



General Manager's report into individual flexibility arrangements under s.653 of the *Fair Work Act 2009* (Cth)

2012–2015

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The contents of this paper are the responsibility of the author and the research has been conducted without the involvement of members of the Fair Work Commission.

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Abbreviations list

ABS	Australian Bureau of Statistics
AIRC	Australian Industrial Relations Commission
ANZSIC	Australian and New Zealand Standard Industrial Classification
AWRS	Australian Workplace Relations Study (2014)
AWIRS	Australian Workplace Industrial Relations Survey (1995)
CATI	Computer assisted telephone interview
Commission	Fair Work Commission
DEEWR	Department of Education, Employment and Workplace Relations
Enterprise-agreement IFA	An IFA varying the effect of a term in an enterprise agreement
Explanatory Memorandum	Fair Work Bill 2008 (Cth) Explanatory Memorandum
Fair Work Act	<i>Fair Work Act 2009</i> (Cth)
IFA	Individual flexibility arrangement
Modern-award IFA	An IFA varying the effect of a term in a modern award
Multiple-IFA employer	An employer survey respondent with an IFA with more than one employee
NES	National Employment Standards
NESB	Non-English speaking background
Regulations	<i>Fair Work Regulations 2009</i> (Cth)
RSE	Relative standard error
Single-IFA employer	An employer survey respondent with an IFA with one employee only
Transitional Provisions Act	<i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i>
WAD	Workplace Agreements Database

Executive summary

The General Manager of the Fair Work Commission (the Commission) is required every three years under section 653(1) of the *Fair Work Act 2009* (Cth) (Fair Work Act) to:

- review the developments in agreement making;
- conduct research into the extent to which individual flexibility arrangements (IFAs) under modern awards and enterprise agreements are being agreed to, and the content of those arrangements; and
- conduct research into the operation of the provisions of the National Employment Standards (NES) relating to employee requests for flexible working arrangements and extensions to unpaid parental leave.

This report presents findings for the 26 May 2012–25 May 2015 period from the research conducted into the extent to which IFAs¹ under modern awards and enterprise agreements are being agreed to, and the content of those arrangements. Pursuant to s.653(3) this report is due to the Minister for Employment within six months from the end of the reporting period, i.e. by 25 November 2015.²

The findings in this report are drawn from the Australian Workplace Relations Study (AWRS). The AWRS is the first Australia-wide statistical data set linking employer data with employee data since the 1995 Australian Workplace Industrial Relations Survey (AWIRS) and involved 3057 enterprises and 7883 of their employees. Data were collected between February and July 2014. For more information on the AWRS, see Section 4.1 of this report and the [AWRS website](#).

Key findings from employer data

Overall, nearly 14 per cent of employers had made an IFA since 1 July 2012. Around three per cent had made one IFA (single-IFA employers) and 11 per cent of employers had made an IFA with more than one of their employees (multiple-IFA employers). Approximately three-quarters of employers who had made an IFA indicated that they had made an IFA that had varied the effect of a modern award (modern-award IFA), 21 per cent indicated that they had made an IFA that varied the effect of an enterprise agreement (enterprise-agreement IFA) and 1 per cent indicated they had made at least one of each.

Employers who had made IFAs were more likely to be large employers (with 200 or more employees) and from the public sector. The three industries with the highest proportions of employers who had made IFAs were:

¹ The Fair Work Act provides that all modern awards must include a flexibility term enabling an employee and their employer to agree on an arrangement varying the effect of the award in relation to the employee and the employer, in order to meet the genuine needs of the employee and employer (s.144(1)). Such an arrangement is known as an IFA. The Fair Work Act also requires a flexibility term to be included in all enterprise agreements to enable the making of IFAs (s.202(1)).

² Section 653(1A) of the Fair Work Act provides that the General Manager is required to review and undertake research for the three-year period from commencement of the provision and each later three-year period. Section 653 commenced operation on 26 May 2009 (see s.2 of the Fair Work Act). The initial reporting period concluded 25 May 2012. The initial General Manager's report presented results which included data up to 30 June 2012 as a result of data collection periods. This report includes data from 1 July 2012 to 30 June 2015 for the same reason.

- Public administration and safety;
- Health care and social assistance; and
- Financial and insurance services.

Most single-IFA employers reported that the IFA had been employee-initiated (around 86 per cent), while a majority of multiple-IFA employers (67 per cent) responded that all or some of the IFAs they had made were initiated by the employee.

Around 85 per cent of single-IFA employers who had made an IFA with a new employee reported that they did not require the employee to agree to the IFA in order to commence employment. More than two-thirds of multiple-IFA employers reported they did not require any new employees to sign IFAs on commencement of employment, and almost four-fifths indicated they did not require any existing employees to sign an IFA.

Approximately three-quarters of employers, regardless of whether they had just a single IFA or multiple IFAs, indicated that the most common variations in IFAs were to ‘arrangements for when work is performed’. Variations to arrangements for when work is performed include changes to the span of ordinary-time hours or to the days of the week when work is to be performed, or modifications to breaks or entitlements to rest periods. Multiple-IFA employers were much more likely than single-IFA employers to report that IFAs had varied the other matters in the model flexibility term for enterprise agreements and modern awards—overtime, penalty rates, allowances and leave loading. Around 36 per cent of employers also reported having varied payment of wages through an IFA.

Fifty-two per cent of multiple-IFA employers indicated that the IFAs varied the same condition(s) for all the employees with whom they had made them. A further 28 per cent responded that most of the IFAs made had varied the same condition(s).

Around half of the employers indicated that the employees with whom they had made IFAs were better off by being able to meet non-work commitments and having an improved work-life balance, while close to half of multiple-IFA employers (and 40 per cent of single-IFA employers) reported that the IFA had resulted in an improved wage/salary for the employee.

Almost three-fifths of employers who had made an IFA indicated they had recorded details as to how the employee was better off under the arrangement. Not documenting how the employee is better off overall may be inconsistent with the model flexibility terms for enterprise agreements and modern awards.

Employers who had not made IFAs were asked about the main reasons for not doing so. The most common reason for not making an IFA reported by all employers was a preference for using informal/undocumented arrangements as an alternative (43 per cent), although only one quarter of large employers provided this reason. Large employers were more likely than other enterprise sizes to indicate that their enterprise agreements offered sufficient flexibility and were less likely to indicate that award provisions were suitable/offered sufficient flexibility. Another prevalent reason for not using IFAs—that no employees wanted a flexible work practice—was reported by 40 per cent of employers.

Key findings from employee data

Data collected from employees on the creation of IFAs showed around 2 per cent of employees were considered to have made an IFA since 1 July 2012, about 80 per cent of which were still in operation. However, just over 30 per cent of employees reported having an informal flexible working arrangement with their employer that was undocumented.

Employees who had made an IFA were more likely to be:

- female;
- part-time;
- in the 25–34 and 35–44 age groups; or
- permanent workers.

Employees who had a dependent child or children under the age of 15 were about twice as likely to have agreed to an IFA as employees without dependent children.

Just under half of employees who had made an IFA reported that it varied arrangements for when they performed work. The IFAs made by female employees were about twice as likely to vary this matter as IFAs made by male employees. The older the age group of employees with IFAs, the greater the proportion who reported that they varied arrangements for when work is performed. Consistent with the employer data, employee-initiated IFAs were more likely to vary this matter type than IFAs initiated by employers.

IFAs varying overtime, allowances and leave loading were less common in general and in particular for female employees. IFAs modifying penalty rates were also less common, but where this did occur it was reported by equal proportions of both genders. IFAs that varied entitlements to components of an employee's total pay were more likely to be employer-initiated IFAs.

The most commonly reported outcomes from the IFA for employees was the flexibility to better manage non-work related commitments, the ability to commence or continue in employment and a wage/salary that was higher than the award rate.

Three-quarters of employees reported that they had not sacrificed pay or conditions in order to benefit from their IFA, and more than four-fifths considered themselves to be better off overall as a result of agreeing to the IFA.

1 Introduction

The Fair Work Commission (the Commission) is the national workplace relations tribunal. It is established by the *Fair Work Act 2009* (Cth) (Fair Work Act). The Commission carries out a range of functions including maintaining a safety net of modern award wages and conditions, facilitating enterprise bargaining and approving enterprise agreements, administering the taking of protected industrial action and settling industrial disputes, granting remedies for unfair dismissal and regulating industrial organisations.

The Commission is comprised of Members who are appointed by the Governor-General under statute, headed by a President.³ The President is assisted by a General Manager,⁴ also a statutory appointee, who oversees the administration of Commission staff. Commission staff are engaged to provide support to the tribunal and its Members. Further information about the Commission can be found on its website: www.fwc.gov.au.

Under section 653(1) of the Fair Work Act the General Manager must:

- review the developments in agreement making;
- conduct research into the extent to which individual flexibility arrangements (IFAs) under modern awards and enterprise agreements are being agreed to, and the content of those arrangements; and
- conduct research into the operation of the provisions of the National Employment Standards (NES) relating to employee requests for flexible working arrangements and extensions to unpaid parental leave.

The review and research must also consider the effect that these matters have had on the employment (including wages and conditions of employment) of the following persons:

- women;
- part-time employees;
- persons from a non-English speaking background;
- mature age persons;
- young persons; and
- any other persons prescribed by the regulations.⁵

The Fair Work Act specifies that the research must be conducted in relation to the first three years following the commencement of section 653 and each subsequent three-year period⁶ and a written report of the review and research must be provided to the Minister within six months after the end of the relevant reporting period.⁷

³ Fair Work Act, ss.575 and 626.

⁴ Fair Work Act, s.656.

⁵ Fair Work Act, s.653(2). The regulations do not prescribe any other persons.

⁶ Fair Work Act, s.653(1A).

⁷ Fair Work Act, s.653(3).

This report presents findings for the 26 May 2012–25 May 2015 period from the research conducted into the extent to which IFAs under modern awards and enterprise agreements are being agreed to, and the content of those arrangements. Pursuant to s.653(3) this report is due to the Minister for Employment within six months from the end of the reporting period, i.e. by 25 November 2015.

The General Manager's 2009–12 reports can be found on the Commission [website](#).

