WHICH OF THE FOLLOWING 10 NATIONAL EMPLOYMENT STANDARDS HAVE BEEN APPLIED TO, OR UTILISED BY YOUR ORGANISATION'S WORKFORCE? (MORE THAN ONE ANSWER WAS ALLOWED)

	% (2010 n= 546)	% (2011 n= 645)
Hours of work	71.6	71.3
Requests for flexible working arrangements	73.1	83.1
Parental leave and related entitlements	78.2	84.5
Annual leave	79.1	78.1
Personal/carer's leave and compassionate leave	88.1	data not collected
Community service leave	53.8	58.6
Long service leave	76.0	79.7
Public holidays	82.1	80.3
Notice of termination and redundancy pay	7.8	79.1
Information Statement	72.7	75.7

Tables 63a and 64, and Question 63b, refer specifically to 'flexible working arrangements'.

Table 63a shows the percentage of respondents stating their organisations applied such arrangements is high and growing, with 83% being recorded in 2010 and 90% being recorded 2011.

From Table 64, the most widely used arrangements are 'part-time work' (91%), followed by 'flex start and finish times' (84%) and 'working from home' (77%), the least used being 'working four days per week' (18%) and the so-called '48/52' (19%).

Question 63b is an open ended question asking respondents why their organisation either 'offered' or 'did not offer' 'flexible working arrangements'. A summary of their responses (n=490) is given in the following:

This question elicited a wide number of explanations as to why respondents' organisations chose to offer 'flexible

working arrangements' to their staff. A handful of respondents indicated that their organisations offered 'flexible working arrangements' simply because the Act 'legally obliged' them to do so (7%) or because the Act had obliged them to formalise existing 'customs and practices' (4%). For a large number of respondents the implementation of flexible working arrangements was considered a 'key factor in attracting and retaining staff' (43%). In the same vein a smaller number indicated that 'flexible working arrangements' were offered to assist employees achieve a 'balance between their work commitments and their personal/family needs' (13%). In such cases, many of the respondents indicated that this was aimed at improving employee engagement, morale, satisfaction and commitment with the fairly typical expectation that this would improve productivity .

Other explanations provided for offering of flexible working arrangements included:

- Compliance with the Act\*
- Compliance with the award/enterprise agreement
- Source of competitive advantage/match the competition
- Aides diversity management in staffing
- To meet staff needs/preferences\*
- Custom and practice\*
- Employer of choice status\*
- Female-dominated workforce\*
- Industry standard
- Good business sense to meet the needs of both parties\*
- It is the right thing to do/organisation values
- Fits the needs of the business
- Supports aging workforce/ assists in transition to retirement
- Assists mother/parent returning from parental leave
- Allow employees flexibilities they had under Australian Workplace Agreements
- To vary award/enterprise agreement provisions
- Best practice/good HR practice

(Those 'explanations' asterisked (\*) were those most frequently cited by survey respondents, with the exception of those discussed in more detail above).

Further to the comments offered to explain why their organisation offered 'flexible working arrangements', many respondents chose to describe the 'process' used if an employee requested 'flexible working arrangements'. The responses revealed that the process for employees to 'request' 'flexible working arrangements' varied between organisations, with some having more formal arrangements than others. Most responses suggest that requests are typically 'negotiated on a case by case basis', with 'acceptance of any change being... subject to ...operational need[s]'. The responses also indicated that requests most commonly came from employees returning from maternity or paternity leave, those with childcare responsibilities, and older workers who either have carer responsibilities for aging parents or are seeking transition to retirement. Many respondents also indicated that their organisations allowed all employees to request 'flexible working arrangements', rather than restricting access to parents with children under school age (the minimum requirement established by the Act).

Whilst most of the respondents endeavoured to explain why their organisations were offering flexible working arrangements, a small number of respondents (8%) endeavoured to explain why 'flexible working arrangements' were not offered. The most commonly cited explanations included:

- Nature of the work/industry\*
- Not requested\*
- Lack of management support
- Union hostility to flexible working arrangements/individual flexibility arrangements

- Operational requirements
- Predominantly casual workforce
- Set rosters make it difficult
- Too hard
- Costly to administer
- Individual Flexibility arrangement provisions too limited in scope
- Not needed

(Those 'explanations' asterisked (\*) were those most frequently cited by survey respondents)

A sample of comments follows Table 64.

**TABLE 63A. ARE FLEXIBLE WORKING ARRANGEMENTS BEING APPLIED IN YOUR ORGANISATION?**

	% (2010 n=771)	% (2011 n= 683)
Yes	83.3	90.0
No	14.4	8.5
Don't know	2.3	1.5

**QUESTION 63B. PLEASE COMMENT ON WHY YOUR ORGANISATION EITHER OFFERS OR DOES NOT OFFER FLEXIBLE WORKING ARRANGEMENTS**

This Question invited open-ended commentary from the respondents, a summary of which is provided at the conclusion of this section (n=490).

