



General Manager's report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave under s.653 of the *Fair Work Act 2009* (Cth)

2012–2015

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November 2015

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.

ISBN 978-0-9942664-3-9

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Abbreviations list

ABS	Australian Bureau of Statistics
ANZSCO	Australian and New Zealand Standard Classification of Occupations
ANZSIC	Australian and New Zealand Standard Industrial Classification
AWALI	The Australian Work and Life Index
AWIRS 1995	1995 Australian Workplace Industrial Relations Survey
AWRS	Australian Workplace Relations Study
CATI	Computer Assisted Telephone Interviews
Commission	Fair Work Commission
DEEWR	Department of Education, Employment and Workplace Relations (now the Department of Employment)
Explanatory Memorandum	<i>Fair Work Bill 2008</i> (Cth) Explanatory Memorandum
Fair Work Act	<i>Fair Work Act 2009</i> (Cth)
FTE	Full-time equivalent
IFA	Individual flexibility arrangement
NES	National Employment Standards
ORU	Online Research Unit
RSE	Relative standard errors
s.65 request	A request for flexible working arrangements under s.65 of the Fair Work Act
s.76 request	A request for extended unpaid parental leave under s.76 of the Fair Work Act

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 made under ss.65(1) and 76(1) of the Fair Work Act.

This report presents findings for the 26 May 2012–25 May 2015 reporting period from the research conducted relating to employee requests made under ss.65(1) and 76(1). 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 2015.¹

Section 653(1)(c) requires the General Manager to conduct research into the operation of the provisions of the NES relating to:

- (i) requests for flexible working arrangements under s.65(1); and
- (ii) requests for extensions of unpaid parental leave under s.76(1).

Section 653(1)(d) requires that the research relating to requests for flexible working arrangements and extensions of unpaid parental leave also examine:

- (i) the circumstances in which employees make such requests; and
- (ii) the outcome of such requests; and
- (iii) the circumstances in which such requests are refused.

The findings in this report are drawn from two principal sources of data. These are, firstly, the Australian Workplace Relations Study (AWRS), which surveyed 3057 enterprises and 7883 of their employees. Data for the AWRS were collected between February and July 2014. For more information on the AWRS, see section 4.1 of this report and the [AWRS website](#).

The second source of data for this report is qualitative research conducted for the Commission by the Centre for Work + Life at the University of South Australia.² The qualitative research (which was supplemented by quantitative data from the Australian Work and Life Index (AWALI)) examined the responses of 25 employees and 15 employers with respect to their experiences in dealing with requests in relation to flexible working arrangements and/or extensions of unpaid parental leave.

¹ 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.

² N. Skinner, B. Pocock and C. Hutchinson, *A qualitative study of the circumstances and outcomes of the National Employment Standards Right to Request provisions*, Centre for Work + Life, University of South Australia, 2014.

Key findings on requests for flexible working arrangements

Section 65 of the Fair Work Act provides an employee with the right to request flexible working arrangements from their employer for a range of circumstances which include caring for children or other family members.³

The data indicates that many requests for flexible working arrangements or extensions of unpaid parental leave are dealt with informally, rather than following the processes set out in the Fair Work Act.

According to the AWRS, a little more than 40 per cent of all employers received a request for a flexible working arrangement from an employee in the period from 1 July 2012 to the time the employer responded to the AWRS in 2014. A little more than one per cent of employers in the national system received formal requests for flexible working arrangements, made in accordance with s.65. On a relative basis, employers who received such requests were more likely to be large employers or in the public sector.

Employers indicated that the main reasons that employees submitted a request for flexible working arrangements was to care for a child or children, but there were significant numbers of employers who reported that employees made requests to care for other family members (e.g., an elderly parent), or if the employee was over 55 years of age.

Employers indicated that in 90 per cent of cases all of the requests for flexible working arrangements were approved without change, and that on 9 per cent of occasions some elements of the requests were granted. Forty per cent of employers who refused a request for flexible working arrangements indicated that all alternative arrangements were also refused. Employers indicated that the refusals of the requests for flexible working arrangements occurred because the request was not operationally viable.

Data from employees in the AWRS survey was broadly consistent with that in the employer survey. Employees indicated that their requests for flexible working arrangements were granted more than 85 per cent of the time. Further, the request was accepted with some changes a further 12 per cent of the time, with just 2 per cent of all requests refused.⁴

Requests for flexible working arrangements were more likely to be made by:

- women;
- part-time employees;
- employees aged between 25 and 44;
- permanent employees rather than casual employees; or
- persons who speak a language other than English at home.

Requests were usually granted on the basis that employers recognised the difficulty many employees have in maintaining a work and life balance.

³ See section 3.1 of this report.

⁴ Figures do not add to 100 due to rounding.

Where requests were refused, the reasons given by employers were usually that the change requested was not operationally viable. The employers in the qualitative study were able to provide additional information about such requests and often indicated that the difficulty was where scheduling arrangements were inconsistent with the flexible practices sought.

Key findings on requests for extensions of unpaid parental leave

Section 76 of the Fair Work Act provides an employee with the right to request additional unpaid parental leave for a period beyond the initial 12 months up to a maximum of 12 months additional unpaid parental leave.

Between 1 July 2012 and the time the AWRS survey was completed in June 2014, a little more than 3 per cent of all national system employers had received a request for extended unpaid parental leave consistent with the terms of s.76 of the Fair Work Act.

Employers more likely to receive a request for an extension of unpaid parental leave included:

- large employers;
- public sector employers;
- employers whose workforce was more than 50 per cent female;
- employers whose workforce was more than 50 per cent part-time; and
- employers whose workforce was more than 50 per cent permanent.

The data from the AWRS indicate that a range of periods of additional unpaid leave were sought, but that the majority of employee requests were for greater than six months.

Almost 90 per cent of requests for extended unpaid parental leave were granted in the first instance. Where requests for extensions of unpaid parental leave were refused, employers usually indicated that this was for operational reasons.

Within the AWRS data set there are relatively small numbers of employers and employees who reported making or receiving requests for extended unpaid parental leave. Data in the AWRS on the employee experience with s.76 requests was relatively limited. Nine employees who had made requests for extensions of unpaid parental leave since 1 July 2012 completed the AWRS employee questionnaire. Their experiences are supplemented by the qualitative study conducted by the Centre for Work + Life.

The AWRS indicates that less than 1 per cent of all employees had made a request for an additional period of leave beyond the initial 12 month period between 1 July 2012 and the time that the employee survey was completed.

Given the low numbers of persons who have accessed this entitlement, thought should be given to the optimum design of future research and in particular the right mix of qualitative and quantitative research.

Both the AWRS and the qualitative study indicated that the main reasons employees had requested additional leave were due to a desire to stay at home longer with their children, or due to a limited availability of childcare.

All of the employees who were in the AWRS sample who made requests pursuant to s.76 were women, and the majority were employed on a part-time basis at the time of completing the survey.

Two of the nine employees were from a non-English speaking background. No employees who accessed the entitlement to request additional periods of leave were mature aged persons (older than 55) or young persons (under 25 years).

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1 Introduction

The Fair Work Commission (the Commission) is the national workplace relations tribunal. It is established by the *Fair Work Act (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.⁵ The President is assisted by a General Manager,⁶ 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 made under ss.65(1) or 76(1) of the Fair Work Act.

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.⁷

The Fair Work Act specifies that the research must be conducted in relation to the first three years following the commencement of the section 653 and each subsequent three-year period,⁸ 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.⁹

⁵ Fair Work Act, s.575 and s.626.

⁶ Fair Work Act, s.656.

⁷ Fair Work Act, s.653(2). The regulations do not prescribe any other persons.

⁸ Fair Work Act, s.653(1A).

⁹ Fair Work Act, s.653(3).

This report presents findings for the 26 May 2012–25 May 2015 period from the research conducted on the operation of the provisions of the NES relating to employee requests. For consistency with data reporting cycles, the data in this report may include data from 1 July 2012 to 30 June 2015.

Specifically, this report responds to the requirements in s.653(1)(c) and (d), that the General Manager of the Commission must:

- conduct research into the operation of the provisions of the NES relating to:
 - requests for flexible working arrangements under s.65(1);
 - requests for extensions of unpaid parental leave under s.76(1); and
- conduct research into:
 - the circumstances in which employees make such requests;
 - the outcome of such requests; and
 - the circumstances in which such requests are refused.¹⁰

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 2009–12 reports can be found on the Commission [website](#).

¹⁰ Fair Work Act, s.653(1).

2 Report outline

This report presents research undertaken into the operation of the NES relating to employee requests 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 NES request provisions, refer to the 2009–12 reports, which can be found on the Commission [website](#).

The methodology is discussed in Chapter 4 and includes an outline of the Australian Workplace Relations Study (AWRS)—the key data source for this report—as well as how NES requests are identified for the purposes of the report and limitations of the analysis.

The findings of the research are divided in two key chapters that cover:

- requests for flexible working arrangements under the NES (Chapter 5)
- requests for extensions of unpaid parental leave under the NES (Chapter 6).

These chapters use both information provided by employers and employees collected in the linked AWRS data set as well as commissioned qualitative research undertaken by the Centre for Work + Life, University of South Australia.

3 Legislative overview

The right to request flexible working arrangements¹¹ and the right to request extensions to unpaid parental leave¹² are provided for in Part 2–2 of the Fair Work Act, which deals with the NES. The NES are ‘minimum standards that apply to the employment of employees which cannot be displaced’ even if an enterprise agreement includes terms that have the same (or substantially the same) effect as the NES.¹³ Further detail concerning the NES can be found in the General Manager’s report for the 2009–2012 period.¹⁴

The NES relate to a range of matters but the two critical provisions relevant to this report are:

- Section 65, which governs requests for flexible working arrangements; and
- Section 76, which governs extending the period of unpaid parental leave for a period of up to 12 months.¹⁵

Since the previous General Manager’s report,¹⁶ amendments to the Fair Work Act have come into effect, including changes to the right to request flexible working arrangements. These are discussed below.¹⁷

This section provides an overview of:

- the development of the right to request flexible working arrangements and the right to request extensions to unpaid parental leave; and
- the operation of these provisions.

3.1 Section 65 – requests for flexible working arrangements

Review of the Fair Work Act

The Fair Work Act Review Panel was established by the previous Commonwealth Government to examine the operation of the Fair Work Act. The government released the Review Panel’s final report, *Towards more productive and equitable workplaces: An evaluation of the Fair Work legislation* on 2 August 2012.¹⁸ The report contained 53 recommendations, one of which was to

¹¹ Fair Work Act, s.65.