This report is focused on meeting the requirements of s.653 of the Fair Work Act, however there is scope for much wider exploration of IFAs using the AWRS as a data source.⁸

⁸ AWRS is freely available to interested parties (under certain conditions related to preserving the confidentiality of participants), however any finer-level analysis of IFA use should take account of the low numbers of respondents to certain questions.

2 Report Outline

This report presents research undertaken into the extent to which IFAs under modern awards and enterprise agreements are being agreed to, and the content of those arrangements for the 2012–2015 reporting period.

Chapter 3 provides an overview of the relevant legislation. For a detailed explanation of the governing legislation pertaining to IFAs refer to the 2009–12 report, which can be found on the Commission [website](#).

The methodology is discussed in Chapter 4 and includes an outline of the AWRS—the key data source used for this report—as well as how IFAs are identified for the purposes of the report and limitations of the analysis.

The findings of the research are divided in two key chapters reflecting the two areas of research pertaining to IFAs required by s.653(1)(b) of the Fair Work Act:

- extent of IFA use (Chapter 5)
- content of IFAs (Chapter 6).

These chapters use information provided by both employers and employees collected in the linked AWRS data set.

3 Legislative overview

IFAs are made under the flexibility terms in modern awards or enterprise agreements. IFAs are made between an individual employee and his or her employer and vary the effect of the terms of a modern award or enterprise agreement in relation to the employee and the employer.⁹ Flexibility terms in modern awards and enterprise agreements detail the effect of the terms of the modern award or enterprise agreement that may be varied by an IFA and the mandatory content of an IFA.

This chapter is structured as follows:

- flexibility terms in modern awards;
- flexibility terms in enterprise agreements; and
- Commission decisions in disputes regarding IFAs.

3.1 Flexibility terms in modern awards

3.1.1 Legislative framework for flexibility terms in modern awards

A modern award must include a flexibility term enabling an individual employee and his or her employer to agree on an IFA varying the effect of the modern award in relation to that employee and employer to meet their genuine needs.¹⁰

If an individual employee and his or her employer agree to an IFA under a flexibility term in a modern award, the modern award has effect in relation to the individual employee and their employer as if it were varied by the IFA.¹¹ The IFA is taken to be a term of the modern award¹² and hence may be enforced as though it were a term of the modern award.

The flexibility term for modern awards is made by the Commission. In doing so, the Commission must ensure the flexibility term includes the matters listed in s.144(4) of the Act.

3.1.2 Changes to the model flexibility term in modern awards

The criteria by which the model flexibility term was determined by the Australian Industrial Relations Commission (AIRC) in June 2008 under the previous legislative framework was similar to s.144(4) of the Fair Work Act. A significant difference, however, is the inclusion of s.145(4) in the Fair Work Act, which provides that an IFA that does not meet the requirements of the flexibility term in the modern award can be terminated “by either the employee, or the employer, giving written notice of not more than 28 days”.

As part of the transitional review of all modern awards required after 1 January 2012 under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*, a Full Bench of the

⁹ *Re Minister for Employment and Workplace Relations* [2010] FWAFB 3552; Fair Work Act, ss.144(2)–(3); 202(2)–(3).

¹⁰ Fair Work Act, s.144(1).

¹¹ Fair Work Act, s.144(2)(a).

¹² Fair Work Act, s.144(2)(b).

Commission issued a Decision on 15 April 2013 that made a number of variations to the existing model flexibility term in modern awards.¹³

The Full Bench varied the model flexibility term as follows:

- The better off overall clause was amended to specify that the assessment of whether an employee would be better off overall under an IFA, than if no IFA had been agreed to, is applied at the time the IFA is made. This amendment was made "...to make it clear that the reference to 'the employee being better off overall' in clause 7.3(b), refers to when the IFA is made."¹⁴
- The notice period for the termination of an IFA by either party was increased from four weeks to 13 weeks to give effect to recommendations made in the report entitled *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation*,¹⁵ a post-implementation review of the Fair Work Act. The Full Bench was satisfied that "... such a variation has merit, will enhance the operational effectiveness of the model term and is consistent with the modern awards objective".¹⁶
- A note was inserted stating that if the IFA does not meet the requirements of the flexibility term in the modern award or under the Fair Work Act, the IFA may be terminated by either the employee or the employer giving written notice of not more than 28 days. This variation was made "[i]n order to ensure that parties to IFAs are aware of the termination provisions in s.145(4)...".¹⁷
- It was clarified that an IFA can only be entered into after the individual employee has commenced employment with the employer. This amendment was made as there was evidence that employees and employers were entering into IFAs before the commencement of employment and doing so was "contrary to the intent of the model flexibility term and the FW Act".¹⁸

3.1.3 Content of an IFA and the model flexibility term in modern awards

As noted above, s.144(4) sets out the mandatory content for the Commission to include within the flexibility term in a modern award. The mandatory content includes:

- identifying the terms of the modern award the effect of which the IFA may vary
- genuine agreement between the parties
- that the employer ensures the employee is better off overall as a result of the IFA than if no IFA were agreed to
- the steps for terminating an IFA

¹³ *Modern Awards Review 2012–Award Flexibility* [2013] FWCFB 2170.

¹⁴ *Modern Awards Review 2012–Award Flexibility* [2013] FWCFB 2170 at para. 159.

¹⁵ Fair Work Act Review Panel (2012), *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation*, report prepared by the Fair Work Act Review Panel, August, DEEWR.

¹⁶ *Modern Awards Review 2012–Award Flexibility* [2013] FWCFB 2170 at para. 187.

¹⁷ *Modern Awards Review 2012–Award Flexibility* [2013] FWCFB 2170 at para. 188.

¹⁸ *Modern Awards Review 2012–Award Flexibility* [2013] FWCFB 2170 at para. 209.

- that the IFA be in writing and signed, and
- the requirement that the employer give the employee a copy of the IFA in writing.¹⁹

The flexibility term must also preclude IFAs from being approved by or consented to by third parties, unless the employee is under 18 years old.²⁰

The current model flexibility term, which forms the basis of flexibility terms in all modern awards, is included as Appendix B.

3.1.4 Legislative framework for flexibility terms in enterprise agreements

An enterprise agreement must include a flexibility term enabling an individual employee and his or her employer to agree to an IFA varying the effect of the enterprise agreement in relation to that employee and employer, in order to meet their genuine needs.²¹ If an enterprise agreement does not include a flexibility term, or the flexibility term does not meet the requirements of the Fair Work Act,²² the model flexibility term is taken to be a term of the enterprise agreement.²³

The model flexibility term for enterprise agreements is based “upon the model flexibility term developed by the AIRC for inclusion in modern awards”.²⁴ Whereas the model flexibility term for modern awards may be varied by the Commission²⁵ the model flexibility term for enterprise agreements is prescribed by the *Fair Work Regulations 2009* (Cth) (Regulations).²⁶ Accordingly, the model flexibility term for enterprise agreements may only be modified by amending the Regulations.

If an individual employee and his or her employer agree to an IFA under a flexibility term in an enterprise agreement, the enterprise agreement has effect in relation to the individual employee and his or her employer as if it were varied by the IFA.²⁷ The IFA is taken to be a term of the enterprise agreement²⁸ and hence may be enforced as though it were a term of the enterprise agreement.

Section 203 of the Fair Work Act prescribes the content that a flexibility term in an enterprise agreement must contain.

¹⁹ Fair Work Act, s.144(4).

²⁰ Fair Work Act, s.144(5).

²¹ Fair Work Act, s.202(1).

²² *Stewart And Sons Steel P/L. Collective Agreement 2013/2014* [2013] FWCA 2132; Explanatory Memorandum to the Fair Work Bill 2008, cl. 863.

²³ Fair Work Act, s.202(4).

²⁴ Explanatory Memorandum to the Fair Work Bill 2008, r.151 and clause 864.

²⁵ Fair Work Act, ss.156 and 157.

²⁶ Fair Work Act, s.202(5) and reg. 2.08 and Schedule 2.2 of the Regulations.

²⁷ Fair Work Act, s.202(2)(a).

²⁸ Fair Work Act, s.202(2)(b).

Section 204 of the Fair Work Act provides that an arrangement that purports to be an IFA that has been entered into by an individual employee and his or her employer that does not meet the requirements of the flexibility term in the enterprise agreement has the effect as if it were an IFA.²⁹

3.1.5 Content of an IFA and the model flexibility term in enterprise agreements

The content that may be included in an IFA made under a flexibility term in an enterprise agreement will vary from enterprise agreement to enterprise agreement. The flexibility terms provided for in modern awards are determined by the Fair Work Commission, within the requirements of the Act. By contrast, as enterprise agreements are negotiated between employees and employers, there is scope, within the requirements of the Act, for employees and employers to agree to a flexibility term that permits the variation of the effect of more terms in an enterprise agreement.

The provisions of s.203 of the Fair Work Act detail the permitted substantive and mandatory content of a flexibility term in an enterprise agreement.

If an enterprise agreement does not include a flexibility term, or the flexibility term does not meet the requirements of the Fair Work Act, the model flexibility term for enterprise agreements is taken to be a term of the enterprise agreement.³⁰

The model flexibility term for enterprise agreements is set out in Schedule 2.2 of the Regulations and can be found at Appendix A.

3.1.6 Use of the model flexibility clause in enterprise agreements

Table 3.1 presents data from the Workplace Agreements Database (WAD) on the types of flexibility terms (model or otherwise) incorporated into enterprise agreements approved between 1 July 2012 and 30 June 2015. Most enterprise agreements had flexibility terms that differed from the model clause, and either specified the terms that can be varied (60 per cent) or allowed any term of the agreement to be varied (3 per cent).

A significant proportion of enterprise agreements contained the model flexibility term provided in the Regulations—31 per cent contained the model flexibility term and it was incorporated into a further 4 per cent of agreements following a Commission decision. Three per cent of agreements contained no flexibility clause and therefore the model flexibility term is taken to be a term of the agreement.

²⁹ Fair Work Act, s.204(2).

³⁰ Fair Work Act, s.202(4) and *Re Minister for Employment and Workplace Relations* (2010) 195 IR 138.