**TABLE 64. WHICH OF THE FOLLOWING FLEXIBLE WORKING ARRANGEMENTS ARE BEING APPLIED IN YOUR ORGANISATION? (MORE THAN ONE ANSWER WAS ALLOWED)**

	% (2011 n= 657)
Purchase additional 4 weeks annually	29.8
Deferred salary schemes	5.4
Working from home	77.1
Banking hours	17.7
Flex start and finish times	84.1
Telecommuting	27.6
Part time work	90.6
Job sharing	48.8
Additional year off after maternity leave	48.6
48/52	19.2
Core hours	27.3
Work four days, fifth day off	18.4
Time off in lieu/Rostered days off	72.4
Other	4.4

## SAMPLE OF RESPONDENT COMMENTS ON FLEXIBLE WORKING ARRANGEMENTS

*"Flexible working arrangements are a good way to meet employee needs (relating to children or otherwise) and we have a good record of retaining staff to whom we offer flexible arrangements."*

*"We offer flexible working arrangements on the basis of it being a win-win option and a way of assisting with work life balance without necessarily having to increase rates of pay. We also extend the option of entering into a FWA to all employees - not just those with child responsibilities."*

*"Flexible work arrangements are offered to retain our talent and allow staff to work productively at times and places that meet their needs and that of the business. It's part of our company's international values - care for people."*

*"Offer[ed] to be competitive with other employers in sector, to achieve employer of choice status and to meet emerging community/employee standards re family friendly support from employer."*

*"It [organisation] believes in family friendly policies so that people can manage their work-life balance as effectively as possible - in turn, it is viewed that this will contribute towards happier more engaged employees, higher morale and increased productivity during their time at work."*

*"Hard to offer flexible arrangements when it is production line processing. If people are not there then you lose money."*

*"Individual Flexibility Agreements are ineffective, cumbersome and overly restrictive so that they are not worthwhile entering into and provide no tangible benefit to the business or the employee. Unions have sought to sever[e]ly restrict those matters which can be contained in an IFA."*

Tables 65 and 66, and Question 67, look at the organisational issue of 'outsourcing' and the impact of the 'transfer of business' provisions contained in the Fair Work Act 2009.

Table 65 indicates that outsourcing is not widely considered, though the trend is one of growing consideration. The percentage of respondents claiming that this employment strategy is contemplated or sought rose from 14% in the 2010 survey to 24% in the present survey. The transfer of business provisions contained in the Fair Work Act 2009 remain a significant but diminishing concern, with the percentage of respondents claiming it had a 'negative' or 'very negative' impact declining from (24%+17%=) 41% in the 2010 survey to (18%+18%=) 37% in the 2011, whilst the percentage of those claiming it had 'no impact' rose from 38% to 44%.

Question 67 is open ended in asking respondents about the transfer of business provisions contained in the Fair Work Act 2009. A summary of their responses (n=68) is listed under that question.

Of the 68 respondents, only one supported the 'transfer of business' provisions. While some respondents indicated these provisions did not impact on them, the majority of comments were highly critical of this aspect of the Act. Many commented on the increased complexity of the legislation with the majority noting the difficulty and risks when negotiating acquisitions, partnerships and joint ventures. For those companies that have subsidiaries, it was often stated that this legislation had severely hampered movement between subsidiaries. Some respondents indicated that the only way around the legislation was for individuals to resign or be declared redundant, and then re-employed at the other company. Costs were also cited as a major barrier to the transfer of business, with many indicating that their organisation was choosing not to outsource non-core work because it was no longer cost efficient to do so.

**TABLE 65. HAS YOUR ORGANISATION SOUGHT OR CONSIDERED 'OUTSOURCING' (OR INSOURCING) PART OF ITS OPERATIONS WHICH INVOLVES THE TRANSFER OF EMPLOYEES FROM ONE EMPLOYER TO ANOTHER?**

	% (2010 n=758)	% (2011 n= 677)
Yes	13.9	23.9
No	80.7	71.5
Don't know	5.4	4.6

**TABLE 66. WHAT IMPACT DO YOU BELIEVE THE FAIR WORK ACT'S NEW 'TRANSFER OF BUSINESS' PROVISIONS HAVE HAD ON YOUR ORGANISATION?**

	%	
	(2010 n=101)	(2011 n= 149)
Very positive	1.0	2.0
Positive	8.9	6.7
No impact	37.6	43.6
Negative	23.8	18.1
Very negative	16.8	18.8
Don't know	11.9	10.8

**QUESTION 67. IN YOUR OWN WORDS, PROVIDE A BRIEF STATEMENT OF HOW THE TRANSFER OF BUSINESS PROVISIONS CONTAINED IN THE FAIR WORK ACT IS IMPACTING ON YOUR ORGANISATION.**

This Question invited open-ended commentary from the respondents, a summary of which follows.