¹² Fair Work Act, s.76.

¹³ Fair Work Act, s.61(1) and s.55(5).

¹⁴ O’Neill, B, [*General Manager’s report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave: 2009–2012*](#), Fair Work Commission, November 2012.

¹⁵ Fair Work Act, s.61(2)(b) and (c).

¹⁶ O’Neill, B, [*General Manager’s report into the operation of the provisions of the National Employment Standards relating to requests for flexible working arrangements and extensions of unpaid parental leave: 2009–2012*](#), Fair Work Commission, November 2012.

¹⁷ The Commonwealth Parliament has also considered proposed amendments to the right to request an extension of unpaid parental leave contained in the *Fair Work Amendment Bill* 2014. However, as this Bill was not passed during the reporting period (to May 2015), it will not be further discussed.

¹⁸ 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.

extend the right to request flexible working arrangements (for example, changes to hours of work, patterns of work and locations) to a wider group of employees.

The Review Panel also recommended amending s.65 to provide that a request can only be refused after a meeting to discuss the request between the employer and employee has taken place. The Review Panel expressed the view that 'this would be consistent with the overall policy intentions of the legislation and will help meet the specific policy intent of facilitating conversations about flexible working arrangements.'¹⁹

Fair Work Amendment Act 2013 (Cth)

The *Fair Work Amendment Act 2013 (Cth)* gave effect to a number of the Review Panel's recommendations, including extending the right to request flexible working arrangements. Previously, employees could only request flexible working arrangements if they were a parent or carer of a child under school age, or of a child under 18 with a disability, to assist the employee to care for the child.

The Minister for Employment and Workplace Relations Minister in his second reading speech to the *Fair Work Bill 2013 (Cth)* said that:

'The bill includes new family friendly arrangements such as further flexibility in relation to unpaid parental leave, the right for pregnant women to transfer to a safe job and an expanded right to request flexible working arrangements including for working parents, for workers with caring responsibilities, workers who are of mature age or who have a disability and indeed those who are the victims suffering family violence.'²⁰

New subsection 65(1A) of the Fair Work Act provides the following circumstances in which an employee can request a change in his or her working arrangements, namely if the employee:

- is the parent, or has responsibility for the care, of a child who is of school age or younger;
- is a carer (within the meaning of the *Carer Recognition Act 2010*);
- has a disability;
- is 55 or older;
- is experiencing violence from a member of the employee's family;
- provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing violence from the member's family.

3.2 Operation of s.65 – requests for flexible working arrangements

3.2.1 Eligibility

Section 65 of the Fair Work Act prescribes the method for making and responding to requests for flexible working arrangements. An employee may make the request if the employee has completed at least 12 months of continuous service with the employer immediately before making the request

¹⁹ 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, p. 99.

²⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 21 March 2013, 2903–2910 (Bill Shorten, Minister for Financial Services and Superannuation and Minister for Employment and Workplace Relations), at 2905.

or is a long term casual employee of the employer and has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.²¹

3.2.2 Making a request

Section 65 of the Fair Work Act requires that:

- the request must be in writing and set out the details of the change sought and the reasons for the change;²²
- an employer must respond to the employee's request in writing within 21 days, stating whether or not the request is granted;²³ and
- an employer may only refuse a request on reasonable business grounds,²⁴ and if the employer refuses the request, must provide written details of the reasons for the refusal.²⁵

The Fair Work Act does not exhaustively define 'reasonable business grounds'. Section 65(5A), introduced as part of the 2013 amendments, provides that 'reasonable business grounds' include:

- (a) that the new working arrangements requested by the employee would be too costly for the employer;
- (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee;
- (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees to accommodate the new working arrangements requested by the employee;
- (d) that the new working arrangements requested by the employee would be likely to result in a significant loss in efficiency or productivity;
- (e) that the new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

3.3 Operation of s.76 – extending period of unpaid parental leave – extending for up to 12 months beyond available parental leave period

3.3.1 Eligibility

An employee who is eligible for and takes unpaid parental leave may request his or her employer to agree to an extension of unpaid parental leave for a further period of up to 12 months.²⁶ To be eligible for unpaid parental leave, and thereby eligible to request an extension, the employee must have completed 12 months of continuous service at the relevant date²⁷ or be a long term casual

²¹ Fair Work Act, s.65(2).

²² Fair Work Act, s.65(3).

²³ Fair Work Act, s.65(4).

²⁴ Fair Work Act, s.65(5).

²⁵ Fair Work Act, s.65(6).

²⁶ Fair Work Act, s.76(1).

²⁷ Fair Work Act, s.76(1) and (3).

employee of the employer immediately before the relevant date and have a reasonable expectation of continuing employment with the employer on a regular and systematic basis.²⁸

There are also special rules in s.76(6) of the Fair Work Act for employee couples. An employee couple comprises two national system employees who are the spouse or de-facto partner of each other.²⁹ Under the NES, an employee couple can take a combined total of 24 months' unpaid parental leave, with the option to take up to eight weeks' unpaid parental leave concurrently.³⁰ If one of the parents wishes to extend their period of unpaid parental leave beyond 12 months, it will affect the other parent's unpaid parental leave entitlement. In these circumstances, the period of the extension is a maximum of 12 months, less any period of unpaid parental leave or unpaid special maternity leave that the other member of the employee couple has taken, or will have taken, in relation to the child.³¹ For example, Parent A wants to extend the period of his or her unpaid parental leave for a further eight months. The employer agrees and the period of unpaid parental leave for Parent A is extended to a total of 20 months. The amount of unpaid parental leave that Parent B can take will therefore be a maximum of four months. According to the *Fair Work Bill 2008* Explanatory Memorandum, these arrangements provide employee couples flexibility in configuring their combined leave entitlement over a period of up to 24 months.³²

The employee is not entitled to extend the period of unpaid parental leave beyond 24 months after the date of birth or day of placement of the child.³³

3.3.2 Making a request

Requests for extended unpaid leave must be in writing and must be given to the employer at least four weeks before the end of the available parental leave period.³⁴

The employer must respond to the employee in writing as soon as practicable, and not later than 21 days after the request is made, informing them of whether or not the request is granted. The employer may refuse the request only on reasonable business grounds and must provide written details of the reasons for the refusal.³⁵

What constitutes 'reasonable business grounds' is not defined in the Fair Work Act. However, the Explanatory Memorandum notes that 'a bare refusal (i.e., without reasons) is insufficient'³⁶ and provides the following further guidance:

²⁸ Fair Work Act, s.76(2) and (3).

²⁹ Fair Work Act, s.12.

³⁰ Fair Work Act ss.70 and 72.

³¹ Fair Work Act, s.76(6).

³² Fair Work Bill (Cth), Explanatory Memorandum 2008, p. 53, item 329.

³³ Fair Work Act, s.76(7).

³⁴ Fair Work Act, s.76(2).

³⁵ Fair Work Act, s.76(3)–(5).

³⁶ Fair Work Bill (Cth), Explanatory Memorandum 2008, p. 54, item 331.

Reasonable business grounds may include, for example:

- the effect on the workplace and the employer's business of approving the request, including the financial impact of doing so and the impact on efficiency, productivity and customer service;
- the inability to organise work among existing staff; or
- the inability to recruit a replacement employee or the practicality or otherwise of the arrangements that may need to be put in place to accommodate the employee's request.³⁷

3.4 Scope and coverage of s.76 parental leave extension entitlement

Part 6–3 of the Fair Work Act extends the coverage of certain NES entitlements to non-national system employees, including the parental leave provisions contained in Part 2–2. This includes extending the right under s.76 to request extended unpaid parental leave to all employees through the use of the external affairs power.³⁸ This gives effect to both International Labour Organization Convention No.156 concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities and the Workers' with Family Responsibilities Recommendation.³⁹

3.5 Disputes

Section 44(1) of the Fair Work Act provides that an employer must not contravene the NES. An employer who does so may be liable to a civil remedy order, such as a pecuniary penalty order.⁴⁰ The requirement to give a written response to a request made under s.65 or s.76 within 21 days is a civil remedy provision.

However, s.44(2) of the Fair Work Act specifically provides that an order cannot be made in relation to the refusal of a request under s.65(5) or s.76(4) on reasonable business grounds. This means that an employer's decision to refuse a request on reasonable business grounds cannot be subject to the imposition of a civil penalty.

In addition, the Commission may only deal with a dispute as to whether an employer had reasonable business grounds to refuse a request for flexible working arrangements under s.65 or a request for an extension of unpaid parental leave under s.76 if the parties have agreed in a contract of employment, enterprise agreement or other written agreement to have the Commission deal with a dispute relating to the request.⁴¹

The cases below deal with a contravention of s.65(4), where the employer failed to respond in writing to the employee's request for flexible working arrangements within the prescribed time. In both cases, the Federal Court imposed a pecuniary penalty on the employer for breaching this provision.

³⁷ Fair Work Bill (Cth), Explanatory Memorandum 2008, p. 54, item 332.

³⁸ *Australian Constitution* s.51(xxix).

³⁹ Fair Work Act ss.743–744.

⁴⁰ Fair Work Act s.546(1).

⁴¹ Fair Work Act, s.739(2).

Stanley v Service to Youth Council Incorporated [2014] FCA 643

Following a period of parental leave, the employee sought to return to work on a part-time basis and requested flexible working arrangements, by email. The employee claimed that the employer did not respond to her request as required by s.65(4).

The Court found that the employer contravened s.44(1) in that it failed, as required by s.65(4) of the Fair Work Act, to give the employee a written response, within 21 days, to the request for a change in work arrangements. The Court ordered the employer to pay a penalty of \$4,000 to the employee in respect of the contravention of s.65(4).

Poppy v Service to Youth Council Incorporated [2014] FCA 656

The employer contravened s.44(1) in that it failed, as required by s.65(4) of the Fair Work Act, to give the employee a written response, within 21 days, to her request for a change in work arrangements.

The Court considered the contravention of s.65(4) to be minor, as the employer responded verbally to the employee 22 days after the request was made, and responded in writing within 27 days. A contravention of s.65(4) was, however established, and the Court ordered that a pecuniary penalty of \$2,500 be paid to the employee.