Table 3.1: Types of flexibility terms in enterprise agreements 1 July 2012–30 June 2015, per cent of enterprise agreements

Type of flexibility term	(%)
Model flexibility term: the flexibility term is the model term	30.9
Model flexibility term incorporated: the Fair Work Commission Member's decision incorporates the model flexibility term into the agreement	3.7
No flexibility clause: model flexibility term taken to be a term of the agreement	2.9
Flexibility – specific: the flexibility term differs from the model flexibility term, and specifies which term can be varied	60.0
Flexibility – general: the flexibility term allows any term of the agreement to be varied	3.3

Note: Some agreements may contain more than one flexibility term and therefore proportions may not add up to 100.

Source: Department of Employment, *Workplace Agreements Database*, June 2015.

3.2 Commission decisions in disputes regarding IFAs

One dispute relating to an IFA referred to the Commission during the reporting period resulted in a decision.

The case is summarised below and provides insight into issues involving the negotiation of IFAs and the requirement for genuine agreement between the parties. It deals with circumstances where an IFA under an enterprise agreement was refused by an employer for operational reasons.

The Commission did not compel the employer in this case to enter into an IFA with the employee, accepting that the employer's refusal was for genuine operational reasons.

Australian Municipal, Administrative, Clerical and Services Union v Western Water
[2013] FWC 6060:

The Australian Municipal, Administrative, Clerical and Services Union, on behalf of a member, applied under the dispute settlement procedure of the *Western Water Enterprise Agreement 2011* and s.739 of the Fair Work Act for the Commission to deal with a dispute between its member and his employer.

The employee, an IT administrator, requested an IFA under the flexibility terms of the enterprise agreement, to compress his work hours into a four-day week in order to assist in caring for his elderly mother and mother-in-law.³¹

The Respondent refused citing operational reasons, namely, that it would need to backfill the employee's position for the day he was not at work, as the IT administrator role required attendance each day.³²

Commissioner Gregory accepted that the employee had genuine reasons for requesting the IFA but said he was satisfied that granting the request would involve significant cost to the Respondent as it would need to arrange for replacement staff to cover the employee on his day off.³³

Commissioner Gregory, taking into account the operational needs of the Respondent, found that, in all the circumstances, it was not appropriate to direct the Respondent to grant the employee's request.³⁴

³¹ [2013] FWC 6060 at paras 1 and 7.

³² [2013] FWC 6060 at para. 14.

³³ [2013] FWC 6060 at paras 24, 35 and 36.

³⁴ [2013] FWC 6060 at para. 36.

4 Methodology

As IFAs are not lodged with or assessed by the Fair Work Commission, or any agency, no administrative data source exists from which to report on the extent of IFA use and IFA content. There are also no data sets in Australia that collect information on IFAs in order for the Commission to comply with the requirements of s.653 of the Fair Work Act. As such, it was necessary for the Commission to obtain data from original sources. The Commission conducted its own survey to obtain data relating to IFAs in Australia. The survey conducted was the Australian Workplace Relations Study (AWRS).

4.1 Australian Workplace Relations Study – Background

The AWRS is the first Australia-wide statistical data set linking employer data with employee data since the 1995 Australian Workplace Industrial Relations Survey (AWIRS).

4.1.1 AWRS design

The AWRS is representative of employers and employees in the national jurisdiction of workplace relations (i.e. covered by the Fair Work Act).³⁵

Although the AWRS was designed to produce statistically reliable population estimates for the Australian economy, there were some business units excluded. These included:

- businesses with fewer than 5 employees;
- businesses in the Agriculture, forestry and fishing industry³⁶ and in the Defence industry;^{37 38} and
- certain public sector and private sector businesses that are not ‘national system’ employers.³⁹

The AWRS is a resource for producing population estimates of Australian enterprises and their employees in relation to workplace relations matters and will enable analysis of employment and workplace relations matters that are not canvassed by other national surveys.

4.1.2 AWRS sample and data collection methodology

Data were collected from enterprises between February and July 2014.

A total of 3057 enterprises participated in the AWRS by responding to the Employee Relations questionnaire. This was the first questionnaire component (of five employer survey components) to be administered and had to be completed in order for the enterprise to be considered as recruited. Data collection methods included computer assisted telephone interviews (CATI) and online questionnaires.

³⁵ Certain private sector non-incorporated businesses in Western Australia and public sector organisations that are not constitutional corporations (i.e. some local councils and state government departments) were not in the sample.

³⁶ As defined by the Australian and New Zealand Standard Industrial Classification (ANZSIC) industry division.

³⁷ As defined by the ANZSIC sub-division 76: Defence.

³⁸ Businesses with fewer than five employees and those in the Agriculture and Defence industries are commonly excluded from industrial relations surveys. See, for example, AWIRS 1990 and 1995.

³⁹ See s.14 of the Fair Work Act.

The employee survey was conducted at enterprises that participated in the AWRS. All employees of enterprises with 5–21 employees (i.e. the study coordinator and up to 20 employees) were invited to participate and a random selection of 20 employees from enterprises with more than 21 employees was invited to participate. Data were collected through a questionnaire that could be completed online or in hard copy format.

A total of 7883 employees completed the employee survey, from 1384 of the 3057 enterprises.

The data collected through the AWRS surveys have been weighted up to population estimates sourced from Australian Bureau of Statistics (ABS) catalogues. All data presented for analysis have been weighted using the appropriate weight from each survey (as indicated in the Table/Figure note).

4.1.3 Further information about AWRS

Further information about the research design and process, survey instruments, sampled population and units of analysis, sample characteristics and survey weights, and recruitment and response outcomes is available in the [AWRS Technical notes](#).

4.2 Identification of IFAs

4.2.1 Identification of IFAs among employers

A total of 561 employers in the AWRS sample are considered to have made at least one IFA for the purposes of this report.

Employers were considered to have made an IFA⁴⁰ if:

- they indicated that since 1 July 2012 they had made at least one IFA, and
- the arrangement varied the employee's conditions of employment from what was applicable under an enterprise agreement or modern award, and
- they responded that the IFA(s) varied a modern award or enterprise agreement (or both) or 'don't know'.

4.2.2 Identification of IFAs among employees

A total of 172 employees who responded to the AWRS questionnaire were considered as having made an IFA for the purposes of this report.

An employee was considered to have made an IFA⁴¹ if:

- the employee indicated they had made one since 1 July 2012, and
- their employing enterprise also indicated it had made at least one IFA, and

⁴⁰ Interviewers administering the Employee Relations (HR) questionnaire were given a description of an 'individual flexibility arrangement' to read to respondents. The full description can be found in the Employee Relations (HR) questionnaire available on the [AWRS website](#).

⁴¹ The online and hardcopy versions of the employee questionnaire contained a description of an 'individual flexibility arrangement' to read to respondents. The full description can be found in the Employee questionnaire available on the [AWRS website](#).

- their employing enterprise responded that the IFA varied a modern award or enterprise agreement (or both) or 'don't know'.

4.3 Data limitations

As noted earlier, no administrative data source exists from which to report on the extent of IFA use and IFA content and it has again been necessary to collect data on this in order to meet the General Manager's reporting requirements under s.653(1)(b). The Commission has sought to collect the data using a comprehensive survey of Australian enterprises and their employees.

However, unlike the Workplace Agreements Database held by the Department of Employment, which is a census of all enterprise agreements made in the national system, the survey conducted by the Commission can only provide results that are indicative of the population. As the results are based on a sample of employers and employees, the results in this report are estimates only.

A further data limitation in relation to reporting on IFAs from survey data relates to the incomplete understanding of research participants about industrial relations matters.⁴² As an example, the survey results from the 2009–12 report showed some employees had difficulty differentiating IFAs from a broader range of workplace flexibility practices or changes to employment conditions.⁴³

Although the Commission conducted testing of the questionnaires to limit the extent to which respondents misunderstood the technical legal concepts, ultimately there remain risks that there were some respondents who have incorrectly identified their arrangement at the workplace and that some results may reflect IFAs that are not consistent with the meaning of the Act.

4.3.1 Disaggregation of data and relative standard errors

As was the case with the 2012 report, the incidence rate of IFA use by employers and employees does not allow disaggregation of the data to the degree that might be desired.⁴⁴ For example, the data is sufficient to analyse the incidence rates of IFA use, but as the number of respondents in particular categories gets smaller, some analysis is simply not statistically feasible.

Guiding the extent to which disaggregated data could be presented was the level of relative standard error (RSE).⁴⁵ Relative standard errors were calculated for all analysis undertaken. Estimates have not been presented where the relative standard error is greater than 50 per cent due to the low reliability of the estimate and these data are indicated throughout the report by 'np'.

⁴² For example, in relation to wages previous research has found that employees have limited understanding of how wages matters were dealt with legally (see Evesson J and Oxenbridge S (2011), *Enterprise Case Studies: Effects of minimum wage-setting at an enterprise level*, Research Report No. 7/2010, February, Fair Work Australia) and wage data provided by employees is considered "less robust" than that provided by employers (see ABS, *Understanding Earnings In Australia Using ABS Statistics*, August 2013, cat. no. 6310.0).

⁴³ O'Neill, B, *General Manager's report into the extent to which individual flexibility arrangements are agreed to and the content of those arrangements: 2009–2012*, Fair Work Commission, November 2012, p. 30.

⁴⁴ As the estimated rate of IFA use among employees is 2 per cent (see p. 26), it would require a survey of many thousands of employee respondents to a survey to collect sufficient data to support this type of analysis.

⁴⁵ The Standard Error measure indicates the extent to which a survey estimate is likely to deviate from the true population and is expressed as a number. The Relative Standard Error is the standard error expressed as a fraction of the estimate and is usually displayed as a percentage. For more information, see ABS (2010), *What is a Standard Error and Relative Standard Error, Reliability of estimates for Labour Force data*, <http://www.abs.gov.au/websitedbs/d3310114.nsf/Home/What+is+a+Standard+Error+and+Relative+Standard+Error.+Reliability+of+estimates+for+Labour+Force+data>.