**SAMPLE OF RESPONDENT COMMENTS ON 'TRANSFER OF BUSINESS'**

*"Other businesses very reluctant to take on employees in a 'transfer of business' manner - prefer to have them resign and then take up with them."*

*"My company has subsidiary businesses, making like role transfers across subsidiaries a lengthy process to try to get exemptions. It is not feasible for employees covered by an instrument to take that instrument to another subsidiary, especially when the employee has voluntarily elected to apply for the role in the other business. Very frustrating."*

*"We are in the business of providing managed services to other large companies. The new transfer of business test is a huge impediment to our business that at the very least means that we no longer offer employment to people who may become redundant from the company which has outsourced their roles to us."*

*"For approximately 100 employees per year the transfer of business provisions prevent employees permanently moving between group companies (often to better terms and conditions) due to the risk of the industrial instrument transferring."*

*"The potential transfer of industrial instruments in outsourcing situations has made it more difficult and a deterrent for our company to offer employment and transition employees."*

*"Our company has always prided itself on making genuine comparable offers of employment, same remuneration, similar role, continuity of service and transfer of leave. The transfer of business provisions has resulted in us offering less jobs to our clients' employees in outsourcing scenarios."*



## YOUR SAY ON THE FAIR WORK ACT

This section begins with Question 68, which asked respondents to comment on the changes they believe had occurred in the employment management practices of their organisations as a direct result of the Fair Work Act 2009. It is a question that attracted a wide variety of responses from its 507 respondents. It also confused many respondents who interpreted it as asking what general changes have occurred as a result of the Fair Work Act, rather than focussing specifically on the 'significant changes that had resulted in their organisation's employment management practices' due to the Act. From those survey respondents who addressed the question correctly, three dominant themes emerged; increased trade union involvement, compliance and risk management, and performance management. These key themes closely reflect those which emerged from the responses this question attracted when the survey was last conducted in 2010 (Question 83 in the 2010 survey).

It was clear from the data that many of the organisations in which our survey respondents were employed had experienced an increase in the presence and level of involvement of trade unions. A large number of respondents (21%) indicated that their organisation now experienced greater levels of union involvement in both negotiation processes and in 'standard' 'day-to-day management practices'. The increased role of trade unions in our respondents' organisations was a source of frustration for many, with it considered to be unwanted, restrictive, time-consuming and costly. Further to this, many felt that the greater union presence in their organisations was 'divisive', producing a 'them and us mentality', and that it had also increased the level of industrial disputation experienced by their organisation.

The second key theme to emerge from the responses to this question was that relating to compliance and risk management. Thirty per cent (30%) of respondents to this question commented on this issue. This theme encompasses a number of related changes to employment management practices that respondents identified as having occurred in their organisation as a result of the Act. Both HR professionals and line managers are investing considerable time and effort in reviewing and updating both the legal instruments relevant to their employees, and their organisation's existing policies and procedures in areas such as recruitment and selection, redundancy, performance management, flexible working arrangements and change management to ensure they are compliant with the Act. Some employers have also had to introduce awards to employees who were previously award free while others have had to spend a lot of time transferring employees to a new modern award. The introduction of flexible work arrangements has also been said to have resulted in many organisations dealing with increased requests in this area.

According to our survey respondents, the 'administrative burden' their organisations have experienced as a result of the Act, was the result of both increased compliance requirements and the risk management processes adopted by their organisations in light of heightened concerns relating to unfair dismissal and adverse action. Respondents indicate that more detailed records now need to be kept due to the increased possibility of such claims. Several also indicated that their organisation was now making greater use of external IR and legal advisors than had previously been required.

Performance management of employees, especially under-performing employees, was the third theme to emerge from the data. Respondents (6%) identified that managers are now more cautious in their dealings with employees because of the perceived increase in employer obligations. Performance management processes have been 'tightened', and, as mentioned above, are being documented in detail. There is now a heavy emphasis on ensuring that 'counselling, disciplinary, induction, probation and grievance processes... are robust'. Despite the reported 'tightening' of performance management processes, a number of respondents (4%) indicated that the Act had made it more difficult to terminate staff.

### **QUESTION 68. IN YOUR OWN WORDS, WHAT ARE THE MOST SIGNIFICANT CHANGES YOU BELIEVE HAVE OCCURRED IN THE EMPLOYMENT MANAGEMENT PRACTICES OF YOUR ORGANISATION AS A DIRECT RESULT OF THE FAIR WORK ACT.**

This question invited open-ended commentary from the respondents, a summary of which is provided here.

## SAMPLE OF RESPONDENT COMMENTS TO QUESTION 68 (N=507)

*"Union involvement has increased which is very frustrating."*

*"I am concerned that I am no longer able to negotiate directly with staff but feel obliged to bring outsiders in (unions) which do not understand our culture or are not concerned about my employees."*

*"The unions have become bullish in how they interact with employers. Bully boy tactics abound."*

*"More caution is being taken with decisions, necessary changes take significantly longer [to] implement due to increased formality and documentation needed to ensure that all decisions can be defended in FWA."*

*"As the HR manager, I have had to document more conversations I have with staff over minor matters, just in case they turn into bigger problems in the future. When I do have a problem with an employee, the Fair Work Act looks for my timeline of evidence against the employee, even though they may not have been formal warnings. It protects employees too much in regards to being able to keep their jobs even when they cannot fulfil the role correctly."*

*"I believe our employment management practices have become more risk averse. Many times we are 'afraid' to make the decision which is right for the business, based on the ramifications it may have under the Fair Work Act. Sometimes we ultimately take the action, but it takes a lot longer to get to the end result - due to being more cautious."*

*"The ability to claim adverse action is acting as a vehicle for people without legitimate claim to pursue unfair dismissal."*

*"The adverse actions provisions are a minefield for employers and we are beginning to see the creative use of them by unions to undermine the capacity of management to manage. The management of employee under-performance and poor conduct, with the onus on the employer to demonstrate they have done everything possible to support the employee to improve, requires very tight and time consuming practices. We have reviewed all our counselling, disciplinary, induction, probation and grievance processes to ensure these are robust."*

*"You can't terminate underperforming employees and they know it. Management and other employees look at it and say, 'HR does not have the balls to do anything!' However, we are unable to."*

Tables 69 to 71 refer to questions that ask respondents to speculate about work-family balance, willingness to hire employees and productivity over the next three years. Here the news is not good.