Table 3.1 shows the number of applications to the Commission made under s.739 during the period from 1 July 2012 to 30 June 2015 to deal with a dispute relating to s.65 flexible working arrangement requests. No applications were made to the Commission to deal with a dispute relating to a request under s.76 for an extension of unpaid parental leave for the period.

Table 3.1: Number of applications to deal with a dispute in relation to requests for flexible working arrangements made under s.739 of the Fair Work Act

Financial year	Number of applications
1 July 2012–30 June 2013	37
1 July 2013–30 June 2014	50
1 July 2014–30 June 2015	41

Source: *Fair Work Commission Annual Report 2012–13*; *Fair Work Commission Annual Report 2013–14*; *Fair Work Commission Annual Report 2014–15*.

The outcomes of conciliation conferences relating to disputes concerning flexible working arrangements pursuant to s.739 are not currently recorded by the Commission. As such, it is not possible to provide analysis of the outcomes of the applications presented above.

4 Methodology

As NES requests and/or their outcomes are not lodged with the Fair Work Commission, or any agency, no administrative data source exists from which to report on the operation of these provisions. There are also no pre-existing data sets in Australia that collect information that would enable the General Manager 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 requests made under ss.65 and 76 of the Fair Work Act. The survey conducted was the 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 1995).

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).⁴²

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 five employees;
- businesses in the Agriculture, forestry and fishing industry⁴³ and in the Defence industry;^{44 45} and
- certain public sector and private sector businesses that are not ‘national system’ employers.⁴⁶

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 (HR) questionnaire. That 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.

⁴² 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.

⁴³ As defined by the Australian and New Zealand Standard Industrial Classification (ANZSIC) industry division.

⁴⁴ As defined by the ANZSIC sub-division 76: Defence.

⁴⁵ 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.

⁴⁶ 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 were invited to participate (i.e., the study coordinator and up to 20 employees) as were random selections of 20 employees from enterprises with more than 21 employees. 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 notes).

4.1.3 Further information about the 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 Data limitations

4.2.1 Data sources and knowledge of participants

As noted earlier, no administrative data source exists from which to report on the extent of applications for flexible working arrangements or extensions for unpaid leave 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). The Commission has sought to collect the data using a comprehensive survey of Australian enterprises and their employees.

However, unlike the Workplace Agreements Database (WAD) 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 applications for flexible working arrangements and extensions of unpaid parental leave from survey data relates to the incomplete understanding of research participants about industrial relations matters.⁴⁷ As an example, the survey results from the 2009–12 General Manager's report on IFAs showed some employees had difficulty differentiating IFAs from a broader range of workplace flexibility practices or changes to employment conditions.⁴⁸

⁴⁷ 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).

⁴⁸ 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.

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, particularly where there was uncertainty by either the employer or the employee about the formal requirements for an application for flexible working arrangements or extensions of unpaid family leave, are not consistent with the meaning of the Act.

4.2.2 Disaggregation of data and relative standard errors

As was the case with the 2012 report, the incidence rate of NES requests in the workforce at large does not permit disaggregation of the data to the degree that might be desired. For example, the data is sufficient to analyse the incidence of NES requests, 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).⁴⁹ 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', that is, not published.

4.2.3 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 was 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 applications pursuant to s.65 and s.76 was used;⁵⁰
- employee survey data are weighted up to the population using estimates sourced from the ABS;⁵¹

⁴⁹ 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>.

⁵⁰ The reference periods for reporting requests for flexible working arrangements and extensions to unpaid parental leave 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 report asked respondents to report on requests made from 1 January 2010 to the date the survey was completed (surveys were undertaken in April/May 2012 with employees and May/June 2012 with employers). The reference period for respondents therefore ranged from approximately 2 years and 3 months to 2 years and 6 months. AWRS, which provides data for this 2012–2015 report, asked respondents to report on requests 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 therefore ranged from approximately 1 year and 7 months to 2 years and 1 month.

⁵¹ The employee survey data presented in the 2009–2012 report on requests for flexible working arrangements and extensions of unpaid parental leave 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 (first 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.

- results are drawn from a linked employer-employee population (rather than separate employer and employee populations), which was cross referenced; and/or
- different definitions of small and medium-sized employers were used.⁵²

In particular, the questions used to collect information about the extent and content of applications for flexible working arrangements and extensions for unpaid parental leave differ from the questions posed in 2012. Additional information was sought in 2012, in part because collecting information about requests for flexible working arrangements and extensions of unpaid parental leave (as well as IFAs) was the sole purpose of the 2012 survey.

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

4.2.4 Complexities when conducting this research

It is important to remember that this report is a report pursuant to s.653 of the Fair Work Act, and relates specifically to ss.65 and 76 of the Act. It is not a report on the level of flexibility available to employers and employees when dealing with family responsibilities generally, or even when considering other aspects of the Act. For example, arrangements that support employees with family responsibilities arising from formal human resources policies, enterprise agreements or even informal discussions at the workplace do not fall within the scope of this report.

This creates a level of difficulty when conducting research about provisions such as ss.65 and 76. To accurately research the operation of these sections, it is necessary to exclude from the research any flexible arrangements that are not derived entirely by operation of the NES. As the NES are legislated minima, in the sense that it is not possible to make an agreement to provide less than the relevant NES, any alternative arrangement which provides better arrangements is not a request pursuant to the NES. This means that while a great many flexible working arrangements are being utilised by employers and employees in Australia, the majority of these are not arrangements that fall within the scope of this report.

4.3 Qualitative methodology

4.3.1 Method

Notwithstanding the importance of AWRS as a nationwide, whole of economy data set, it does have some limitations. One of these, for the purposes of this report, is that the data set while enabling whole of economy estimates, is limited in its ability to address disaggregations. For example, the AWRS provides estimates of the extent of s.65 requests throughout the economy. The difficulty is that where an inquiry involves smaller populations, such as the number of women under 25 requesting flexible working arrangements, the number of observations in a broad-based data set can be small. This limits the ability to undertake statistically reliable research.

⁵² 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 was defined as having fewer than 15 employees, a medium business was defined as one with 15–199 employees and 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, utilised the Australian Bureau of Statistics 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 five–19 employees, a medium business is one with 20–199 employees and a large business is one with 200 or more employees.

A further limitation of the broad-based cross-sectional data set is that it utilises the same questions for all respondents. In some instances, it may be beneficial for researchers to go beyond cross-sectional data to examine matters in greater detail. In such instances, it may be appropriate to rely on qualitative research enabling more in-depth probing of specifically chosen data. Qualitative research is therefore a useful addition to research where representative data may be difficult to come by, or where more in-depth specific questions are called for. In the areas this report is considering, qualitative research can both provide more detailed information and supplement the representative data.

The Commission contracted with the Centre for Work + Life from the University of South Australia to obtain qualitative research on matters relating to s.65 and s.76 of the Fair Work Act.⁵³

The research comprised in-depth telephone interviews with 25 employees and 15 employers in relation to their experiences of requests for flexibility and extended unpaid parental leave under the NES. The Centre for Work + Life also supplemented its qualitative research with data from the 2012 and 2014 Australian Work and Life Index. The Australian Work and Life Index (AWALI) is a national survey of work–life outcomes of working Australians undertaken by the Centre for Work + Life.⁵⁴

To inform reporting on the ss.65 and 76 requests, qualitative interviews were conducted in August 2012 (employees) and September 2013 (employers). Employee participants were recruited from two sources:

- Participants who applied for flexible working arrangements in writing as identified in the 2012 AWALI survey;
- The Online Research Unit (ORU) company, which provided access to a database of potential study participants. Research participants were screened through a series of questions, and eligible participants participated in a phone interview. A second wave of surveys and interviews was undertaken through this data source to recruit additional interviewees in relation to extension of unpaid parental leave.

The interviews were conducted prior to the 2013 amendment to requests for flexibility (see section 3.1) so only participants with pre-school aged children or a child younger than 18 with a disability were included. Additionally, the request had to sit outside of a flexibility entitlement in a contract or enterprise agreement.

Employer participants were also recruited utilising the ORU. To be included in the study, employers had to have knowledge of the NES, knowledge and experience with the decision-making involved with requests, and be employed in an organisation where there was no policy in relation to the NES provisions in question, or policies that did not exceed the standard. If an employer answered yes to these questions in the ORU, they proceeded to the second stage of selection.

⁵³ N. Skinner, B. Pocock and C. Hutchinson, *A qualitative study of the circumstances and outcomes of the National Employment Standards Right to Request provisions*, Centre for Work + Life, University of South Australia, 2014.

⁵⁴ Further information on the 2012 and 2014 surveys are available from the AWALI national reports from the Centre for Work + Life website (<http://www.unisa.edu.au/Research/Centre-for-Work-Life/>).

In the second stage of selection, participants completed a short online survey comprising demographic information and a set of questions addressing their knowledge and experience with employee requests (see eligibility criteria below). On the basis of the survey responses, 25 participants were identified as eligible. Six of these 25 participants were deemed ineligible to participate for the following reasons: two were small business owners with no employees; three had received no formal requests; and one had no knowledge of the right to request under the Fair Work Act. Four participants could not be contacted after four attempts. A total of 15 employer participants were interviewed for the study.

4.3.2 Scope of the qualitative research

Employees were interviewed in relation to:

- reasons for requesting flexible working arrangements;
- organisational processes involved in submitting requests;
- outcomes of requests;
- impact of request outcomes on work–life balance; and
- capacity to continue in the position as a consequence of the request outcomes.

Employers were interviewed regarding:

- perceived impact of the Fair Work Act on employee requests;
- number and type of requests;
- organisational processes involved in dealing with the request;
- outcomes of request; and
- perceived impact of request outcome on employee and organisation.

In the qualitative study conducted for this report, employers were more likely to be from medium and large businesses, with few small businesses represented. A range of industries were represented in the sample, although these only represented employers who were able to be recruited. Industries that were not represented in the sample include Mining, Manufacturing and Construction. In relation to employees, the qualitative sample is dominated by workers with tertiary qualifications, in managerial or professional roles in the private sector, with reported household incomes of at least \$100 000. These limitations on the representativeness of the study should be noted during the interpretation of the qualitative findings.

4.3.3 Australian Work + Life Index (AWALI) survey 2012 and 2014

As noted, The Centre for Work + Life utilised the AWALI survey to supplement the qualitative data collected from respondents.