4.3.2 Issues of comparability between 2012 and 2015 reports

Results for the 2012–2015 reference period presented in this report are not directly comparable with those presented for the 2009–2012 report. While there are some similarities in the way that data were generated, the differences between the data sets and their method of collection should ensure caution is exercised when comparing the two data sets. Results in this report may differ from the previous report for a range of reasons including:

- a shorter reference period for reporting IFAs was used;⁴⁶
- employee survey data are weighted up to the population using estimates sourced from the ABS;⁴⁷
- results are drawn from a linked employer-employee population (rather than separate employer and employee populations), which was cross referenced; and
- a different definition of small and medium-sized employers was used.⁴⁸

In particular, the questions used to collect information about the extent and content of IFAs in the AWRS surveys differ from the questions posed in 2012. Additional information was sought in 2012, in part because collecting information about IFAs (and NES requests) was the sole purpose of the survey. As a result IFAs are identified in a different way in this report when compared with the earlier report.

It is not possible for the purposes of this report to estimate the significance of these reasons for the differences in the results presented.

⁴⁶ The reference periods for reporting IFAs differ between the reports due to the timing of the data collection to inform each report. The survey that provided data for the 2009–12 IFA report asked respondents to report on IFAs made from 1 Jan 2010 (the date that the flexibility term provisions commenced operation) to the date the survey was completed (surveys were undertaken in April/May 2012 with employees and May/June 2012 with employers). As such the reference period for respondents ranged from approximately 27 months to 30 months. AWRS, which provides data for this 2012–2015 report, asked respondents to report on IFAs made from 1 July 2012 to the date the survey was completed (February to July 2014 for both employers and employees). The reference period for respondents for this report therefore ranged from approximately 19 months to 25 months.

⁴⁷ The employee survey data presented in the 2009–2012 IFA report was not weighted to the population due to the approach method used for potential employee respondents—a simple random sample. Due to the non-random way in which employees were invited to participate in the AWRS (an employee's enterprise would need to have been approached and agreed to participate, before an employee would have a chance of being selected), the employee data is weighted to ensure representativeness.

⁴⁸ The survey conducted to inform the 2009–12 report used a definition of business size reflecting the s.23 Fair Work Act definition of a small business employer in the national system as one with fewer than 15 employees. Therefore the following definition structure of business size was reflected in the 2009–12 report: a small business is defined as having fewer than 15 employees, a medium business is defined as one with 15–199 employees and a large business as one with 200 or more employees. However, the AWRS, having a much broader application and a need for comparison with other data sources, used the ABS definition of business size and excluded 'micro' businesses employing fewer than five workers. Therefore for this 2012–2015 report, the following definition structure is used: a small business is defined as one with 5–19 employees, a medium business is defined as one with 20–199 employees and a large business as one with 200 or more employees.

5 Extent of IFA use

5.1 Incidence of IFAs since 1 July 2012 reported by employers

Table 5.1 shows the incidence of IFAs that had been made since 1 July 2012 as reported by employers. Overall, nearly 14 per cent of national system employers indicated they had made at least one IFA.⁴⁹ Three per cent of employers had made just one IFA with an employee (single-IFA employers) and around 11 per cent of employers had made an IFA with more than one of their employees (multiple-IFA employers).

Table 5.1: Incidence of employers who have made IFAs since 1 July 2012, per cent

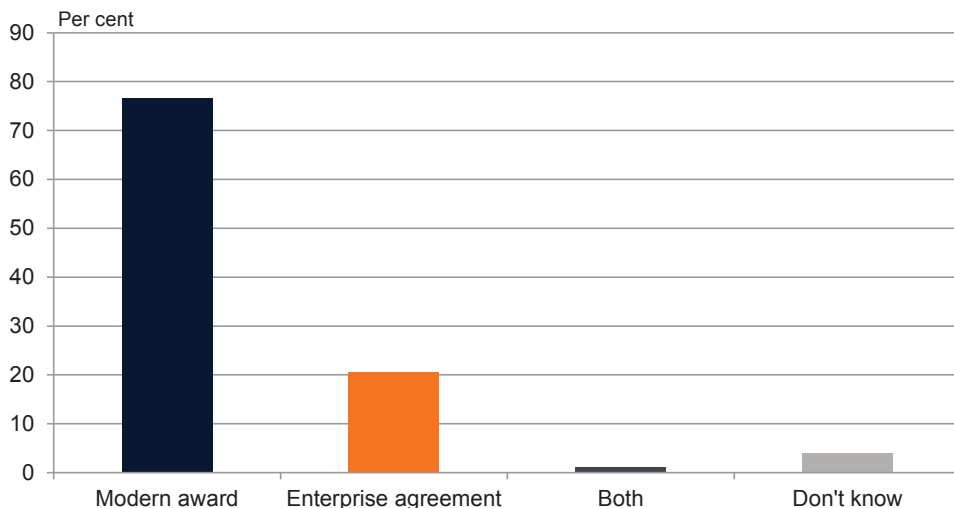
	(%)
None	84.1
IFA	13.7
Single IFA	3.2
Multiple IFAs	10.5
Unsure	2.2
Total	100.0

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*. All data are weighted using the enterprise weight.

As noted above, IFAs can vary the effect of either a modern award or an enterprise agreement. The vast majority (around 77 per cent) of employers who had created an IFA with at least one employee indicated they had varied a condition of employment in a modern award (modern-award IFA) while 21 per cent indicated that they had made an IFA that varied the effect of an enterprise agreement (enterprise-agreement IFA). A further 1 per cent indicated they had made at least one modern-award IFA and at least one enterprise-agreement IFA (Figure 5.1).

⁴⁹ This incidence rate is not directly comparable with the overall incidence rate reported in the 2012 General Manager's report (<http://www.fwc.gov.au/documents/documents/IFA.pdf>) of 8.4 per cent. See section 4.3.2 in the Methodology chapter in this report for issues with comparability across the two reports.

Figure 5.1: Employers with IFAs and the instrument under which they were made since 1 July 2012, per cent with IFAs



Note: All data are weighted using the enterprise weight. Figures may exceed a total of 100 per cent due to rounding.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

A range of modern awards were identified as having been varied by IFAs. The *Clerks - Private Sector Award 2010* (11 per cent) and the *General Retail Industry Award 2010* (7 per cent) were the modern awards most commonly reported by employers as having been varied (Table 5.2).

Table 5.2: Modern awards under which IFAs are most commonly agreed, per cent

	(%)
<i>Clerks - Private Sector Award 2010</i>	11.4
<i>General Retail Industry Award 2010</i>	7.2
<i>Manufacturing and Associated Industries and Occupations Award 2010</i>	5.5
<i>Social, Community, Home Care and Disability Services Industry Award 2010</i>	5.3
<i>Hospitality Industry (General) Award 2010</i>	5.2
<i>Health Professionals and Support Services Award 2010</i>	4.4
<i>Children's Services Award 2010</i>	4.1
<i>Vehicle Manufacturing, Repair, Services and Retail Award 2010</i>	3.9
<i>Banking, Finance and Insurance Award 2010</i>	3.1
<i>Real Estate Industry Award 2010</i>	2.5

Note: This table presents the ten modern awards under which IFAs are most commonly agreed as indicated by employers. Some IFAs may have varied the effect of multiple modern awards. About 11 per cent of responses did not know the specific modern award the IFA had been made under, these responses were excluded. Data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.1.1 Characteristics of employers who had made IFAs

Table 5.3 provides a range of characteristics of the employers who had made IFAs. Column one provides results for all employers with an IFA as a proportion of those with that specific characteristic. Columns two and three present disaggregated results for single and multiple-IFA employers as a proportion of employers with that given characteristic.

Large employers were more likely to have entered into an IFA with one or more of their employees (38 per cent) than medium (20 per cent) or small employers (12 per cent). Most of these large employers have multiple IFAs, as might be expected given they have a higher number of employees.

Public sector enterprises were more likely to have made at least one IFA than private sector enterprises—41 per cent compared with 14 per cent.

Employers from Tasmania, Northern Territory and the Australian Capital Territory were more likely to have made an IFA (ranging between 20 and 23 per cent) relative to other states. Employers based in Victoria and Queensland were least likely to have made an IFA (around 13 per cent each).

There was relatively little difference between employers from metropolitan locations and employers based in regional/rural locations regarding IFA use.

Table 5.3: Characteristics of employers who had made IFAs, per cent of employers with given characteristic

	Proportion with given characteristic who have an IFA (%)	Single-IFA employers (%)	Multiple-IFA employers (%)
Organisation size			
Small (5–19 employees)	11.6	3.4	8.2
Medium (20–199 employees)	20.4	2.9	17.6
Large (200 or more employees)	37.9	2.0	35.9
Sector			
Private	13.8	3.3	10.5
Public	41.1	np	35.3
State			
New South Wales	14.4	4.0	10.4
Victoria	12.8	2.0	10.8
Queensland	13.4	2.7	10.7
South Australia	18.2	4.8	13.4
Western Australia	16.2	4.1	12.1
Tasmania	22.5	np	16.6
Northern Territory	20.3	8.1	12.2
Australian Capital Territory	21.6	np	16.0
Location			
Metropolitan	14.9	3.7	11.2
Regional/rural	12.5	2.6	9.9

Note: Private sector employers include commercial 'for profit' employers and 'not for profit' employers. Businesses with multiple worksites may operate in more than one state/territory. Therefore, proportions across state/territory will not add up to 100. With regards to location, businesses with multiple worksites are asked whether the largest share of the organisation's employees are working in either metropolitan (major city) or regional/rural areas. Therefore, proportions by location add up to 100. The table excludes 'don't know' responses for each characteristic. np = not published. Data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

The distribution by industry of employers who had made IFAs is detailed in column one of Table 5.4. Employers in Health care and social assistance (15 per cent) and the Retail sector (13 per cent) comprised the largest proportions of industry employers who had made IFAs. Column two shows the proportion of employers within a given industry who had agreed to an IFA. The three industries with the highest proportions of employers who had made IFAs were: Public administration and safety (30 per cent of employers), Health care and social assistance (27 per cent) and Financial and insurance services (22 per cent).