Table 69 shows the percentage of respondents who believed the Fair Work Act 2009 would improve work-family balance over the next three years was ('agreed' 25% + 'strongly agreed' 6%=) 31%, whereas those who held a contrary view was ('disagreed' 25% + 'strongly disagreed' 11%=) 36%. Figures contained in the following two Tables are particularly damaging.

Table 70 indicates that the percentage of respondents who believed that the Act would facilitate a willingness to hire employees over the next three years is only ('agreed' 5% + 'strongly agree' 1%=) 6%, whereas those who believed otherwise was ('disagree' 30% + 'strongly disagree' 17%=) 47%.

Table 71a shows the percentage of respondents who believed the Act would facilitate improvements in organisational productivity over the coming three years was ('agree' 9% + 'strongly agree' 2%=) 11%, whilst holding a different expectation was ('disagree' 33% + 'strongly disagree' 26%=) 59%.

When compared with the results of the 2010 survey, the trend in these Tables appears to be one of declining confidence in the Act. This is suggested in the fact that the greatest movement across the two surveys occurs in the 'disagree' or 'strongly disagree' entries relating to the propositions set out in the Tables. Those who 'disagreed' or 'strongly disagreed' with the proposition that work-life balance would improve over the next three years constituted (19%+8%=) 27% of respondents in the 2010 survey, whereas they constituted (25%+11%=) 36% in the present survey. Those who 'disagreed' or 'strongly disagreed' with the proposition that the willingness to hire employees would improve over the same period constituted (29%+8%=) 37% of respondents in the 2010 survey, whereas they constituted (30%+17%=) 47% in the present survey. And those who 'disagreed' or 'strongly disagreed' with the proposition that productivity would improve under the Act constituted (42%+12%=) 54% of respondents in the 2010 survey, a figure that has grown to (33%+26%=) 59% in the present survey.

Table 71b picks up on the productivity question asked in the previous Table relating to productivity, in this instance asking what contribution the 'flexibility provisions' of the Fair Work Act 2009 have played in achieving productivity improvements. The percentage of respondents stating that the provisions had made productivity improvements more difficult was ('somewhat' 29% + 'very' 15%=) 44%, whereas those stating that the provisions had assisted in this regard

was ('somewhat' 15% + 'greatly' 2%=) 19%. This is the first time this question has been asked in the survey series, so that no trend is to be reported.

Table 71c is a 'gateway' question simply asking respondents if their organisation has been engaged in bargaining under the Fair Work Act 2009, the percentage of respondents asserting they had being 47%. Of these respondents, 33% claimed that 'productivity initiatives had been included in the resultant agreements' (Table 71d).

Question 71e invited such respondents to provide examples of the productivity initiatives that were included. A summary of their responses is included in the following.

Given the opportunity to provide, in their own words, examples of the 'productivity initiatives' included in their organisation's enterprise agreement, the data revealed that a variety of such 'productivity initiatives' existed within the enterprise agreements in use within our survey respondents' organisations. These 'productivity initiatives' included:

- Productivity incentive/bonus schemes\*
- Linking of pay to skill/competency development
- Reduced staffing levels
- Multi-skilling
- Training and certification of employees
- Increased use of, and upgrading of technology/plant\*
- Flexibility in the use of part-time and temporary labour
- Flexibility in the use of contractors
- Increased hours of work\*
- Extended span of hours
- Increased flexibility in rostering\*
- Greater flexibility in work task allocation

(Those 'productivity initiatives' asterisked (\*) were those most frequently cited by survey respondents'.)

**TABLE 69. HOW STRONGLY DO YOU AGREE OR DISAGREE WITH THIS STATEMENT: 'OPERATING UNDER THE FAIR WORK ACT WILL IMPROVE WORK-FAMILY BALANCE WITHIN THE ORGANISATION OVER THE NEXT THREE YEARS.'**

	%	
	(2010 n=786)	(2011 n= 677)
Strongly agree	4.6	5.6
Agree	26.3	24.7
Neither agree or disagree	42.4	34.1
Disagree	18.7	25.1
Strongly disagree	8.0	10.5

**TABLE 70.** HOW STRONGLY DO YOU AGREE OR DISAGREE WITH THIS STATEMENT: 'OPERATING UNDER THE FAIR WORK ACT WILL INCREASE THE ORGANISATION'S WILLINGNESS TO HIRE EMPLOYEES OVER THE NEXT THREE YEARS.'