The AWALI is a survey of a randomly selected cross-section of the adult Australian employed population by means of CATI. Respondents are selected by means of a random sample process that includes a quota set for each capital city and non-capital city area, and within these areas a quota set for statistical divisions or subdivisions. Household telephone numbers were selected using random digit dialling, and there was a random selection of an individual in each household by means of a 'last birthday' screening question.

Further information on the 2012 and 2014 surveys are available from the AWALI national reports from the Centre for Work + Life website (<http://www.unisa.edu.au/Research/Centre-for-Work-Life/>).

The 2014 survey contained a subset of questions pertaining to flexible work requests that had been in the 2012 survey. The 2012 survey did contain questions on unpaid parental leave, however none of the respondents took more than 52 weeks of unpaid leave. They were therefore not within the scope of the report, which, at least insofar as it pertains to s.76, focuses on extended unpaid parental leave beyond 52 weeks.

AWALI data on flexibility requests from both the 2012 and 2014 surveys includes:

- respondents' awareness of the NES right to request a flexible working arrangement (2012, 2014) and extended unpaid parental leave (2012);
- whether they made a flexibility request (2012, 2014);
- what change to working arrangements they requested and why (2012);
- the outcome of the flexibility request (2012, 2014);
- reasons why a flexibility request had not been made (2012, 2014); and
- the association between flexibility request outcomes and work-life interference (2012, 2014).

5 Requests for flexible working arrangements under the NES

5.1 Identification of requests for flexible working arrangements

The Commission conducted the AWRS⁵⁵ in 2014 to obtain information from enterprises on flexible working practices pursuant to the Act from both the employer and employee perspective.⁵⁶ The AWRS also collected information from enterprises regarding processes and policies for receiving requests, including any criteria used to assess requests as to why an employee required a flexible working arrangement.⁵⁷

As this report is required to only address requests for flexible working arrangements pursuant to the NES standards, it is not intended to examine other arrangements that may nonetheless provide for flexible working arrangements.

5.1.1 Identification of requests for flexible working arrangements among employers

In the AWRS data set, the identification of relevant requests for flexible working arrangements relied upon a series of filter questions in both the employer and employee surveys. In testing the AWRS questionnaires, it was noted that many employers, and employees, were unable to identify NES provisions explicitly. Hence, the key questions used to identify requests for flexible working arrangements were simply whether requests had been made for flexible working arrangements by employees, and were they made in writing.

As an example of the difficulty in obtaining data that relates directly to s.65 requests, 1393 employers in the AWRS sample indicated that their organisation had received a request from one or more employees for a flexible working arrangement since 1 July 2012. However, following further screening questions, just 84 of these employers received a request consistent with the provisions of the NES for a flexible working arrangements. It is these 84 employers that form the sample for the analysis of s.65 requests using employer data.

5.1.2 Identification of requests for flexible working arrangements among employees

A similar approach was applied relating to the employee questionnaire. More than 2200 employees in the AWRS sample indicated that they had requested a change to their working arrangements since 1 July 2012. However, since many of these requests were verbal, they were not requests made pursuant to s.65.

A total of 345 employees in the AWRS sample were identified as having requested a flexible working arrangement consistent with the terms of s.65 for the purposes of this report.

⁵⁵ For more information about AWRS see: <https://www.fwc.gov.au/creating-fair-workplaces/research/australian-workplace-relations-study>

⁵⁶ Australian Workplace Relations Study, *First Findings report*, Pay Equity Unit, Fair Work Commission, pp. 30–31.

⁵⁷ Australian Workplace Relations Study, *First Findings report*, Pay Equity Unit, Fair Work Commission, p. 31.

5.2 Requests for flexible working arrangements since 1 July 2012 reported by employers

5.2.1 Incidence of requests for flexible working arrangements since 1 July 2012 as reported by employers

Table 5.1 shows the incidence of requests for flexible working arrangements. Although approximately 40 per cent of employers received a request for flexible working arrangements, the AWRS suggests that just more than 1 per cent of national system employers had received a request for flexible working arrangements consistent with the terms of s.65.⁵⁸

Table 5.1: Incidence of requests for flexible working arrangements as reported by employers

	Weighted proportion (%)
Employers who had received a request for a flexible working arrangement	40.4
Was the request made in accordance with s.65?	
Yes	1.3
No (i.e., request made verbally only or NES criteria were not used)	0.6
Unsure	38.5 ⁵⁹
No request made	58.5
Unsure if request was received	1.2
Total	100.0

Note: Data are weighted using the enterprise weight.

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

On its face, therefore, the proportion of requests that rely on the Fair Work Act exclusively is small given the overall number of requests for flexible working arrangements. The qualitative study is also able to shed some light on this.

As noted earlier, the researchers at the Centre for Work + Life only included employers and employees in the qualitative study where a formal written request had been made for flexibility or to extend unpaid parental leave.

Employer respondents were interviewed in relation to how they became aware of the NES rights to request flexibility and extend unpaid parental leave. For the majority of employer participants,

⁵⁸ The high degree of uncertainty in Table 5.1 associated with whether requests for flexible working arrangements were made in accordance with s.65 or not, reduces the level of reliability that can be placed on the estimated proportion of employers who had received such a request (1.3 per cent). It is possible that with a greater level of certainty the proportion of employers who had received requests for flexible working arrangements pursuant to s.65 may have been greater. It is likely that 1.3 under-represents the true proportion of employers who have received such a request.

⁵⁹ The data in this table exhibit a high 'unsure' percentage (38.5). This may reflect the uncertainty associated with each step that is necessary to make a request consistent with the terms of s.65 of the Act.

information on the NES was provided through human resource (or equivalent) units in the form of an organisational email or memorandum. The study found that in some instances, managers and supervisors then independently sought further information from government websites to ensure conformity with the NES. For example, one employer representative stated that:

If a staff member comes to us with a request we often just jump on a government website and see what the baseline rules are, make sure we don't cross over that, that we at least work within that range. (*Male supervisor, Financial and insurance services, VIC.*)⁶⁰

Most employer participants in the qualitative study had received between one and three requests for flexibility in the preceding 12 months, with a smaller number reporting between four and 10 requests.⁶¹ Many of these requests, however were made in general terms and not in compliance with the NES. Further, employer participants noted that many requests were handled in a verbal, informal manner, particularly where overall hours were not being varied. This is consistent with the AWRS data where many requests for flexibility are handled without invoking the terms of s.65 of the Fair Work Act.

Responses from employer participants indicated that while there had not been significant changes to the way in which requests for flexibility were received following the NES implementation, some employers suggested that the requirement for a written request had improved the clarity of information flow between employers and employees, ensuring clear documentation of the request. Some employers noted that they believed there had been a small increase in requests, and an increase in the acceptance rate of these requests.

The study found that in most instances, formal requests were preceded by an informal conversation between an employee and his or her manager/supervisor during which the possibility of flexibility and the nature of the flexible working arrangements were discussed. Comments by employer participants in the qualitative study included:

Initially people have an informal chat with their manager. Then when everything is worked out they move forward in consultation with their manager to ask for formal approval from HR in writing. (*Male manager, Financial and insurance services, VIC.*)⁶²

Normally we start with the informal discussion, and then move onto the formal process of applying in writing, there is an employee [online] portal that they can put the request through. It goes first to their supervisor and then onto the higher level management. (*Male operations manager, Accommodation and food services, VIC.*)⁶³

On the other hand, the qualitative data showed some variation in awareness and understanding of the NES right to request flexibility among employees. In the majority of instances, employee participants reported that they did not have any knowledge of the relevant NES provision. One interviewee in this category had his rights under the NES explained by a manager.⁶⁴ Two other

⁶⁰ Skinner et al.

⁶¹ Skinner et al.

⁶² Skinner et al.

⁶³ Skinner et al.

⁶⁴ Skinner et al.

participants explained that they had submitted their request on the basis of a workplace culture that appeared to be supportive of flexible arrangements. It was said that:

I didn't really know about any legislation. I just knew they [the organisation] were good about work-life balance. (*Female, community services worker, 0.9 full-time equivalent (FTE) reduced from full-time.*)⁶⁵

One participant indicated that he had limited knowledge of a legal right to request but would only have investigated this right if his request had been denied. Only one employee interviewee whose primary role was in human resources, indicated a comprehensive understanding of the NES and right to request, and had consequently submitted an initial request in writing.

In the 2014 AWALI survey, 43 per cent of employee respondents indicated they were aware of the NES right to request flexible working arrangements. This was an increase from the 2012 AWALI survey, where only 30 per cent of employee respondents were aware of the relevant standard.⁶⁶

The AWALI data provided an indication of awareness across different categories of employee. For example, awareness of the right to request flexibility was higher in older workers than in younger workers and women with caring responsibilities relevant to the NES were also more likely to have a greater awareness of the right to request flexible working arrangements.

The AWRS also sought information from employers as to which level of management had the authority to approve a request for a flexible working arrangement. The results are found at Table 5.2. Acknowledging the data limitations, the AWRS suggests that senior positions in the enterprise—owners, senior managers, CEOs and directors—generally have this authority but that in some organisations immediate supervisors, or the human resources area, have the authority.

Table 5.2: Authority to grant a request for a flexible working arrangement, per cent of employers who received requests under s.65

	Weighted proportion (%)
Immediate supervisors / Line managers / Middle management / Branch or Department manager	23.7
Human resources	16.5
Owner / Senior manager / CEO / Director	88.4
Other	np
Don't know	0.0

Note: Multiple responses were permitted and therefore proportions may not add up 100. np = not published. Data are weighted using the enterprise weight.

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

⁶⁵ Skinner et. al.

⁶⁶ Skinner et. al.

This accords with the data in the qualitative study by the Centre for Work + Life. There it was found that managers played a significant role, by being 'gatekeepers'. This gatekeeping role involved managing the initial request for flexibility with the employee, and then potentially being influential with senior management in the outcome of the request.⁶⁷ The study concluded that factors conducive to employees utilising their right to request flexibility included:

- A positive relationship between the requesting employee and supervisor ('gatekeeper'), which provided encouragement to the employee to have a formal conversation.
- A positive attitude of the manager toward flexible working arrangements and understanding of the reasons for requesting flexible working arrangements, particularly in relation to family responsibilities.⁶⁸

The employer participants indicated that managers/supervisors at this point had substantial influence over the outcome of the request. Examples of this perspective by the employer representatives in the study include those who said:

I am the manager so the request comes to me. Then I have to assess the situation and what can be done in the circumstances and then I will advise the Director and others in the Directorate and then the final decision will be made. I will give advice about how we feel about this particular person, as I have more direct contact with these people than the Directors. (*Female manager, Education and training, NSW.*)⁶⁹

When a request comes my way I will sit down with that person and go through the reasons for that request, how many hours have you got, and that sort of stuff. If there is availability for them to do that in terms of there's nothing major that needs to be done around that time then that's fine. (*Female regional liaison manager, Education and training, QLD.*)⁷⁰

The research suggested that only one employer had been proactive in mediating this relationship by providing training in relation to the National Employment Standards to managers.