Table 5.4: Industry of employers who had made IFAs, per cent of employers with IFAs across and within industry

	Proportion with IFA across industry (%)	Proportion with IFA within industry (%)
Mining	0.5	10.6
Manufacturing	9.1	12.7
Electricity, gas, water and waste services	0.5	17.0
Construction	9.1	11.9
Wholesale trade	6.4	13.0
Retail trade	13.4	14.7
Accommodation and food services	7.3	8.5
Transport, postal and warehousing	3.1	11.9
Information media and telecommunications	0.9	15.7
Financial and insurance services	3.6	22.0
Rental, hiring and real estate services	3.4	12.5
Professional, scientific and technical services	11.2	13.9
Administrative and support services	4.4	11.5
Public administration and safety	1.5	30.3
Education and training	3.1	19.5
Health care and social assistance	15.2	26.8
Arts and recreation services	2.0	15.1
Other services	5.2	11.1

Note: Data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.1.2 Employers who had not made IFAs

Employers who had not made IFAs were asked about the main reasons that they had not done so. The results are presented by employer size in Table 5.5.

The most common reason for not making an IFA reported by all employers was a preference for using informal/undocumented arrangements as an alternative (43 per cent), although only one quarter of large employers provided this reason.

In what may be attributable to patterns of industrial instrument use by business size, large employers were more likely to indicate that their enterprise agreement offered sufficient flexibility (29 per cent compared with 4 and 9 per cent of small and medium size employers) and less likely to indicate that award provisions are suitable/offered sufficient flexibility (8 per cent compared with 16 and 17 per cent of small and medium size employers).

Another frequently reported reason for not using IFAs—that no employees wanted a flexible work practice—was reported by 40 per cent of employers.

Around 2 per cent of employers indicated that IFAs do not allow sufficient flexibility or that they do not understand how to use IFAs. Less than 1 per cent indicated that they are not reliable longer term or that they are concerned about penalties if IFAs are used incorrectly.

Table 5.5: Main reasons provided for not making IFAs, per cent of employers who had not made IFAs since 1 July 2012

	5–19 employees (%)	20–199 employees (%)	200+ employees (%)	All employers (%)
Prefer to use informal/undocumented arrangements instead	45.0	36.2	24.7	43.2
No employees have wanted a flexible work practice	38.3	46.9	44.7	39.9
Award provisions are suitable/sufficient flexibility in award provisions	15.5	17.0	7.5	15.7
Use common law contracts instead	6.0	7.7	13.2	6.4
Happy with EA/sufficient flexibility in enterprise agreement provisions	3.8	9.4	29.3	5.1
Not suited to business/type/size, etc.	4.4	2.7	4.4	4.1
Unaware IFA provisions exist	3.4	2.3	np	3.3
No need	2.6	1.3	np	2.3
Flexibility/flexible arrangement already in place	2.1	2.8	np	2.3
IFAs don't allow sufficient flexibility	2.1	2.2	4.1	2.1
Don't understand how to use IFAs	2.2	1.2	0.0	2.0
IFAs not reliable longer term (i.e. can be cancelled with 90 days notice)	0.5	0.7	3.2	0.6
Concerned about penalties if use IFAs incorrectly	np	0.9	np	0.5
Other reason	2.0	1.7	3.8	1.9
Don't know	1.6	0.9	np	1.5

Note: Employers could provide multiple responses. np = not published. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.1.3 Creation of IFAs reported by single-IFA employers since 1 July 2012

Table 5.6 presents data on single-IFA employers. The data indicate that the IFAs reported by single-IFA employers were primarily initiated by employees (86 per cent) and that in a majority of instances IFAs were created with existing employees (81 per cent). There was little variation across modern-award IFAs and enterprise-agreement IFAs regarding who instigated the IFA and whether new or existing employees had agreed to the IFA.

As more than two-thirds of single-IFA employers (around 68 per cent) reported that the IFA they entered into modified a modern award, there is little variation between the results for all employers who had made a single IFA (column 1 in Table 5.6) and those who made one varying a modern award (column 2 in Table 5.6). Around 85 per cent of employers who made one IFA with a new employee reported that they did not require the employee to agree to the IFA in order to commence employment.

Table 5.6: Creation of IFAs by instrument varied by the IFA, per cent of single-IFA employers

	All single-IFA employers	Modern award	Enterprise agreement
	(%)	(%)	(%)
Party who initiated the IFA			
Employer initiated	13.7	13.4	np
Employee initiated	86.3	86.6	83.7
Employee history			
New employee signed IFA	19.4	18.8	np
Existing employees signed IFA	80.6	81.2	78.6
Requirement to agree to IFA to commence employment*			
Employee not required	85.2	79.4	96.6

Note: Excludes 'Don't know' responses to party who initiated the IFA, employee history and requirement to agree to IFA to commence employment. Those employers who did not know what instrument their IFA varied are incorporated under all single-IFA employers. Single-IFA employers were not asked whether employees were required to sign an IFA to continue employment. np = not published. All data are weighted using the enterprise weight.

*Per cent of employers who had new employees who had signed an IFA.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.1.4 Creation of IFAs reported by multiple-IFA employers since 1 July 2012

Among multiple-IFA employers, 67 per cent responded that all or some of the IFAs they had made were initiated by the employee. More of these employers with employee-initiated IFAs had enterprise-agreement IFAs (82 per cent) than modern-award IFAs (63 per cent).

Of the multiple-IFA employers who had made an IFA with a new employee or with an existing employee, the majority indicated they had not required the employee(s) to sign an IFA to commence work (69 per cent) or to continue work (78 per cent).

Among those who made IFAs with new employees, two-thirds who made modern-award IFAs reported that they did not require this of the employee as a condition of employment.⁵⁰

⁵⁰ As noted in section 3.1.2 of this report, changes made to the model flexibility term in modern awards by a Full Bench of the Commission in April 2013 included a clarification that an IFA can only be entered into after the individual employee has commenced employment with the employer.

Around four-fifths who had made enterprise-agreement IFAs with new employees reported that they did not require this of the employee as a condition of employment.

Around 22 per cent of multiple-IFA employers who had initiated some or all of their IFAs responded that they had required the employee to sign the IFA to continue employment.

Table 5.7: Creation of IFAs by instrument varied by the IFA, per cent of multiple-IFA employers

	All multiple- IFA employers	Modern award	Enterprise agreement
	(%)	(%)	(%)
Party who initiated the IFA			
All IFAs employee initiated	40.8	36.2	56.3
Some IFAs employee initiated	25.8	27.0	25.7
All IFAs employer initiated	33.4	36.9	18.0
Requirement to sign IFA to commence employment*			
All employees	23.8	24.8	14.3
Some employees	7.6	8.1	np
No employees	68.6	67.1	83.3
Requirement to sign IFA to continue employment**			
All employees	17.7	18.3	np
Some employees	4.2	4.0	6.1
No employees	78.2	77.7	79.1

Note: Excludes 'Don't know' responses. np = not published. All data are weighted using the enterprise weight.

*Per cent of employers who had new employees who had signed an IFA.

** Only those employers who reported some or all of their IFAs were initiated by the employer were required to respond.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.1.5 Creation of IFAs with particular groups of interest

Table 5.8 provides information on particular types of employees⁵¹ with whom single-IFA employers reported they had made IFAs.

Table 5.8: Types of employees with IFAs, per cent of single-IFA employers

	All single-IFA employers (%)
Types of employees covered by IFAs	
Female	72.3
NESB	11.4
Part-time	37.7
Casual	12.8
Aged under 21 years	np
Aged 45 or over	20.4

Note: Part-time hours are defined as fewer than 35 hour per week. Excludes 'Don't know' and missing responses. np = not published. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Tables 5.9 provides information on these same groups of employees with whom multiple-IFA employers reported having made IFAs.

Around 35 per cent of multiple-IFA employers had made their IFAs exclusively with female employees and a further 48 per cent had made some of their IFAs with female employees.

A higher proportion of multiple-IFA employers made IFAs with part-time employees than with casual employees. Around half of these employers reported having made all or some of their IFAs with part-time workers compared with around one-quarter having made all or some of their IFAs with casual employees.

⁵¹ Section 653(2) of the Fair Work Act requires that the General Manager give consideration to the effect of IFAs on the employment of women, part-time employees, persons from a non-English speaking background, mature age persons, and young persons.

Table 5.9: Types of employees with IFAs, per cent of multiple-IFA employers

Types of employees covered by IFAs	All	Some	None
	(%)	(%)	(%)
Female	34.6	47.7	17.6
NESB	3.0	21.6	75.5
Casual	6.6	19.8	73.6
Part-time	8.7	41.1	50.2
Aged under 21 years	np	18.4	80.7
Aged 45 years or over	11.5	55.9	32.6

Note: Part-time hours are defined as fewer than 35 hour per week. Excludes 'Don't Know' responses. np = not published. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Table 5.10 also shows the types of employees with whom employers (both single and multiple-IFA employers) reported they had made an IFA but dissected by whether the employer reported they had been exclusively initiated by employees, exclusively by the employer, or, some by the employee and some by the employer.

Of all employers with an IFA, around 44 per cent had made them solely with female employees while 20 per cent of employers had made none of them with female employees, i.e. IFAs had only been made with male employees. As a proportion of IFAs made by employers who reported all had been employee initiated, just over half (53 per cent) were made only with female employees.

Five per cent of employers who had made an IFA had made them exclusively with employees from a non-English speaking background (NESB) and a further 17 per cent had made some of their IFAs with NESB employees.

Just over half of IFA employers had made all of their IFAs with full-time employees, just under one-third had made some with part-time and some with full-time employees, and 16 per cent had made them only with part-time employees.

It was relatively uncommon for employers to have made IFAs with young employees (under 21 years), compared to the other key characteristics examined. However, 14 per cent of IFA employers had made some of their IFAs with young employees and of the group of IFA employers that had initiated all of their IFAs, close to one-third were with those aged under 21 years.

Fourteen per cent of employers who had made IFAs had made them solely with employees aged 45 years or over, representing one-fifth of all the employers who had entered into only employee-initiated IFAs. Forty-three per cent had made some of their IFAs with this group and the same proportion had made them solely with employees under 45 years.