	% (2010 n=873)	% (2011 n= 669)
Strongly agree	0.6	1.3
Agree	4.1	4.9
Neither agree or disagree	58.5	46.7
Disagree	28.8	30.3
Strongly disagree	8.0	16.8

**TABLE 71A.** HOW STRONGLY DO YOU AGREE OR DISAGREE WITH THIS STATEMENT: 'OPERATING UNDER THE FAIR WORK ACT WILL IMPROVE PRODUCTIVITY WITHIN THE ORGANISATION OVER THE NEXT THREE YEARS.'

	% (2010 n=873)	% (2011 n= 669)
Strongly agree	1.0	1.8
Agree	8.2	8.5
Neither agree or disagree	37.5	31.4
Disagree	41.6	32.7
Strongly disagree	11.7	25.6

**TABLE 71B.** DO THE EMPLOYEE FLEXIBILITY PROVISIONS OF THE FAIR WORK ACT:

	% (2011 n= 645)
Make it very difficult to achieve productivity improvements?	15.1
Make it somewhat difficult to achieve productivity improvements?	27.8
Have no effect on achieving productivity improvements?	40.0
Assist somewhat in achieving productivity improvements?	15.2
Assist greatly in achieving productivity improvements?	1.9

**TABLE 71C.** HAS YOUR ORGANISATION ENGAGED IN BARGAINING UNDER THE FAIR WORK ACT?

	% (2011 n= 691)
Yes	46.9
No	50.2
Don't know	2.9

**TABLE 71D. WERE SPECIFIC PRODUCTIVITY INITIATIVES INCLUDED IN THE ENTERPRISE AGREEMENT?**

	%
	(2011 n= 324)
Yes	33.0
No	61.0
Don't know	5.9

**QUESTION 71E. WHAT ARE SOME EXAMPLES OF PRODUCTIVITY INITIATIVES INCLUDED?**

This question invited open-ended commentary from the respondents, a summary of which is provided in the commentary above

Tables 72 to 74 posits a range of possible amendments to the Fair Work Act 2009, and asks respondents what they believe their likely impact will be on productivity, a willingness to hire employees, and equity and fairness in the workplace.

The amendments offered for consideration include those which allow for the 'conclusion of individual labour contracts that are subject to a "better off overall test"', those which allow for a 'choice to be made between union and non-union negotiated labour contracts', and those which allowed for 'greater flexibility in the use of contractors and labour-hire employees'.

Across each of the Tables the largest percentage of respondents are found in the 'no impact' entry. The percentage of respondents who believed amendments which allowed for the conclusion of individual contracts would have no impact on productivity was 44%, on a willingness to hire new employees was 57%, and on workplace fairness and equity was also 57%.

The percentage of respondents who believed amendments which allowed for a choice between union and non-union labour contracts would have no impact on productivity was 46%, on a willingness to hire new employees was 58%, and on workplace fairness and equity was 51%.

And the percentage of respondents who believed amendments that allowed for the greater use of contractors and labour hire employees would have no impact on productivity was 43%, on a willingness to hire new employees was 51%, and on workplace fairness and equity was 61%.

Outside the dominance that respondents accorded to the 'no impact' entry, there are some notable biases in the other entries. In relation to amendments which allowed for individual labour contracts to be concluded, the percentage of respondents holding them as likely to 'improve productivity' was ('somewhat' 25% + 'greatly' 7%=) 32%, with those holding them as likely to 'reduce productivity' being ('somewhat' 8%+ 'greatly' 5%=) 12%. Those holding these same amendments as likely to 'improve a willingness to hire new employees' was ('somewhat' 19% + 'greatly' 6%=) 25%, whilst those holding them as likely to 'reduce this willingness' was ('somewhat' 6%+ 'greatly' 3%=) 9%. And those holding such amendments as likely to 'improve workplace fairness and equity' was ('somewhat' 18% + 'greatly' 5%=) 23%, whereas those holding them as likely to 'reduce fairness and equity' was ('somewhat' 8% + 'greatly' 4%=) 12%.

In relation to amendments which allowed for a choice between union and non-union labour contracts, the percentage of respondents holding them as likely to 'improve productivity' was ('somewhat' 18% + 'greatly' 13%=) 31%, with those holding them as likely to 'reduce productivity' being ('somewhat' 8% + 'greatly' 5%) 12%. Those holding these same amendments as likely to 'improve a willingness to hire new employees' was ('somewhat' 17% + 'greatly' 8%=) 25%, whilst those holding them as likely to 'reduce this willingness' was ('somewhat' 6% + 'greatly' 3%=) 9%. And those holding such amendments as likely to 'improve workplace fairness and equity' was ('somewhat' 12% + 'greatly' 8%=) 20%, whereas those holding them as likely to 'reduce fairness and equity' was ('somewhat' 6% + 'greatly' 4%=) 10%.

In relation to amendments which allowed for the greater use of contractors and labour-hire employees, the percentage of respondents holding them as likely to 'improve productivity' was ('somewhat' 23% + 'greatly' 17%=) 40%, with those holding them as likely to 'reduce productivity' being ('somewhat' 5% + 'greatly' 4%) 9%. Those holding these same amendments as likely to 'improve the willingness to hire new employees' was ('somewhat' 21% + 'greatly' 15%=) 36%,

whilst those holding them as likely to 'reduce this willingness' was ('somewhat' 3% + 'greatly' 2%=) 5%. And those holding such amendments as likely to 'improve workplace fairness and equity' was ('somewhat' 12% + 'greatly' 7%=) 19%, whereas those holding them as likely to 'reduce fairness and equity' was ('somewhat' 7% + 'greatly' 4%=) 11%.