5.2.2 Characteristics of employers who had received written requests for flexible working arrangements

The AWRS found that there were some variations in the nature of the enterprises that received written requests for flexible working arrangements. However, the differences are not unexpected. Larger enterprises (which employ more persons) receive a higher number of written requests than smaller enterprises. Public sector enterprises were also more likely than private sector enterprises to have received a request. These data are shown in Table 5.3.

⁶⁷ Skinner et al.

⁶⁸ Skinner et al.

⁶⁹ Skinner et al.

⁷⁰ Skinner et al.

Table 5.3: Characteristics of employers who had received requests for flexible working arrangements, per cent of employers who received a request under s.65 and all employers with given characteristic

	Has received request under s.65 (%)	Has given characteristic (%)
Organisation size		
Small (5–19 employees)	37.6	1.0
Medium (20–199 employees)	47.8	5.7
Large (200 or more employees)	14.6	22.6
Sector		
Private	97.7	2.1
Public	2.3	9.1
Location		
Metropolitan	78.7	2.8
Regional/rural	21.3	1.2

Note: 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. Data are weighted using the enterprise weight.

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

5.2.3 Circumstances in which employees made requests for flexible working arrangements as reported by employers

The main reason for requesting a flexible working arrangement by employees, as reported by AWRS employers who received a s.65 request, was to care for a child or children (73 per cent). However, a significant number of employers who had received a s.65 request indicated that there were other factors that may have been relevant such as the need to care for a family member, such as an elderly parent.

Table 5.4: Reason for employee request, per cent of employers who had received requests under s.65

	Weighted proportion (%)
To care for a child/children	73.0
To care for a family member (e.g., elderly parent)	28.4
Due to the employee being 55 years of age or older	23.3
The employee was experiencing family violence or was supporting a family member who was	3.3
Due to the employee's disability	np
Other	21.2 ⁷¹

Note: np = not published. Multiple responses were permitted and therefore proportions may not add up to 100. All data are weighted using the enterprise weight.

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

Employers in the AWRS sample were also asked about the requested changed working arrangements sought by employees. The responses are set out in Table 5.5. The most common change was a reduction in hours worked (67 per cent). Other changes commonly requested included changed start/finish times and a change in days worked (57 and 56 per cent respectively). A relatively small proportion of employers indicated that their employees requested an increased amount of leave or change in their role/responsibilities (both 5 per cent).

Table 5.5: Changes in working arrangements requested, per cent of employers who had received requests under s.65

	Weighted proportion (%)
Reduction in hours worked	66.8
Change start/finish times	57.1
Change days worked	56.4
Work from home	33.6
Change in shift arrangements or rostering	14.4
Increased amount of leave	5.4
Change to role/responsibilities	5.4
Other	np

Note: np = not published. Multiple responses were permitted and therefore proportions may not add up to 100. All data are weighted using the enterprise weight.

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

⁷¹ A relatively high proportion of employers also reported 'other' reasons (21 per cent), including for health and work/life balance reasons.

Employers in the qualitative study undertaken by the Centre for Work + Life were also asked the reasons why their employees wished to work under flexible arrangements. The responses to these issues in the qualitative study resembled those generated by the AWRS.⁷² The qualitative research was able to provide for more detail about how the requests were acted upon.⁷³

The response of employers to the requests for flexible working arrangements began with the recognition of the issues facing employees, and in particular the challenges that 'juggling' work with parenting presented in terms of competing demands and conflicting schedules. Examples of the responses of employer representatives included:

Because they've got young children they're not wanting to work five days a week. They're cutting back and working two days a week, job sharing with someone else. So someone steps up into the other days. (*Female clinical nurse manager, Health care and social assistance, QLD.*)⁷⁴

It's usually the pressures that they face with a new child and having to juggle work as well. It's particularly with coming back from maternity leave. The requests that we've had so far [for part-time work], all of them have ended up full-time when they've got a routine that actually works for them. (*Male manager, Information media and telecommunications, NSW.*)⁷⁵

The employer responses showed a variety of flexible working arrangements had been requested, with the majority of employees seeking part-time work, flexible or changed start and finish times, and working from home. Only one participant cited a job share arrangement.

As with the AWRS, multiple responses in relation to flexible working arrangements were recorded such that approximately half of the employers reported requests for more than one type of flexible working arrangement, with the other half of employers reporting that their employees had sought a single type of flexible working arrangement.

The Centre for Work + Life analysis indicated that working from home, and altered start/finish times, were mechanisms utilised most commonly by workers who did not wish to, or were unable to, reduce their work hours. Conversely, requests for part-time work appeared most commonly in requests in relation to providing primary care to young children, particularly for women returning from parental leave.⁷⁶

The study reported that there were a range of arrangements in place regarding the duration of the changed work schedules. The majority of participants indicated that there was no fixed end-date for the arrangement. In many instances, there appeared to be an implicit assumption that the arrangements would cease when pre-school children started school, although this is somewhat unclear from the data presented. Some participants stated that their arrangements would be subject to review at different points, which will be discussed in a later section.

⁷² However, the timing of the qualitative study preceded the passage of the *Fair Work Amendment Act 2013*. This meant that the only requests eligible to be included in the qualitative sample were those legislated by the NES pertaining to care for pre-school children or the care of a child with a disability.

⁷³ Nine requests were received in relation to flexible working arrangements only and there was only one request in the employer qualitative sample for extended unpaid parental leave.

⁷⁴ Skinner et al.

⁷⁵ Skinner et al.

⁷⁶ Skinner et al.

5.2.4 Outcomes of requests for flexible working arrangements reported by employers

According to the AWRS, 90 per cent of employers who had received an initial request for a flexible working arrangement under s.65 granted the request(s) (Table 5.6). A further 9 per cent (reflecting only employers who had received multiple requests) indicated that *some* of the s.65 requests received were approved in the first instance.

Obviously, given that only 9 per cent of employers refused a request for flexible working conditions at first instance, there is a very limited amount of data available to be analysed with respect to refusals. Nonetheless, enterprises that rejected some of the requests made were also asked whether subsequent discussions led to the request being accepted on a different basis; 40 per cent of those who rejected the request at first instance also rejected it after further discussions. Putting this another way, 60 per cent of enterprises that had rejected at least one request initially had accepted a variation of the request after discussions.

Table 5.6: Employer responses to requests for flexible working arrangements under s.65, per cent of employers who had received requests under s.65

	Weighted proportion (%)
Employers initial response to s.65 request	
(All) request(s) granted	90.2
Some requests granted	9.1
No requests granted	np
Unsure	np
Did the employer agree to any alternative arrangements with those employees whose initial request was refused?*	
(All) request(s) accepted with alternative arrangement	np
Some requests accepted with alternative arrangement	25.5
All alternative arrangements rejected	39.5
Unsure	np

Note: *Comprises employers who granted some or no initial requests. np = not published. All data are weighted using the enterprise weight.

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

Employers who rejected the request for flexible working arrangements were asked their reasons for doing so. The most common reason was that the request was 'not operationally viable', although some employers refused s.65 requests on the basis that approving them would have a negative impact on productivity/efficiency or customer service.

5.3 Requests for flexible working arrangements since 1 July 2012 reported by employees

5.3.1 Incidence of requests for flexible working arrangements since 1 July 2012 reported by employees

The AWRS data shows that more than one-quarter of all employees indicated that they had requested flexible working arrangements since 1 July 2012. However, although flexible working arrangements are frequently sought, it is rare that the actual provisions of s.65 are invoked. The AWRS data suggests that while more than 27 per cent of employees have made requests for flexible working conditions, about 4 per cent of employees submitted a request for a flexible working arrangement in accordance with s.65.

Table 5.7: Incidence of requests for flexible working arrangements as reported by employees

	Weighted proportion (%)
Employees who had requested flexible working arrangements	27.9
<u>Was the request made in accordance with s.65?</u>	
Yes	4.1
No (i.e., request made verbally only or not for a reason set out in s.65)	23.0
Unsure	0.8
No request made	69.2
Unsure if request made	3.0
Total	100.0

Note: Data are weighted using the employee weight.

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

5.3.2 Characteristics of employees who made a written request for a flexible working arrangement

Table 5.8 presents some of the characteristics of employees who made a request for a flexible working arrangement under s.65.

Females were three times as likely to make a s.65 request compared to males (with an incidence rate of more than 6 per cent for females compared to nearly 2 per cent for males).

A higher proportion of part-time employees (close to 8 per cent) than full-time employees (3 per cent) made a s.65 request with their employer.

Those who spoke a language other than English at home were more likely to have made a s.65 request (6 per cent) than employees who spoke only English at home (4 per cent).

The age group with the highest incidence of making s.65 requests was the 35–44 age group (more than 7 per cent) followed by the 25–34 age group (6 per cent). Only a small proportion of

employees aged under 25 years submitted a s.65 request (less than half of a per cent). The oldest age category, 55 years and over, also had a relatively low incidence of making a s.65 request (1 per cent). The incidence rate of making a s.65 request among permanent and casual employees was 5 per cent and 2 per cent, respectively. Fixed-term employees appeared to have the highest incidence rate of making a s.65 request at 7 per cent.

At least insofar as s.65 requests are concerned:

- females are more likely to make such requests than males;
- part-time employees are more likely than full-time employees (although this may simply reflect the outcome of the requests);
- there were minor differences between people who spoke a language other than English at home compared to those from an English-speaking background; and
- young persons and older persons are less likely to make requests than persons in the middle of the working age spectrum.

The main reason that employees requested a flexible working arrangement, as reported by employers, was to provide care to a child or children. This corresponds with the relatively high incidence of making a s.65 requests among employees with a dependent child (nearly 12 per cent).