Table 5.10: Types of employees with IFAs by who initiated the IFA, per cent of employers that made an IFA

Types of employees	All employee initiated	Some employee and some employer initiated	All employer initiated	All IFA employers
	(%)	(%)	(%)	(%)
Females				
All	53.2	37.7	26.8	43.5
Some	26.1	48.8	48.6	36.5
None	20.8	13.5	24.5	20.0
NESB				
All	np	np	np	4.9
Some	18.3	15.0	15.1	16.5
None	75.9	82.2	81.4	78.5
Part-time				
All	16.3	np	16.3	15.6
Some	23.0	45.3	38.3	31.4
None	60.7	46.3	45.5	53.0
Casual				
All	5.8	9.3	7.8	8.1
Some	8.0	21.8	24.3	15.1
None	86.2	68.9	67.9	76.9
Aged under 21 years				
All	np	0.0	np	0.8
Some	5.5	13.3	31.9	14.3
None	93.1	86.7	67.9	84.9
Aged 45 years or over				
All	19.8	9.6	6.3	13.5
Some	27.4	64.6	59.2	43.3
None	52.7	25.8	34.6	43.2

Note: 'All employee initiated' includes both employers with a single IFA initiated by an employee and those with multiple IFAs that were all initiated by the employee. 'All employer initiated' includes both employers with a single IFA they initiated and multiple-IFA employers that were all initiated by the employer. 'Some employee and some employer initiated' includes multiple-IFA employers who indicated they had initiated some of their IFAs and that some of their IFAs were initiated by their employees. Those employers who did not know who initiated the IFA are still included in the 'All IFA employers' column. Excludes 'don't know' responses for each type of employee. np = not published. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.2 Creation of IFAs since 1 July 2012 reported by employees

Around two per cent of employees were considered for the purposes of this report to have made an IFA since 1 July 2012. Although an estimated five per cent of all employees reported that they

had varied one or more of their employment conditions in a written arrangement since 1 July 2012, as outlined in section 4.2.2, data from the AWRS Employee questionnaire was cross-referenced with enterprise data from the AWRS Employee Relations (HR) questionnaire to validate whether an employee had agreed to an IFA.⁵² Data for 214 employee records were excluded by the additional filtering, and under this approach, 2⁵³ per cent of employees were considered to have made an IFA.

Nearly 7 per cent of employees indicated that they did not know if they had made an IFA with their employer since 1 July 2012. The remaining 88 per cent of employees indicated they had not agreed to an IFA since 1 July 2012.

Most IFAs made since 1 July 2012 were still in operation at the time the AWRS was conducted (82 per cent). However, as shown in Table 5.11, close to half (45 per cent) of IFAs had been in operation for less than six months.

Table 5.11: Time that IFAs have been in operation, per cent of employees who had made IFAs

	(%)
Less than one month	11.3
One to less than six months	33.9
Six to less than 12 months	10.4
12 to less than 18 months	10.5
18 months or more	20.3
Can't recall	13.5

Note: Reflects IFAs that employers had indicated had been created since 1 July 2012. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.2.1 Formal and informal flexibility

The AWRS collected information about employees' experience with both formal and informal flexible working arrangements. For the purposes of this report, formal flexible work arrangements are IFAs implemented in accordance with the provisions in s.144(1) and s.202 of the Fair Work Act. Informal practices for the purposes of this report are defined as any other flexible working arrangements that have not been documented and signed. Such informal flexible work arrangements may be arrived at through varied mechanisms, including personnel or human resources policies and ad hoc negotiations with management.

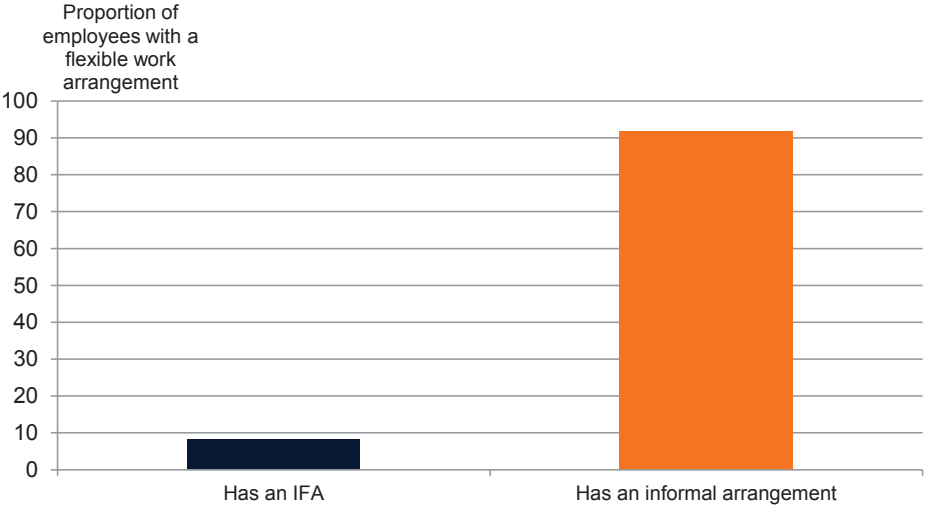
⁵² The use of linked data from the AWRS improves the quality of information on IFAs by enabling the data provided by employees to be cross-referenced to data from employers. Typically in workplace relations research, employers are found to provide more accurate information regarding employment arrangements than employees. For example, the ABS has reported that earnings data from household surveys are "less robust" and rely on respondents' recollection of their pre-tax earnings while earnings data from employer surveys can be more accurately reported as data can be obtained from the employer's payroll (ABS, *Understanding Earnings In Australia Using ABS Statistics*, August 2013, cat. no. 6310.0).

⁵³ Associated with a standard error of 0.0016913, with a 95 per cent confidence interval of 1.7–2.3 per cent.

Analysis of AWRS data suggests that informal flexibility is much more prevalent than formal IFAs. In the first half of 2014, just over 30 per cent of employees reported having an informal flexible working arrangement with their employer that was not documented and signed. As seen earlier in Table 5.5, a substantial proportion of employers who did not use IFAs indicated that they prefer to use informal/undocumented arrangements instead (43 per cent).

Figure 5.2 shows that around 92 per cent of employees who had a flexible work arrangement had made an informal agreement, compared to 8 per cent with a formal IFA.

Figure 5.2: Employees with a flexible work arrangement (IFAs and informal flexible working arrangements) since 1 July 2012, per cent



Note: Results are based only on the results from the online employee survey, as hard copy completers were not asked these questions. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.2.2 Characteristics of employees who reported having made IFAs

Table 5.12 presents some of the demographic characteristics of employees who had agreed to an IFA. As already noted, there are very small numbers of persons in the population who have an IFA, with around 2 per cent of all employees estimated to have made an IFA since 1 July 2012. Coupled with the often low numbers of employees who hold the key characteristics that the General Manager is required to report on, this shows how rare the employee might be in a random sample. For example, if young persons represent 15 per cent of the workforce and IFA use among employees is at the 2 per cent level, it would be anticipated that only 3 in every 1000 employees randomly sampled would be both young and have an IFA.⁵⁴

⁵⁴ Assuming an equal distribution of IFAs amongst employees with and without the key characteristics.

The small numbers of persons in the AWRS sample with IFAs (172 employees) limits the ability to generalise the findings from the AWRS data to the population of employees generally. Accordingly, caution should be used when drawing conclusions from these data.

There is little difference between the proportion of female employees and male employees who have agreed to an IFA with their employer (just over 2 per cent of females compared with just under 2 per cent of males).

A greater proportion of part-time employees (3 per cent) than full-time employees (2 per cent) reported having an IFA. However, the distribution of employees with IFAs is strongly skewed towards full-time employees, who comprised 63 per cent of all employees with IFAs compared to 37 per cent who worked part-time.

The highest level of IFA incidence was reported by the 25–34 and 35–44 years age groups (both more than 2 per cent), followed by those aged 55 years and over. Employees in the 45–54 years age group had the lowest incidence.

Employees who had a dependent child or children under the age of 15 were about twice as likely to have agreed to an IFA than those without dependent children.

Table 5.12: Characteristics of employees who had made IFAs since 1 July 2012, per cent of employees by select characteristics

	As percentage of all employees with an IFA (%)	As percentage of all employees with that characteristic (%)
Gender		
Male	38.3	1.9
Female	61.7	2.3
Full-time/part-time status		
Full-time	63.2	1.8
Part-time	36.8	3.2
Language background		
Speaks only English at home	87.1	2.2
Speaks a language other than English at home	12.9	2.2
Age group		
Under 25 years	10.2	2.0
25–34	30.1	2.4
35–44	26.7	2.4
45–54	15.8	1.4
55 years and older	17.3	2.2
Employment classification		
Permanent	89.3	2.4
Casual	5.4	1.0
Fixed-term contract	5.2	2.2
Has dependent child(ren) under age of 15		
Has dependent child(ren)	43.5	3.0
No dependent child(ren)	56.5	1.7

Note: Other carers include secondary carers and 'other' type of carers identified by respondents. Excludes 'don't know' responses for each characteristic. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

5.2.3 Creation of IFAs reported by employees since 1 July 2012

Table 5.13 provides information on some elements of the making of IFAs as reported by employees. A majority of employees who had made an IFA indicated that they had initiated the arrangement with their employer (61 per cent), which is broadly consistent with the responses from employers.

Most employees who had made an IFA reported that the IFA established a new practice (30.3 per cent), or, both established a new practice *and* formalised an existing practice (33 per cent).

Table 5.13: Creation of IFAs since 1 July 2012, per cent of employees with an IFA

	(%)
Party who initiated the IFA	
Employer-initiated	39.1
Employee-initiated	60.9
Nature of changes in IFA	
Establish new practice	30.3
Formalise existing practice	23.9
Both establish new and formalise existing practices	33.0
Don't know	12.9

Note: Results are based only on the results from the online employee survey, as hard copy completers were not asked these questions. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

6 Content of IFAs

6.1 Content of IFAs reported by employers

6.1.1 Matters varied by IFAs

Table 6.1 shows the proportion of employers who reported that the IFAs they had made modified various employment-related working patterns. These reflect the five matters in the model flexibility term:⁵⁵

- arrangements for when work is performed,
- overtime,
- penalty rates,
- allowances, and
- leave loading.