From these figures there is clearly a significant minority of respondents who believe the proposed amendments would benefit their organisations, the treatment of their workforces and the employment of new staff. If the percentage of negative responses is discounted against the positive, a broad ordering of preference among the respondents appears to weigh heaviest in favouring amendments which 'allow for the greater use of contractors and labour-hire employees'.

Each of Tables 72 to 74 invited the respondents to comment on the proposed amendments.

## TABLE 72. WHAT IMPACT WOULD THE FOLLOWING AMENDMENTS TO THE FAIR WORK ACT HAVE ON PRODUCTIVITY IN YOUR WORKPLACE?

### A. AMENDMENTS THAT ALLOWED FOR THE CONCLUSION OF INDIVIDUAL LABOUR CONTRACTS SUBJECT TO A 'BETTER OFF OVERALL TEST'

	% (2011 n= 691)
Greatly reduce productivity	4.5
Somewhat reduce productivity	8.1
No impact	44.1
Somewhat improve productivity	24.6
Greatly improve productivity	6.7
Don't know	12.0

### B. AMENDMENTS THAT ALLOWED FOR A CHOICE BETWEEN UNION AND NON-UNION NEGOTIATED LABOUR CONTRACTS

	% (2011 n= 691)
Greatly reduce productivity	5.2
Somewhat reduce productivity	7.5
No impact	45.9
Somewhat improve productivity	17.5
Greatly improve productivity	13.2
Don't know	10.7

### C. AMENDMENTS THAT ALLOWED FOR GREATER FLEXIBILITY IN THE USE OF CONTRACTORS AND LABOUR-HIRE EMPLOYEES

	% (2011 n= 691)
Greatly reduce productivity	5.1
Somewhat reduce productivity	3.8
No impact	43.1
Somewhat improve productivity	23.2
Greatly improve productivity	16.5
Don't know	8.3

From the 'optional comments' entry in Table 72, a summary of responses (n=66) received on the impact on productivity thought likely to flow from the three proposed amendments to the Fair Work Act 2009 is listed in the following:

Respondents in this instance saw the words, 'productivity' and the 'Fair Work Act' and wrote broadly on this connection rather than engaging specifically with the three proposed amendments. Of those who did address the amendments specifically, the overwhelming majority referred to the 'choice between union and non-union negotiated labour contractors'. The majority of these responses in turn were critical of union involvement. There were, however, those who commented on the benefits of being able to use individual contracts. The weight of comments relating to these two amendments is thus contrary to statistical findings, which favoured amendments that 'allowed for the greater use of contractors and labour-hire employees.'

One respondent raised an interesting question in relation to the 'better off overall test':

*"Better off overall needs to be better defined. Staff are happy to trade off financial benefits for increased flexibility but currently this is deemed as not better off overall. Surely, if the employee believes they are better off and there is no collusion, how can someone external determine they aren't better off overall."*

### SAMPLE RESPONDENT COMMENTS TO QUESTION 72 (N=66)

*"Businesses should retain the right to determine who/how they employ people and what they pay them. The poor behaviour of some union delegates (employed by the union) inhibits progress - yet there are limited options for complaining to the union about their poor behaviour. They seem to get away with bullying, vexatious claims, wasteful complaints - all at a great cost to the business."*

*"I do not believe in union V non-union labour contracts or remuneration. Labour contracts and remuneration should be determined by the job not who has the strongest union."*

*"More options need to be available to the employer and the employees. Many of our non-union employees are unimpressed at union activities and perspectives restricting the way they want to work."*

*"The constrictive nature of the Fair Work Act and the inability to remove unproductive workers is making the use of labour-hire employees more and more attractive. Eventually labour-hire will become the dominant form of employment due to the ease of 'termination'."*

*"Individual agreements provide a counter to union agreements and make for a better all round relationship with unions as the individual agreement provides for an alternative whether it is used or not by the employer."*

*"Individual contracts can be a good thing for both employees and business if negotiated in a fair way."*

*"Individual labour contacts can reduce risk to the business by securing a legally binding agreement that is not subject to being over-ridden by a union initiated agreement."*

## TABLE 73. WHAT IMPACT WOULD THE FOLLOWING AMENDMENTS TO THE FAIR WORK ACT HAVE ON THE WILLINGNESS TO HIRE EMPLOYEES IN YOUR WORKPLACE?