Table 5.8: Characteristics of employees who requested a flexible working arrangement, per cent of employees who requested a flexible working arrangement in accordance with s.65 and of all employees with a given characteristic

	As percentage of all employees who made a s.65 request (%)	As percentage of all employees with that characteristic (%)
Gender		
Male	18.3	1.8
Female	81.7	6.2
Full-time/part-time status		
Full-time	53.2	3.1
Part-time	46.8	7.8
Language background		
Speaks only English at home	81.9	4.1
Speaks a language other than English at home	18.1	5.8
Age group		
Under 25 years	1.1	0.4
25–34	36.0	5.8
35–44	40.6	7.4
45–54	17.3	3.2
55 years and older	4.9	1.3
Employment classification		
Permanent	86.4	4.5
Casual	5.0	1.8
Fixed-term contract	8.6	7.1
Has dependent child(ren)		
Has dependent child(ren) under age of 15	82.9	11.8
No dependent child(ren) under age of 15	17.1	1.1

Note: np = not published. All data are weighted using the employee weight.

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

Consistent with the responses from employer participants, employees in the Centre for Work + Life qualitative study reported that the process for requesting flexibility in most instances commenced with a verbal discussion with the employee's immediate manager/supervisor.⁷⁷ From the sample of requests for flexibility reported in the study, these discussions were followed with a written request

⁷⁷ Skinner et al.

for flexible working arrangements. A small number of participants, including a human resources professional, made a request in writing in the first instance. The research found that these participants who made initial written requests were more likely to do so as a consequence of perceiving the workplace to be amenable to flexible working arrangements, and therefore likely to agree to a request.

In a majority of instances, written requests were reviewed by employees' immediate supervisors in conjunction with human resources, and in approximately half of the sample, written requests were also reviewed by senior management. All participants except one provided a reason for the request in their written communication.

The data that is available here on identification of requests represents the written requests under NES provisions that were made and processed. The qualitative study indicates that the 2012 AWALI identified 93 respondents who had requested flexibility and only 10 of these who had done so in writing under the NES provisions. Further the research noted that many employers indicated that there were often instances in which flexible working arrangements were managed informally, especially where requests were short-term or did not actually involve a reduction of work hours.

One inference that might be drawn from the data informing this report in relation to the processing of requests, is that there are a range of circumstances where requests are both made and managed outside of NES provisions.

5.3.3 Circumstances in which employees made requests for flexible working arrangements

As already noted the majority of requests for flexible working arrangements are conducted without requiring that the minimum entitlements of the NES be invoked. In many cases, the flexible working arrangements were agreed by the employer and employee without the need to have a s.65 request formally lodged.

However, even in those instances where a s.65 request was formally lodged, more than four-fifths of employees discussed the request with their manager or employer before lodging their request in writing (Table 5.9).

Table 5.9: Discussion of request and amendments made in response, per cent of employees who made a request for a flexible working arrangement under s.65

	Weighted proportion (%)
Did you discuss your request with your manager/employer prior to putting your request in writing?	
Yes	85.0
No	11.3
Can't recall	3.7
Did you change your written request as a result of this discussion?*	
Yes	7.2
No	92.8

Note: All data are weighted using the employee weight. *Per cent of employees who had discussed their request with their manager/employer prior to putting their request in writing.

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

More than half (55 per cent) of the employees who had made a s.65 request reported that it was in order to care for a child/children under school age. Forty-three per cent of requesters did so to allow them to care for a child/children of school age. This is the highest proportion of the additional allowable reasons to request that came into effect with the *Fair Work Amendment Act 2013* (Cth). Fifteen per cent of those who made a request did so to allow them the flexibility to care for a family member (other than a school age or under school age child).

Table 5.10: Reason for request and extent of period sought for effect of flexible working arrangement, per cent of employees who made a request for a flexible working arrangement under s.65

	Extent of period sought for effect of flexible working arrangement		Total (%)
	One month or less (%)	Longer than one month (%)	
To care for a child/children under school age	6.6	48.5	54.8
To care for a child/children of school age	10.6	33.0	42.7
To care for a family member	7.5	6.6	14.8
Due to employee's disability or long term chronic health condition	np	5.8	6.4
Due to experiencing family violence or supporting a family member who was	np	np	np

Note: Multiple responses were permitted and therefore proportions may not add up to 100. Data for the extent of the period sought is based on a smaller sample size compared to the total number of employees who responded to the reason for the flexible working arrangement request. np = not published. All data are weighted using the employee weight.

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

The qualitative study conducted by the Centre for Work + Life also examined the primary reason the employee requested flexible working arrangements.⁷⁸ The reason most commonly referred to was the responsibility to provide care for pre-school aged children, although one participant was caring for a grandchild.

The reasons given for seeking flexibility differed between men and women. Many of the male participants cited their partner's work commitments as contributing to the request for flexible working arrangements. Female respondents, on the other hand, simply focused on primary care responsibilities. For many women, the request—often for part-time work—followed a return from parental leave, with both the age of very young children as well as childcare availability stated as reasons for the reluctance to return to a full-time role.

Employee comments clearly pointed to the fact that access to flexibility prevented disengagement from paid work or from a particular employer. Employees' comments to the researchers included:

Well, I would have been unemployed. *(Male professional, extra one month leave.)*⁷⁹

I think I would have been quite disgruntled. Potentially started to explore looking at other work arrangements. *(Female professional, extra three months' leave.)*⁸⁰

Male employee participants also added to their comments by suggesting that lack of access to their requests would have affected the capacity of their female partner to engage in paid work. Employees in the study were reported as having said:

It probably would have meant that my wife wouldn't have gone back to work full-time, or wouldn't have been able to until next year [when their son starts school]. Or we would have had to make the awkward decision of putting our child in full-time day-care. I don't think we would have been willing to do that, especially in the earlier years. It would have meant that we would have stayed on the single income. *(Male manager, full-time hours, work from home two days per week.)*⁸¹

I'd just have to accept that [the request for 0.8FTE was refused]. But maybe my wife wouldn't have been able to go back to work, because her boss required her to be there a minimum of two days a week. *(Male professional, 0.8FTE.)*⁸²

5.3.4 Outcomes of requests for flexible working arrangements reported by employees

Data from the AWRS suggests that the vast majority of employees who made a request pursuant to s.65 had that request approved. More than 85 per cent of employees had their request granted with a further 12 per cent having their request granted with amendments. Two per cent of employees had their request for flexible working arrangements refused by the employer.

⁷⁸ Skinner et al.

⁷⁹ Skinner et al.

⁸⁰ Skinner et al.

⁸¹ Skinner et al.

⁸² Skinner et al.

Table 5.11: Outcome of request, per cent of employees who made a request for a flexible working arrangement under s.65

	Weighted proportion (%)
Request granted	85.8
Request accepted, but with some changes	12.1
Request refused	2.1

Note: All data are weighted using the employee weight.

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

The rate of approval of NES requests was high relative to that of informal verbal requests. Of those employees who had made only verbal requests, around 76 per cent indicated their request had been accepted and 16 per cent were accepted with some change. Around 8 per cent had their request refused.

Table 5.12 presents data on the type of flexibility sought by employees who had made a flexible working arrangement under s.65.

The most common response was a change to start and/or finish times (61 per cent) followed by a change to the days worked (35 per cent). Around one-fifth of these employees indicated a reduction in the hours or days worked or the ability to work from home were the changes requested.

Table 5.12: Changes in working arrangements requested, per cent of employees whose request under s.65 was granted or granted with some changes

	Weighted proportion (%)
Change to start / finish times	61.3
Change days worked	35.2
Reduce hours or days worked	20.6
Work from home	18.7
Change from full-time to part-time	14.5
Change averaging of hours	13.8
Change to leave arrangements	6.8
Change to shift arrangement or roster (e.g., rotating to fixed, daytime only)	5.9
Other	1.7
No change	np

Note: All data are weighted using the employee weight. np = not published. Multiple responses were permitted and therefore proportions may not add up to 100.

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

As might be expected where such a large proportion of initial requests are granted, almost all (95 per cent) employees reported they were satisfied with the outcome. The converse was also true. In

the small number of cases where the initial request was refused all employees were dissatisfied with the outcome. The results are shown in Table 5.13.

Table 5.13: Satisfaction with outcome by outcome of request, per cent of employees who made a request for a flexible working arrangement under s.65

	Request granted	Request accepted, but with some changes	Request refused	Total
Dissatisfied	3.7	13.7	100.0	7.0
Neither satisfied nor dissatisfied	np	np	0.0	np
Satisfied	94.8	80.3	0.0	91.0

Note: All data are weighted using the employee weight. np = not published.

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

5.3.5 Circumstances in which requests for flexible working arrangements were refused as reported by employees

The Fair Work Act requires that the employer must provide a response in writing to a s.65 request, stating whether it is granted or refused.⁸³ Due to the very low numbers of employees in the AWRS sample who had their request refused, it is simply not possible to assess the level of compliance with this requirement with any degree of confidence. Data from the AWRS employee survey suggests that only about one-third of employees received the refusal in writing, but this data should simply be treated as indicating that there is a degree of non-compliance.

Similarly, while the AWRS collected data from employees on the reasons given by representatives of the employer for refusing their flexible working arrangement requests, the numbers of refusals were too low to place statistical reliance on them. Nonetheless, the most common reason given by employers to the employees in the AWRS sample for refusing a request for flexible working arrangements was that it was not operationally viable.

Given the small numbers of employee and employer respondents who reported that a request for flexible working arrangements had been refused, the data obtained from the qualitative study provides useful added information. The qualitative data had a high degree of consistency with the AWRS data. Nearly all of the requests for flexibility were approved without variation. However, where the request was not immediately granted, the employer and the employee negotiated around the request. In four cases, the request was refused.

Employers indicated that the main reasons for accommodating requests for flexibility were recognition of the challenges of combining paid work with care responsibilities and recognition of the substantial benefits to employee well-being in assisting in reducing work/life conflict through accommodating care responsibilities. Representatives of employers said:

⁸³ Fair Work Act, s.65(4).