A further category included in the analysis of matters varied by IFAs is 'payment of wages'. This was included as a consequence of the findings in the 2012 General Manager's report on IFAs,⁵⁶ and also following cognitive testing and piloting of the relevant AWRS survey instrument.

Arrangements for when work is performed was the matter most commonly varied by IFAs (around three-quarters of both single and multiple-IFA employers). Arrangements for when work is performed include variations in arrangements such as changes to the span of ordinary-time hours or to the days of the week when work is to be performed, or modifications to breaks or entitlements to rest periods.

Multiple-IFA employers were much more likely than their counterparts to report that IFAs had varied overtime (34 per cent compared with 15 per cent), and also more likely to report variations to penalty rates, allowances and payment of wages.

⁵⁵ In this Chapter, 'model flexibility term' refers to both the model flexibility term for enterprise agreements contained in Schedule 2.2 of the *Fair Work Regulations 2009* (Cth) and the model flexibility term developed by the Commission for inclusion in modern awards in *Award Modernisation* [2008] AIRCFB 550, 20 June 2008 at para. 175.

⁵⁶ O'Neill, B, [*General Manager's report into the extent to which individual flexibility arrangements are agreed to and the content of those arrangements: 2009–2012*](#), Fair Work Commission, November 2012, p. 63.

Table 6.1: Matters varied by IFAs, per cent of employers who had made IFAs

Element modified	All IFAs (%)	Single-IFAs (%)	Multiple-IFAs (%)
Arrangements for when work is performed	75.5	77.8	74.8
Overtime	29.2	14.8	33.6
Penalty rates	22.5	16.5	24.3
Allowances	27.5	24.0	28.5
Leave loading	19.6	17.6	20.2
Payment of wages	35.7	31.3	37.1
Other variations	5.4	8.1	4.6

Note: Employers could provide multiple responses. Excludes 'Don't know' responses from each matter varied. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Table 6.2 presents the same matter types by the proportion that varied the effect of a modern award and enterprise agreement.

Changes to arrangements for when work is performed was varied in similar proportions of modern-award and enterprise-agreement IFAs (75 and 77 per cent).

Modern-award IFAs were more likely to vary provisions related to overtime, penalty rates, leave loading and payment of wages than enterprise-agreement IFAs.

Table 6.2: Matters varied by IFAs by industrial instrument varied, per cent of employers who had made IFAs

Element modified	Modern award (%)	Enterprise agreement (%)
Arrangements for when work is performed	75.5	76.7
Overtime	32.8	18.2
Penalty rates	24.7	15.0
Allowances	27.7	28.6
Leave loading	22.3	12.1
Payment of wages	37.4	29.6
Other variations	4.3	11.0

Note: Employers could provide multiple responses. Excludes 'Don't know' responses from each matter varied. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Table 6.3 provides the matters varied by IFAs disaggregated by who initiated the IFA. IFAs that varied arrangements for when work is performed were generally more likely to be employee-initiated IFAs than initiated by the employer. Around 85 per cent of IFAs that were exclusively

initiated by employees varied this matter while 62 per cent of IFAs that were exclusively employer initiated varied this matter.

Employer-initiated IFAs more commonly varied overtime (44 per cent), allowances (43 per cent) payment of wages (42 per cent) and penalty rates (36 per cent).

Conversely, employee-initiated IFAs were less likely to vary penalty rates, overtime, allowances and leave loading (ranging from 12 to 16 per cent).

Table 6.3: Matters varied by IFAs by who initiated the IFA, per cent of employers who had made IFAs

Matters varied	All employee initiated	Some employee and some employer initiated	All employer initiated
	(%)	(%)	(%)
Arrangements for when work is performed	84.6	73.0	61.6
Overtime	15.1	43.6	43.6
Penalty rates	11.7	25.1	36.2
Allowances	16.2	28.9	43.2
Leave loading	12.6	23.5	30.8
Payment of wages	29.6	42.9	42.1
Other variations	5.2	7.7	4.7

Note: 'All employee initiated' includes both employers with a single IFA that was initiated by an employee and those with multiple IFAs that were all initiated by the employee. 'All employer initiated' includes both employers on a single IFA that they initiated and multiple-IFA employers that were all initiated by the employer. 'Some employee and some employer initiated' includes multiple-IFA employers who indicated that they had initiated some of their IFAs and some of their IFAs were initiated by their employees. Those employers who did not know who initiated the IFA are still included in the 'All IFA employers' column. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Multiple-IFA employers were asked whether the IFAs agreed to varied the same conditions. Results to these responses are shown in Table 6.4. Around half (52 per cent) indicated that all the IFAs they had agreed to with employees had varied the same condition(s). A further 28 per cent responded that most of the IFAs made had varied the same condition(s).

Table 6.4: Extent of IFA variations across multiple employees, per cent of multiple-IFA employers

	(%)
All varied same condition(s)	52.0
Most varied the same condition(s)	27.7
Approximately half varied the same condition(s)	4.7
Less than half varied the same condition(s)	12.8
Don't know	2.9

Note: All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*

Around half of employers who had made an IFA indicated that the employees with whom they had made the arrangements were better off by being able to meet non-work commitments and having an improved work-life balance (48 and 54 per cent respectively) (Table 6.5). Around 47 per cent of multiple-IFA employers (and 40 per cent of single-IFA employers) reported that the IFA had resulted in an improved wage/salary for the employee.

Table 6.5: How employers reported employees were better off under the IFA, per cent of employers who had made IFAs

How was the employee better off?	All IFA employers (%)	Single-IFA employers (%)	Multiple-IFA employers (%)
Improved wage/salary	45.4	39.7	46.7
Increased job security	12.4	np	14.6
Able to meet non-work commitments (e.g. care for children)	47.8	55.2	46.1
Improved work-life balance	53.7	43.9	55.9
More consistent take home pay	15.1	np	15.9
Other	5.4	np	4.5

Note: Excludes those who responded 'Don't know'. Employers could provide multiple responses. np = not published. All data are weighted using the enterprise weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Almost three-fifths of the employers who had made IFAs (58 per cent) indicated that the IFA(s) they had made documented how an employee was better off under the arrangement.⁵⁷

⁵⁷ This figure includes multiple-IFA employers who indicated they had documented this in all or some of the IFAs they made and excludes employers who did not know if they had documented whether the employee was better off.

6.2 Content of IFAs reported by employees

6.2.1 Matters varied by IFAs

Table 6.6 presents the results according to the matters contained in the model flexibility term. Employees reported that the IFAs they had agreed to were most likely to create flexibility in the scheduling of when work is performed (49 per cent). As was evident with the employer data, employee-initiated IFAs were more likely to vary this matter type than IFAs initiated by employers.

IFAs varying entitlements to components of an employee's total pay were less common: 21 per cent of IFAs made by employees modified overtime rates, 18 per cent modified allowances, 17 per cent modified leave loading and 15 per cent modified penalty rates. These matters were all more likely to be varied in IFAs that were initiated by employers.

A relatively small proportion of IFAs varied 'other' terms (9 per cent). Many of these other terms related to the number of hours of work expected of employees, while leave entitlements, such as additional unpaid leave for school holidays, formed another group of variations listed as 'other'.⁵⁸

Table 6.6: Matters varied by IFAs by initiation of IFA, per cent of employees with an IFA

	Employee initiated (%)	Employer initiated (%)	All employees (%)
Arrangements for when work is performed	55.3	37.1	49.0
Overtime rates	9.4	26.6	21.1
Penalty rates	6.6	21.3	14.6
Allowances	15.1	34.9	18.2
Leave loading	7.8	32.7	17.4
Other variations	13.1	11.5	9.0

Note: Employees could provide multiple responses, therefore proportions across matters may not add up 100. Data on the initiation of the IFA is based on a smaller sample as not all employees with an IFA responded to this item. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Table 6.7 shows the matters varied in IFAs agreed to by employees with particular characteristics.

In general, IFAs employees made were more likely to vary arrangements for when work is performed than other matters. When examined by gender, IFAs made by female employees were more likely to vary arrangements for when work is performed than those made by male employees (59 per cent compared with 31 per cent).

Conversely, female employees with IFAs were much less likely to report varying overtime rates compared with male employees. The IFAs of female employees were also less likely to vary

⁵⁸ Some of the 'other' variations may not be readily classified as terms capable of being varied by the model clause or may not require an IFA in order to make the reported changes to working arrangements. Even though a majority of employees who indicated 'other' did not select any of the other standard categories, because very limited information is given in these respondents' verbatim answers, they are not excluded from the employee population with IFAs.

allowances and leave loading than those of male employees. Approximately equal proportions of both genders with IFAs reported varying penalty rates (14 per cent).

There are some differences in results between workers employed part time (fewer than 35 hours per week) and full time (35 or more hours per week). While arrangements for when work is performed was the most common term varied by an IFA for both full-time and part-time employees, there was no consistent pattern between the remaining four matters in the model flexibility term. IFAs varying allowances and leave loading were more common among full-time employees (approximately 25 per cent for each matter) than part-time employees (7 per cent varying allowances, leave loading figure not published). Part-time employees tended to have IFAs that modified penalty rates compared to full-time employees (19 per cent and 12 per cent respectively).

Table 6.7 indicates that a slightly higher proportion of employees who speak a language other than English at home agreed to an IFA varying penalty rates and overtime payments compared to employees who speak only English at home (17 and 26 per cent compared to 14 and 21 per cent). In contrast, relatively small proportions of IFAs made by employees who speak a language other than English at home varied allowances, leave loading and other terms (all less than 10 per cent).

IFAs made by persons under 25 years of age were the least likely of any age group to vary arrangements for when work is performed. These employees were more likely to have an IFA that varied allowances (49 per cent).

The older the age group, the greater the proportion of employees with IFAs reported that their IFA varied arrangements for when work is performed, with almost 60 per cent of those employees aged 55 years or over indicating their IFA varied this matter.