### A. AMENDMENTS THAT ALLOWED FOR THE CONCLUSION OF INDIVIDUAL LABOUR CONTRACTS SUBJECT TO A 'BETTER OFF OVERALL TEST'

	%
	(2011 n= 691)
Greatly reduce willingness	3.3
Somewhat reduce willingness	5.8
No impact	57.2
Somewhat improve willingness	19.4
Greatly improve willingness	5.6
Don't know	8.7

**B. AMENDMENTS THAT ALLOWED FOR A CHOICE BETWEEN UNION AND NON-UNION NEGOTIATED LABOUR CONTRACTS**

	%
	(2011 n= 691)
Greatly reduce willingness	2.6
Somewhat reduce willingness	6.1
No impact	58.2
Somewhat improve willingness	16.8
Greatly improve willingness	7.7
Don't know	8.6

**C. AMENDMENTS THAT ALLOWED FOR GREATER FLEXIBILITY IN THE USE OF CONTRACTORS AND LABOUR-HIRE EMPLOYEES**

	%
	(2011 n= 691)
Greatly reduce willingness	2.2
Somewhat reduce willingness	3.0
No impact	51.2
Somewhat improve willingness	21.1
Greatly improve willingness	14.5
Don't know	8.0

From the 'optional comments' entry in Table 73, a summary of responses (n=37) received on the impact on the willingness to hire new employees thought likely to flow from the three proposed amendments to the Act is listed in the following:

Approximately one-third of the responses received on this entry were, again, general statements about the Fair Work Act 2009, with another eight respondents commenting that they employ on operational grounds rather than on the basis of Government legislation. Of those who addressed the three amendments specifically, 'flexibility in the use of contractors and labour hire employees' drew the greatest response. Those supporting this type of amendment believed it would assist their organisations during the 'peaks and troughs' in the business cycle. Those opposed see the proposed amendments as restrictive and open to manipulation by contractors.

**SAMPLE RESPONDENT COMMENTS TO QUESTION 73 (N=37)**

*"Our projects are cyclic and in two years' time we may face a different situation. Working with contractors is attractive to cater for these peaks and troughs."*

*"Our experience is that if we need employees we'll hire them or risk our business' competitiveness."*

*"The rules around engaging casuals and contractors are very restrictive. The fact that individuals can agree in writing to terms and then later claim for entitlements that they agreed to forgo is particularly unfair."*

*"We are weary of taking on short term contractors who work regular and systematic hours as we are concerned when it comes time to end their contract they will be seen as 'permanent' staff and could claim unfair dismissal etc, especially if we finish them up earlier than was expected."*

*"We put on staff as required by our projects regardless of what the FWA says. We have to to get the job done!"*

*"Willingness to hire is completely unrelated to employment contract and conditions matters (other than redundancy provisions which have not changed."*



**TABLE 74. WHAT IMPACT WOULD THE FOLLOWING AMENDMENTS TO THE FAIR WORK ACT HAVE ON EQUITY AND FAIRNESS IN YOUR WORKPLACE?**

**A. AMENDMENTS THAT ALLOWED FOR THE CONCLUSION OF INDIVIDUAL LABOUR CONTRACTS SUBJECT TO A 'BETTER OFF OVERALL TEST'**

	%
	(2011 n= 691)
Greatly reduce equity and fairness	4.2
Somewhat reduce equity and fairness	8.0
No impact	57.0
Somewhat improve equity and fairness	17.5
Greatly improve equity and fairness	4.5
Don't know	8.8

**B. AMENDMENTS THAT ALLOWED FOR A CHOICE BETWEEN UNION AND NON-UNION NEGOTIATED LABOUR CONTRACTS**

	%
	(2011 n= 691)
Greatly reduce equity and fairness	3.9
Somewhat reduce equity and fairness	5.6
No impact	62.2
Somewhat improve equity and fairness	12.0
Greatly improve equity and fairness	7.8
Don't know	8.5

**C. AMENDMENTS THAT ALLOWED FOR GREATER FLEXIBILITY IN THE USE OF CONTRACTORS AND LABOUR-HIRE EMPLOYEES**

	%
	(2011 n= 691)
Greatly reduce equity and fairness	3.8
Somewhat reduce equity and fairness	7.2
No impact	60.8
Somewhat improve equity and fairness	12.0
Greatly improve equity and fairness	6.8
Don't know	9.4

From the 'optional comments' in Table 74, a summary of responses (n=27) received on the impact on workplace equity and fairness thought likely to flow from the three proposed amendments to the Act is listed in the following: As with previous questions in this series, the majority of respondents did not specifically address the proposed amendments, preferring instead to offer more general comments on the impact that the Fair Work Act had had on workplace equity and fairness. Those who did address the three proposals said it had the potential to raise workplace fairness and equity, while others felt that being forced to work with unions would lead to greater inequity and unfairness; the main reason cited being that all employees would be paid the same regardless of performance. The views of several respondents on this issue are best summarised by one quotation in particular:

*"Equity and fairness in workplace practices does not come from the legislation but from the fundamental need for good employee relations to achieve productivity and retention of key skills."*

### SAMPLE RESPONDENT COMMENTS TO QUESTION 74 (N=27)

*"Being able to lawfully offer alternative arrangements to employees will be mutually beneficial."*

*"As long as the introduction of these initiatives did not encourage the exploitation of employees they would work well. At present, there is a strong sense of transparency and fairness with our EA so the use of other employment instruments or tools needs to be carefully planned."*

*"Current obligation to negotiate with unions "on demand" could lead to greater unfairness and inequity if all employees are given same pay rates regardless of their performance."*