The flexibility is to keep the work and life balance, and they want to be more around their children, or maybe their partner is not flexible and they cannot provide enough support. At the same time a lot of women would like to return to the workforce [after maternity leave] because they would like to engage in their job role rather than staying home and spending all their time at home. They don't want to stay out of the workforce for more than 12 months. Especially if they are in a good working environment. (*Female manager, Education and training, NSW.*)⁸⁴

The day care is only available between certain times. They want to pick up their child and finish their work from home. Or they want to have a day off a week so they can take care of their child at home. When they work from home it is also easier for them to take care of their children. (*Male manager, Financial and insurance services, VIC.*)⁸⁵

The qualitative data that addresses the extent to which requests were refused or accommodated was supplemented by the Centre for Work + Life using data obtained from the 2014 AWALI survey. That survey found that 64 per cent of respondents making a request for flexible working arrangements had their request fully accepted while 17 per cent of respondents reported a partial acceptance of their request. The acceptance rate for men and women who made requests in the 2014 AWALI survey was almost equal. The qualitative data also showed that the majority of participants (22 from 25 employees) had their requests for flexibility granted without variation. Employees in the qualitative study reported examples of the nature of discussions when seeking flexible working arrangements:

Ninety per cent of the people in the office work flexibly ... most of the people that work in the office are women and they all have families. The partners of the firm understand that we have more responsibilities than just work, we have children and households to run. (*Female, professional, return from parenting leave on 0.2 FTE, moving up to 0.6 FTE over time.*)⁸⁶

My line manager is pretty supportive. Her children have grown up now, but I think she realises the importance of getting that balance right. Unfortunately the CEO has got some really old-fashioned ideas. Because I wasn't changing my hours he didn't need to know about it, so it was sort of OK. (*Female manager, change scheduled work days with no change in part-time hours.*)⁸⁷

One of the benefits of the qualitative study was that it enabled a better understanding of different approaches to reductions in working hours between men and women.

The qualitative research found that all five of the male participants requested a reduction in their working hours from full-time to 0.8 FTE in order to have one day of providing childcare at home and to facilitate their female partner's return to the labour market. There was greater variation in the types of working arrangements requested by female employee participants, including a more substantial reduction of work hours (between 0.2 or 0.6 FTE) and changing scheduled work days and varying start and finish times.

⁸⁴ Skinner et al.

⁸⁵ Skinner et al.

⁸⁶ Skinner et al.

⁸⁷ Skinner et al.

Where employers refused the request or negotiated the terms of the request, employers generally indicated scheduling requirements impeded facilitating flexible work schedules. One employer said:

The only reason it would be declined, and it would only be for a set period, would be if we've got a full quota of our staff on holiday. So then we wouldn't have the flexibility to be able to. But that might only be for a week here or a week there. (*Female clinical nurse manager, health care and social assistance, QLD.*)⁸⁸

Other employers from this group discussed the incompatibility of part-time work with particular roles or the the difficulty in back-filling reduced hours. For example:

Well, there are certain jobs where it is difficult. Or it's extremely difficult to fill the other part, particularly a lot of the requests are for things like 0.8 [FTE]. It's very, very difficult to find somebody who can do the other 0.2 [FTE]. A lot of roles need that continuity of service, because they are in service provision. (*Female HR consultant, professional, scientific and technical services, QLD.*)⁸⁹

An important factor influencing the acceptance of requests by employers appeared to be the value of the requesting employee and the perceived benefit of retaining that employee. A number of employer comments implied that employee value was a critical factor in employer decision-making. Employer representatives stated:

Usually if someone is a good employee you want to secure their services whatever way you can. If they are only able to give us part-time and they are a good employee then it's better to have them part-time than not at all. (*Male manager, information media and telecommunications, NSW.*)⁹⁰

Most of the requests are accepted. Because we want all our employees to be happy, and a declined request is a potential loss of the employee. We do realise that. Obviously a lot of things have to be taken into account. How long the employee has worked in the organisation, how experienced they are. Sometimes it's much easier to give flexibility to one employee than take two new ones and the time it takes in training them. If the employee has been there for a while and they are very knowledgeable then they are a valuable employee and their request will be met usually. (*Female manager, Education and training, NSW.*)⁹¹

There was some evidence from a small number of employers that in some cases employees experienced reduced responsibilities following their changed working arrangements. Supervisory roles in particular were more likely to be perceived as less compatible with flexible working arrangements. For example:

Mainly things stay the same. But they might have had a supervision shift at night-time that they probably wouldn't receive any more during the day because the other managers are there. (*Female senior service supervisor, retail trade, SA.*)⁹²

⁸⁸ Skinner et al.

⁸⁹ Skinner et al.

⁹⁰ Skinner et al.

⁹¹ Skinner et al.

⁹² Skinner et al.

It depends on the role of the person. Sometimes it's not always possible to keep the same role when this person requests flexible work arrangements. Most of the time, unfortunately, if they are supervisory or management positions they will probably have to take another position. (*Female manager, Education and training, NSW.*)⁹³

Most employers in the qualitative study reported that they did their best to achieve some attempt at compromise where the request for flexibility could not be granted in full. Conversely, one employer participant noted that it was clear that the only obligation that employers had in regard to requests was to consider it.⁹⁴

Three employee participants from the sample of 25 employees in the qualitative study did not have their requests fully accepted by their employer. In one instance, the request for a change from a 0.8 FTE to a 0.6 FTE role was refused. The employee was advised that the area in which she was employed would not be able to manage with fewer staff and that a job share arrangement was perceived to be unsuitable. The employee reported:

It's a pretty small team, there was only four of us in the team. I knew that that was going to be the response anyway, but I thought that I would just try it. (*Female HR professional, request to reduce hours rejected.*)⁹⁵

Another participant had her request only partially accepted. Again this involved a supervisory position. The request involved no change to hours overall, but a change of two work days from a Thursday/Friday to weekend work. The request was reviewed by the company director who advised the employee that a change of one work day (rather than two) would be permitted in a trial period. The employee was advised of management's concern about the employee's ability to perform the supervisory function in the requested arrangement. In the interview, the participant reported understanding the employer perspective but was hoping that the trial period would demonstrate the effectiveness of the arrangement.⁹⁶

A third participant had submitted a request, and although they had not received a response, believed that the request would be refused. This assumption was premised on a verbal discussion prior to the written request, that the request would be difficult to accommodate given a number of other staff working part time.⁹⁷

⁹³ Skinner et al.

⁹⁴ Skinner et al.

⁹⁵ Skinner et al.

⁹⁶ Skinner et al.

⁹⁷ Skinner et al.

6 Requests for extension of unpaid parental leave under the NES

6.1 Identification of requests for extension of unpaid parental leave

6.1.1 Identification of requests for unpaid parental leave among employers

As with the right to request flexible working arrangements, it was necessary to use a number of filter questions to identify employers who had received requests for extensions of unpaid parental leave. Ultimately, while 386 employers in the AWRS sample had received a request for extended parental leave, only 229 employers had received the request in writing as required pursuant to s.76.

6.1.2 Identification of requests for unpaid parental leave among employees

The respondents to the employee questionnaire in the AWRS included 550 employees who had taken a period of parental leave since 1 July 2011. This represents around 7 per cent of the employee sample.

However, while there were a large number of requests, relatively few of these involved a request for an extension of unpaid parental leave beyond the initial 12-month period. The total number of employees who had made a request for additional leave after 12 months of parental leave was just nine.

In part, this ought not be surprising. In a purely random sample there are relatively few persons taking parental leave at any time, and of these even fewer take more than 12 months' leave. Nonetheless, the small amount of data from the AWRS on this matter does restrict the analysis that can be conducted.

6.2 Requests for extensions of unpaid parental leave reported by employers

6.2.1 Incidence of requests for extensions of unpaid parental leave since 1 July 2012 as reported by employers

As with requests for flexibility, many requests for extensions of unpaid parental leave were made without relying on the actual entitlement provided for by s.76. Section 76 applies to requested extensions for more than the initial 12-month period, and requires that the request be made in writing.

The AWRS data suggests that around 6 per cent of employers received a request from an employee for an extension of unpaid parental leave. Close to 60 per cent of these employers (or 3 per cent of all employers) indicated that the request they received was made in accordance with s.76. That is, the request was made in writing and criteria stipulated by the NES were applied in relation to the request.

Table 6.1: Incidence of requests for extensions of unpaid parental leave as reported by employers

	Weighted proportion (%)
Employers who had received requests for extensions of unpaid parental leave	5.9
<u>Was the request made in accordance with s.76?</u>	
Yes	3.1
No (i.e., request made verbally only or NES criteria were not used)	1.7
Unsure	1.1
No request received	93.6
Unsure if request received	0.5
Total	100.0

Note: Data are weighted using the enterprise weight.

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

6.2.2 Characteristics of employers who had received written requests for extensions of unpaid parental leave

Table 6.2 provides some key characteristics of employers who had received s.76 requests for extensions of unpaid parental leave.

As might be expected given the much larger number of employees who are employed by large employers, a higher proportion of large enterprises had received these requests (35 per cent) compared with medium and small enterprises (around 7 per cent and 1 per cent respectively).

Public sector enterprises were much more likely to have received a request than private sector employers. By contrast, the proportion of employers who had received a request was similar between metropolitan and regional/rural employers.

Table 6.2: Characteristics of employers who had received written requests for extensions of unpaid parental leave under the NES, per cent of employers who received requests under s.76 and given characteristic

	Has received a s.76 request (%)	Has given characteristic request (%)
Organisation size		
Small (5–19 employees)	34.6	1.4
Medium (20–199 employees)	41.5	6.5
Large (200 or more employees)	24.0	34.9
Sector		
Private	95.8	3.0
Public	4.2	24.5
Location		
Metropolitan	73.4	3.6
Regional/rural	26.6	2.3

Note: 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. Data are weighted using the enterprise weight.

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

Table 6.3 provides characteristics of the workforce of employers who received s.76 requests. Employers who have received a s.76 request from an employee, are more likely to:

- have a predominantly female workforce;
- have a high proportion of part-time employees; and
- have a high proportion of permanent employees.

Table 6.3: Characteristics of employee workforce, per cent of employers who had received requests under s.76

Proportion of workforce who are:	Has received a s.76 request (%)	Has given characteristic (%)
Female		
50% or less	39.2	1.9
More than 50%	60.8	4.4
Part-time employees		
50% or less	62.5	2.4
More than 50%	37.5	4.1
Casual employees		
50% or less	89.9	3.1
More than 50%	10.1	1.7

Note: All data are weighted using the enterprise weight.

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

As employees have the capacity to request an extension of unpaid parental leave of up to 12 months pursuant to s.76, it might be anticipated that there will be a range of periods of additional unpaid leave requested by employees. This is evident in Table 6.4.