Table 6.7: Matters varied by IFAs, per cent of employees with an IFA and select characteristics

	Arrangements for when work is performed (%)	Penalty rates (%)	Overtime rates (%)	Allowances (%)	Leave loading (%)	Other variations (%)
Gender						
Male	30.9	14.1	29.8	37.6	31.5	8.3
Female	59.2	14.3	15.2	6.6	9.1	9.7
Full-time/part-time status						
Full-time	42.1	12.1	22.6	24.7	24.6	7.4
Part-time	60.9	18.8	18.5	7.1	np	11.8
Language background						
Speaks only English at home	50.0	13.7	20.7	18.3	18.0	10.2
Speaks a language other than English at home	46.8	17.4	26.0	9.7	5.2	2.0
Age group						
Under 25 years	36.4	20.7	30.3	48.6	30.0	np
25–34	45.5	13.0	26.6	18.8	16.1	np
35–44	50.9	11.4	13.0	13.5	16.8	9.8
45–54	52.7	18.1	17.9	15.8	20.6	np
55 years and over	59.1	np	25.9	12.1	16.7	np

Note: Employees could provide multiple responses against the matters varied by IFAs. Missing in error, 'don't know' and unspecified responses were excluded. The data would not support disaggregation by employment classification. Full-time hours are defined as 35 hours or more per week and part-time hours as fewer than 35 hour per week. np = not published. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*

6.2.2 Outcomes reported by employees with IFAs

IFAs provided a range of outcomes for employees. The most common outcome, as shown in Table 6.8, reported from an IFA was the flexibility to better manage non-work related commitments (42 per cent overall and 61 per cent of employees with self-initiated IFAs).

The second most common result overall was that the employee was able to commence or continue the employment (29 per cent). This was an outcome reported by 31 per cent of those with employee-initiated and 29 per cent of those with employer-initiated IFAs.

An increased wage/salary above the award rate was more commonly reported to be the outcome of those with IFAs that had been initiated by the employer than employee (34 per cent compared with 23 per cent). Maintaining the number of hours worked and increased/new allowances were also more commonly reported outcomes for those who had employer-initiated IFAs.

A small number of employees who had responded 'other' noted that their IFA allowed them to change their employment arrangements from full-time to part-time or permanent to casual. Some

IFAs facilitated a transition to retirement or a return to work from a period of parental leave. Some employees commented that, rather than maintain or increase their number of hours, their IFA allowed them to work fewer hours, or to work hours that better suited business needs or the employee's preference.

A small number of employees indicated that their IFAs had resulted in a reduced rate of pay or that they had to work additional hours for the same pay.

Table 6.8: Outcome for employee of having IFAs by who initiated the IFA, per cent of employees with an IFA

	Employee initiated (%)	Employer initiated (%)	All employees (%)
I was able to commence / continue employment	31.0	28.6	28.9
I was able to maintain the number of hours worked	19.3	26.1	20.4
I was able to work more hours	8.0	11.0	8.5
Increased wage/salary above the award rate	22.8	34.3	26.3
Increased or new allowances	13.2	24.0	16.1
Have flexible hours to better meet non-work related commitments (i.e. study, caring responsibilities, voluntary work)	60.9	21.2	42.0
I was able to work from home	14.8	8.0	11.2
Other	1.6	7.7	4.6

Note: Employees could provide multiple responses. Employees who could not recall who initiated the IFA are excluded from results presented in column one and two but are included in column three. Results are based only on the results from the online employee survey, as hard copy completers were not asked these questions. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

The majority of employees indicated that they had not sacrificed pay or conditions in order to benefit from their IFA (75 per cent). Around 14 per cent of employees had sacrificed pay or conditions, while 11 per cent were not sure if they had made any sacrifices in order to implement their IFA.

That a majority of employees indicated they had not been required to sacrifice pay or conditions in order to benefit from their IFA is consistent with the high proportion of employees who considered themselves to be better off overall as a result of agreeing to an IFA (84 per cent).

Table 6.9 provides information on the characteristics of those employees with IFAs who considered themselves better off overall and sacrificed pay and conditions.

A slightly higher proportion of female employees (89 per cent) considered themselves to be better off under the IFA than male employees (78 per cent). Female employees were also slightly more likely to have indicated they sacrificed pay/conditions to have the IFA—19 per cent compared with 12 per cent of male employees.

Part-time employees and casual employees were more than three times as likely to have sacrificed pay and conditions through their IFA as their full-time and permanent employee counterparts. Both groups were also less likely to consider themselves as being better off overall as a result of their IFA than their counterparts.

Young employees (under 25 years) and those who speak a language other than English at home were more likely consider that their IFA had resulted in a forfeit of pay or conditions and less likely to consider themselves better off than employees aged 25–54 and those who speak only English at home respectively.

Table 6.9: Outcomes of IFAs, per cent of employees with an IFA and select characteristics

	Sacrificed pay/conditions to have IFA	Considered self better off under the IFA
Gender		
Male	11.8	77.5
Female	19.3	89.2
Full-time/part-time status		
Full-time	8.5	87.6
Part-time	28.7	78.7
Language background		
Speaks only English at home	15.1	86.5
Speaks a language other than English at home	25.6	70.6
Age Group		
Under 25 years	32.5	74.5
25–34	15.0	86.0
35–44	17.8	89.6
45–54	0.0	95.4
55 years and older	np	73.7
Employment classification		
Permanent	13.3	90.9
Casual	46.5	59.6
Fixed-term contract	np	83.8

Note: Given the disaggregated level at which these data are presented, results should be interpreted with caution. Results are based only on the results from the online employee survey, as hard copy completers were not asked these questions. Employees who were unsure if they had sacrificed pay/conditions to have an IFA or were unsure if they considered themselves better off under the IFA were excluded. np = not published. All data are weighted using the employee weight.

Source: Fair Work Commission, *Australian Workplace Relations Study 2014*.

Of those employees whose IFA was still in effect, but who did not consider themselves better off under the arrangement, 88 per cent indicated they did not plan to terminate the arrangement with their employer. Most of these employees preferred not to say the reasons given for not considering terminating the IFA, though some verbatim responses indicated that they did not want to risk losing their jobs.

Appendix A – Model flexibility term – enterprise agreements

Fair Work Regulations 2009

Schedule 2.2—Model flexibility term

(regulation 2.08)

Model flexibility term

- (1) An employer and employee covered by this enterprise agreement may agree to make an individual flexibility arrangement to vary the effect of terms of the agreement if:
 - (a) the agreement deals with 1 or more of the following matters:
 - (i) arrangements about when work is performed;
 - (ii) overtime rates;
 - (iii) penalty rates;
 - (iv) allowances;
 - (v) leave loading; and
 - (b) the arrangement meets the genuine needs of the employer and employee in relation to 1 or more of the matters mentioned in paragraph (a); and
 - (c) the arrangement is genuinely agreed to by the employer and employee.
- (2) The employer must ensure that the terms of the individual flexibility arrangement:
 - (a) are about permitted matters under section 172 of the Fair Work Act 2009; and
 - (b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - (c) result in the employee being better off overall than the employee would be if no arrangement was made.
- (3) The employer must ensure that the individual flexibility arrangement:
 - (a) is in writing; and
 - (b) includes the name of the employer and employee; and
 - (c) is signed by the employer and employee and if the employee is under 18 years of age, signed by a parent or guardian of the employee; and
 - (d) includes details of:
 - (i) the terms of the enterprise agreement that will be varied by the arrangement; and
 - (ii) how the arrangement will vary the effect of the terms; and
 - (iii) how the employee will be better off overall in relation to the terms and conditions of his or her employment as a result of the arrangement; and
 - (e) states the day on which the arrangement commences.

- (4) The employer must give the employee a copy of the individual flexibility arrangement within 14 days after it is agreed to.
- (5) The employer or employee may terminate the individual flexibility arrangement:
 - (a) by giving no more than 28 days written notice to the other party to the arrangement; or
 - (b) if the employer and employee agree in writing—at any time.

Appendix B – Model flexibility term – modern awards

7. Award flexibility

7.1 Notwithstanding any other provision of this award, an employer and an individual employee may agree to vary the application of certain terms of this award to meet the genuine individual needs of the employer and the individual employee. The terms the employer and the individual employee may agree to vary the application of are those concerning:

- (a) arrangements for when work is performed;
- (b) overtime rates;
- (c) penalty rates;
- (d) allowances; and
- (e) leave loading.

7.2 The employer and the individual employee must have genuinely made the agreement without coercion or duress. An agreement under this clause can only be entered into after the individual employee has commenced employment with the employer.

7.3 The agreement between the employer and the individual employee must:

- (a) be confined to a variation in the application of one or more of the terms listed in clause 7.1; and
- (b) result in the employee being better off overall at the time the agreement is made than the employee would have been if no individual flexibility agreement had been agreed to.

7.4 The agreement between the employer and the individual employee must also:

- (a) be in writing, name the parties to the agreement and be signed by the employer and the individual employee and, if the employee is under 18 years of age, the employee's parent or guardian;
- (b) state each term of this award that the employer and the individual employee have agreed to vary;
- (c) detail how the application of each term has been varied by agreement between the employer and the individual employee;
- (d) detail how the agreement results in the individual employee being better off overall in relation to the individual employee's terms and conditions of employment; and
- (e) state the date the agreement commences to operate.

7.5 The employer must give the individual employee a copy of the agreement and keep the agreement as a time and wages record.

7.6 Except as provided in clause 7.4(a) the agreement must not require the approval or consent of a person other than the employer and the individual employee.

7.7 An employer seeking to enter into an agreement must provide a written proposal to the employee. Where the employee's understanding of written English is limited the employer must

take measures, including translation into an appropriate language, to ensure the employee understands the proposal.

7.8 The agreement may be terminated:

(a) by the employer or the individual employee giving 13 weeks' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(b) at any time, by written agreement between the employer and the individual employee.

Note: If any of the requirements of s.144(4), which are reflected in the requirements of this clause, are not met then the agreement may be terminated by either the employee or the employer, giving written notice of not more than 28 days (see s.145 of the *Fair Work Act 2009* (Cth)).

7.9 The notice provisions in clause 7.8(a) only apply to an agreement entered into from the first full pay period commencing on or after 4 December 2013. An agreement entered into before that date may be terminated in accordance with clause 7.8(a), subject to four weeks' notice of termination.

7.10 The right to make an agreement pursuant to this clause is in addition to, and is not intended to otherwise affect, any provision for an agreement between an employer and an individual employee contained in any other term of this award.