## QUESTION 75. IN YOUR OWN WORDS, WHAT EFFECT DO YOU THINK THE FAIR WORK ACT IS HAVING IN YOUR WORKPLACE?

Question 75 concludes the survey and asks respondents to comment on what effect they thought the Fair Work Act was having in their workplaces. A summary of the responses received to this open ended question is listed below (n=432):

Many respondents wrote lengthy responses to this question, a large number indicating that the Fair Work Act 2009 had little or no effect on their workplace. As one typical response put it:

*"There is no impact, because with excellent HR there is no need for external interference. The primary responsibility for determining the matters ... rests with the employer and employee. With competent employees this works."*

The major concerns emanating from those critical of the Act did so on the grounds that it reduced employer flexibility to hire casuals, vary the scheduling of part-time hours and reduced the ability to negotiate fair and reasonable contracts. The overtime provisions were also cited as causing real problems in many areas, such as the health sector, while a significant number of respondents believed that the Act did not consider the needs of small business.

Provisions in the Act that reduced the flexibility of employers to manage underperforming employees and plan terminations was also cited as a problem by a large number of respondents, as well as the increased costs associated with having to comply with its provisions. Typical in this last regard were comments that referred to expenses emanating out of increased legal and training costs, as well as payout costs and the increased demands on the human resource function more generally.

One of the most contentious aspects of the Act was the increased prerogatives conferred on trade unions as a result of its provisions. Many respondents complained that provisions that relaxed union 'right of entry' was allowing them greater scope to 'drum-up membership'. Others noted the changed relationship that was emerging between employers and employees as a result of the greater workplace intrusion from trade unions under the Act. As one respondent put it: 'The Act has 'significantly damaged the employee/management relationship by allowing unions to insert their own agendas between management and staff.' And further: 'Even though the Fair Work Act has ... improved conditions within the workplace, ... the increase in union activity has hampered productivity improvements by limiting effective consultation processes – they have been a hindrance rather than a help.'

Respondents also indicated that changes under the Act had seen an increase in vexatious unfair dismissal claims and adverse action claims. As one respondent commented: 'Adverse action claims are becoming increasingly popular. They reverse the onus of proof and should not be available to employees whose length of service is less than six months, as they are just being used to get around the lack of access to unfair dismissal laws.' There was a sense in many responses that some organisations were fearful of or concerned about 'doing the wrong thing' because of the legal complexity

associated with these provisions in the Act.

While many respondents were quite strident in their criticism of the Fair Work Act there was a significant minority who took a more measured approach. The following comments lend some sense of those taking this approach:

*" [The Act] is a good compromise between the extremities of the Conciliation and Arbitration days and the Work Choices days...HR/IR is all about compromise...please communicate this to the lawmakers – extreme reform based on ideology is very counterproductive for business. There is a place at the table for all, including unions, in a well managed business."*

*"I think overall it is a positive piece of legislation that needs some tinkering to reduce the right to take protected action, the effects of adverse action, [and] take-away money in unfair dismissal claims."*

Perhaps the last word should rest with one respondent:

*"In the early stages there was confusion with employees questioning everything...training and time have worked through many of these issues. The induction process has become more important than ever and as employers were learning the new process, [implementing the requirement of Act] it was time consuming. Employees appear to have many rights with the employer forced to prove all actions. This can be costly in time if the employee makes a complaint and no matter how justified, the employer will need to go to mediation and prove it all over again. Time to document procedures is essential and not all businesses have the time or skill to do this. This can create a situation with the employee daring the employer to take actions and see the result."*

### SAMPLE RESPONDENT COMMENTS TO QUESTION 75 (N=432)

*"A good employer did not need the FWA to make them a good employer. It costs us more money and is creating far more work especially with terminations."*

*"In the office...it helps frame the way in which we employ. Out in the field...minimal impact as ...our culture has always been one of inclusion, flexibility and equity."*

*"It is making it harder to conduct a business with a rigid unflexible(sic) workforce, more union control which means less productivity, costs associated with unfair dismissal applications with no grounds (end up paying up to go away). Very difficult with mergers and acquisitions due to the transmission of business clauses."*

*"Confusion, misunderstandings, increased legal costs, fear of adverse action claims, greater employee demands for rights."*

*"The involvement of unions is having a detrimental affect on employee morale and organisational culture – particularly where there is low union membership and the unions are using FWA for membership push."*

*"Unions have now started seeking meetings with employees and management for the first time. We are concerned that this may lead to increased administration effort/costs and increased disputes in our currently harmonious IR environment as well as result in mandated salary increases that undermine our ability to reward good performing employees."*

*"Underperforming employees cannot be terminated very easily...causes morale, productivity issues and increases HR/IR workload."*

*"Employees now have so many 'workplace rights' now Managers wonder whether they even have the right to ask employees to do work!!!"*

*"We aren't able to do overtime very often at all – which makes it particularly difficult for our clinical emergency staff and IT departments....Limited overtime means huge backlogs and gaps in client care."*

*"We have ignored it. If we get fined then we will close the business. At the moment we hire 20 miners...They don't want all this Fair Work bullshit...they just want to be paid to the max and work as much overtime as they safely can."*

*"Now that it is imbedded into the system, the 'aggro' displayed by union workplace reps has calmed down again and the union influence has decreased."*



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