Table 6.4 shows that the requests by employees were rarely for less than one month (3 per cent of requests). Close to one-third of requests were for the full 12 months, and well more than half of the requests for at least an additional six months. Indeed if “don’t know” responses are excluded, more than two-thirds of the requests sought were for more than six additional months of leave.

Table 6.4: Length of requested extension of unpaid parental leave, per cent of employers who had received requests under s.76

	Weighted proportion (%)
Less than one month	3.2
One to less than three months	23.1
Three to less than six months	17.0
Six to less than 12 months	26.6
12 months	31.8
Don’t know	14.1

Note: Multiple responses were permitted and therefore proportions may not add up to 100. All data are weighted using the enterprise weight.

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

The Centre for Work + Life also sought information from its participants on the duration of the requested additional unpaid parental leave.⁹⁸ Six of the employer participants had received requests to extend unpaid parental leave. Of those employers who had received requests for extended unpaid parental leave, three received requests for the maximum additional 12 months' unpaid parental leave, one had received a request for an additional 12 months and an additional three months (two separate requests), and two employer participants had received requests for between three and six months' additional unpaid parental leave.

One employer participant from the health sector observed that the change in legislation had resulted in more men requesting flexibility and extended unpaid parental leave. This employer also attributed the change to an increase of younger men in the workforce who have young families.

Men are requesting as well. In my area we don't have a lot of young men. We have older men who have established families. So we're just starting to get a lot of graduate young guys, and they're the ones who are asking. That's happening more, but only because of the age of the male nurses that I'm working with, we're starting to get a lot of younger grads come through. (*Female clinical nurse manager, health care and social assistance, QLD.*)⁹⁹

The employee participants in the qualitative study had similar experiences to the employer participants. Nine of the employee participants in the qualitative study had made requests for extended unpaid parental leave. More than half of the participants interviewed had requested with the knowledge of their rights under the NES, and in most instances, these participants had accessed this information through their workplace.¹⁰⁰

Of the employee participants in the qualitative study who were not aware that requesting an extension to unpaid parental leave was a legal right, one interviewee stated that this would have made him feel more confident in making the request.¹⁰¹ Another participant who was not aware of her legal entitlement indicated that she may have asked for a longer extension if she had known.¹⁰² Most participants approached their immediate supervisors in the first instance to 'informally' discuss the possibility of additional leave, and then followed up with a request in writing that was sent to Human Resources or senior management.

The duration of the requests made by employees in the qualitative study ranged from two weeks through to twelve months.¹⁰³

The main reasons provided by participants for requesting an extension to unpaid parental leave were spending more time with children, wanting to have more time without pressure of paid employment, and requiring time to prepare for a return to work. Availability of appropriate childcare was an issue for some participants.

⁹⁸ Skinner et al.

⁹⁹ Skinner et al.

¹⁰⁰ Skinner et al.

¹⁰¹ Skinner et al.

¹⁰² Skinner et al.

¹⁰³ Skinner et al.

Requested additional leave because of not being able] to get into day-care. Being my last baby I just wanted to spend more time at home. My plan is to stay home for the 18 month period and then get care after that. *(Female professional, additional six months' leave sought.)*¹⁰⁴

Other participants expressed a preference for not utilising childcare for very young infants, particularly under twelve months of age.

It felt like it was too early for us to be separated, for her [infant daughter] to go into care with a non-family member. I didn't feel like I was ready to juggle two roles, to be in the workforce as well as being a parent. *(Female professional, extra three months' leave.)*¹⁰⁵

I'm the one taking care of the children, and they are both too small [two children aged under 4 years] for both of us to go back [to work]. *(Male professional, additional six months' leave.)*¹⁰⁶

As with requests for flexible working arrangements, males tended to make requests for extended unpaid parental leave in order to assist their partner to transition back into the workforce.

6.2.3 Outcomes of requests for extensions to unpaid parental leave

The AWRS shows that almost 90 per cent of employers who had received a request for an extension to unpaid parental leave under s.76 granted the extension in the first instance (Table 6.5). Another 2 per cent of employers (reflecting employers who had received multiple s.76 requests) indicated that they approved *some* s.76 extensions.

Of the employers who rejected some or all initial requests, the data show that nearly fourth-fifths of these employers did not agree to any alternative arrangements (although such an estimate is of low statistical reliability).

Table 6.5: Employer responses to written requests, per cent of employers who had received requests under s.76

	Weighted proportion (%)
Employers initial response to s.76 request	
(All) request(s) granted	87.7
Some requests granted	2.4
No requests granted	np
Did the employer agree to any alternative arrangements with those employees whose initial request was refused?*	
Did not agree to an alternative arrangement with any employee	78.8

Note: *Comprises employers who granted some or no initial requests. All data are weighted using the enterprise weight.

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

¹⁰⁴ Skinner et al.

¹⁰⁵ Skinner et al.

¹⁰⁶ Skinner et al.

As the data from the AWRS study is limited with respect to the number of refusals for extended family leave, the qualitative data from the Centre for Work + Life study can provide additional information which, while not being statistical in nature, will shed light on how requests and refusals are dealt with.

The main reason for refusing to grant extended unpaid parental leave by participants in the AWRS study was operational reasons, however it must be noted that given the very small numbers of refusals it is difficult to place too much reliability upon the estimates. As with the AWRS study, the qualitative data is also limited in its ability to describe situations where an employer refused an application for extended unpaid parental leave.

Five of the six employers in the Centre for Work + Life study who had received a request for extended unpaid parental leave accepted the requests without negotiation or alterations. Only one employer reported refusing a request.¹⁰⁷

The employer participant who reported that a request to extend unpaid parental leave had been refused cited organisational staffing difficulties, but offered a part-time arrangement to the employee in lieu of the extended leave. The employer representative stated that in relation to this application:

One was not met, it wasn't my decision, it was a decision from higher up given we are going through some specific issues in our organisation at the moment in terms of employment. One request for additional time [extended unpaid leave] wasn't met, so an agreement was to come back part-time instead. (*Female HR consultant, professional, scientific and technical services, QLD.*)¹⁰⁸

On the employee side, the majority of the nine participants who made applications for extended unpaid parental leave received positive responses from their managers regarding their request. However, the researchers noted that the two male participants who made a request received negative responses and in one instance there was an initial rejection of the request. Such a perception, of course, is the result of the qualitative study, and is not necessarily representative of how such applications by males are treated generally.

Participants indicated that a good relationship with their immediate supervisors and the perception of being a 'good' employee were helpful in how their application was received by management. A supportive organisational culture in which a range of working arrangements were operating was also described as a factor assisting in a positive outcome for these requests.¹⁰⁹

The qualitative study outlined the following scenario in relation to the interviewee participant whose request was initially refused:

One participant who had his request rejected was a sole father in a professional role seeking an extension to his unpaid parental leave as his child had developed a serious illness during the initial period of unpaid parental leave. After he received official notification that his request for an additional six months' unpaid parental leave was rejected he advised that he would be offering his resignation.

¹⁰⁷ Skinner et al.

¹⁰⁸ Skinner et al.

¹⁰⁹ Skinner et al.

They [management] said they couldn't stretch to that length of time. So I basically said 'well you can accept my resignation then'. At that stage I had asked for six months' [leave].

In response, his manager took time to reconsider his request and after three weeks had passed he offered the participant an additional month of unpaid parental leave with a formal written offer. This offer came with the proviso that the participant's position may not be available when he returned from leave and that he may have to move to a different position. The participant made it very clear that he prioritised the care of his children over his work, and that he would have left the organisation if the leave was not approved, as his son needed 24-hour care at that time (his son subsequently recovered full health). As he explains below, a change of management ensured that he was able to retain his original position on return to work.

He [supervisor] did say that my position might not be open when I come back and I might have another position. I said I wasn't too fussed about that. My children come first.

[Interviewer: What happened when you went back to work, did they change your job?]

No, I went back basically to the same job. Both managers have changed. My manager and the state manager – so there is now new people in that position. They are lot more worker friendly They [new management] have actually put out a policy on such things like family leave and extended sick leave. *(Male professional, extra one month leave.)*¹¹⁰

The majority of participants indicated that they returned to the same role they had prior to leave, although two participants had not yet returned to work. The interaction between requests for unpaid parental leave and flexible working arrangements was also significant. Some participants had negotiated a return to work at reduced hours, one participant had requested this informally with her supervisor and another interviewee was hoping to submit a request for part-time work following his return to work.¹¹¹

6.3 Requests for extensions of unpaid parental leave since 1 July 2012 as reported by employees

Although a number of questions were included in the employee survey in the AWRS that were designed to obtain information on requests for extensions of parental leave, the actual numbers of formal applications made pursuant to s.76 were very small.

Results from the AWRS show that 7 per cent of employees in the sample (550 employees) have taken a period of parental leave since 1 July 2012. Of these employees, 11 per cent (or 62 employees) have taken a period of leave of exactly 12 months or more and are potentially eligible as s.76 respondents. However, most of these employees either did not request an extension of unpaid parental leave beyond 12 months or were already entitled to more than 12 months' parental leave. The sample size is further reduced when considering those employees who made their request verbally only.

Ultimately of the 7883 employee survey respondents, just nine employees made an application consistent with s.76 of the Act. This represents less than 2 per cent of employees who have taken a period of parental leave since 1 July 2012 and less than 1 per cent of all employees sampled.

¹¹⁰ Skinner et al.

¹¹¹ Skinner et al.

The small count of employees in the Employee Questionnaire who are considered to have made a s.76 request for the purposes of this report prevents any statistically reliable estimates being developed beyond that just described.

All nine employees who made a s.76 request in the AWRS employee sample were female. Seven of these employees were employed on a part-time basis. Two of these employees spoke a language other than English at home.

There were no s.76 requests submitted by young persons (under 25 years) or mature age persons (55 years and over) in the AWRS sample. All nine employees were aged between 25 and 44 years.

All of the employees bar one in the AWRS employee data set discussed their s.76 request with their employer prior to submitting it in writing. As a result of these discussions, two employees modified their written request.

Six of the nine employees in the AWRS employee dataset who had made a s.76 request did so out of the need or desire to stay at home with their child/children. Two of the employees indicated limited availability of childcare.

All eight employees in the AWRS employee data set whose s.76 request was ultimately successful reported that they were satisfied with the outcome. In the one instance where an employee's s.76 request was not successful, the employee indicated that they were dissatisfied with the outcome.