



Fair Work  
Commission

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

---

2021-2024

Murray Furlong, General Manager

November 2024



Fair Work  
Commission

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

ISBN 978-0-6453597-9-4

© Commonwealth of Australia 2024

This work is copyright. You may download, display, print and reproduce this material in unaltered form only for your personal, non-commercial use or use within your organisation, or for any other use permitted under the *Copyright Act 1968*. Content from this document must be attributed as “© Commonwealth of Australia (Fair Work Commission) 2024”. All other rights are reserved. Requests and inquiries concerning reproduction and rights should be directed to [enquiries@fwc.gov.au](mailto:enquiries@fwc.gov.au). To the extent that copyright subsists in a third party, permission will be required from the third party to reuse the material.



# Table of contents

---

|   |    |
|---|----|
| Executive summary .....   | 8  |
| 1. Introduction.....  | 11 |
| 1.1 Report structure .....  | 12 |
| 2. Legislative overview .....   | 13 |
| 2.1 Legislative developments.....   | 13 |
| 2.1.1 <i>Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022</i> .....                                   | 14 |
| 2.1.2 <i>Fair Work Amendment (Secure Jobs, Better Pay) Act 2022</i> .....   | 15 |
| 2.2 Operation of the NES provisions relating to requests for flexible working arrangements under section 65(1).....         | 18 |
| 2.2.1 Eligibility and making a request.....   | 18 |
| 2.2.2 Responding to request.....  | 19 |
| 2.2.3 Disputes about requests for flexible working arrangements.....  | 20 |
| 2.3 Operation of the NES provisions relating to requests for extensions of unpaid parental leave under sections 76–76C..... | 21 |
| 2.3.1 Eligibility and making a request.....   | 21 |
| 2.3.2 Responding to a request.....  | 22 |
| 2.3.3 Disputes about extensions of unpaid parental leave .....  | 24 |
| 2.5 Disputes.....   | 24 |
| 2.5.1 Number of dispute applications lodged with the Commission.....  | 24 |



Fair Work  
Commission

|   |    |
|---|----|
| 2.5.2 Decisions in disputes brought to the Commission under section 65B ..... | 29 |
| 2.5.4 Decisions in disputes brought to the Commission under section 76B ..... | 31 |
| 3. Research approach .....  | 32 |
| 3.1 Research methodology.....   | 32 |
| 4. Findings .....   | 36 |
| 4.1 Section 65 requests for flexible working arrangements.....                | 36 |
| 4.1.1 Who makes requests and the reasons for making requests .....            | 36 |
| 4.1.2 Types of flexibilities requested .....                                  | 40 |
| 4.1.3 Granting and refusing requests.....                                     | 43 |
| 4.1.4 Applications to the Commission .....                                    | 47 |
| 4.1.5 Impact of legislative changes.....                                      | 48 |
| 4.2 Section 76 requests for an extension of unpaid parental leave.....        | 49 |
| 4.2.1 Who makes requests.....   | 50 |
| 4.2.2 Granting and refusing requests.....                                     | 51 |
| 4.2.3 Impact of legislative changes.....                                      | 53 |



# List of tables and charts

---

|   |    |
|---|----|
| Table 1: Number of applications under the Fair Work Act to deal with disputes in relation to flexible working arrangements and disputes in relation to extensions of unpaid parental leave.....   | 25 |
| Chart 1: Number of applications under the Fair Work Act to deal with disputes in relation to flexible working arrangements and disputes in relation to extensions of unpaid parental leave, by type of applicant, 1 July 2021–30 June 2024..... | 26 |
| Table 2: Number of applications under the Fair Work Act to deal with disputes in relation to flexible working arrangements and disputes in relation to extensions of unpaid parental leave, by industry, 1 July 2021–30 June 2024.....          | 27 |
| Table 3: Categories of online survey respondents.....   | 33 |
| Table 4: Industry of online survey participants.....  | 34 |
| Table 5: Have you had any direct experience with the implementation of formal requests (i.e. in writing) for flexible working arrangements (section 65) during the reporting period?.....   | 36 |
| Table 6: Most common category of employees formally requesting flexible working arrangements..  | 37 |
| Table 7: During the reference period, are you aware of employees from the following groups making formal requests (i.e. in writing) for flexible working arrangements (section 65)?.....  | 38 |
| Table 8: Types of flexible working arrangements formally requested.....   | 41 |
| Table 9: Have you observed any formal requests for flexible working arrangements being refused during the reference period?.....  | 43 |
| Table 10: Types of flexible working arrangements that you have observed being refused.....  | 44 |
| Table 11: Reasonable business grounds given for a refusal of a request for flexible working arrangements.....   | 45 |
| Table 12: Have any formal requests for flexible working arrangements (section 65) been granted in part, after negotiation between the employer and the employee?.....   | 47 |



Fair Work  
Commission

|   |    |
|---|----|
| Table 13: In your experience, have any employees applied to the Fair Work Commission for review following any refusals of requests or failure to follow procedure under section 65 of the NES?..... | 48 |
| Table 14: In your experience, have any employees applied to the Fair Work Commission for review following flexible working arrangements (section 65) that have been granted in part?.....           | 48 |
| Table 15: Have you had any direct experience with the implementation of formal requests to extend unpaid parental leave during the period 26 May 2021 to 25 May 2024?.....                          | 50 |
| Table 16: During the reference period, are you aware of employees from the following groups making formal requests (i.e., in writing) for an extension of unpaid parental leave?.....               | 51 |
| Table 17: Reasonable business grounds given for a refusal of a formal request for an extension of parental leave.....   | 52 |



Fair Work  
Commission

# List of abbreviations

---

|   |  |
|---|--|
| 2021 report                                 | General Manager's 2021 report into the operation of the provisions of the NES relating to employee requests for flexible working arrangements and extensions of unpaid parental leave under section 653 of the <i>Fair Work Act 2009</i> (Cth) |
| Commission                                  | Fair Work Commission   |
| E   | Officer or employee of an employer association   |
| Fair Work Act                               | <i>Fair Work Act 2009</i> (Cth)  |
| HR/ER                                       | Human Resources/Employee Relations   |
| IFA   | individual flexibility arrangement   |
| LE  | Legal professionals who deal with employers  |
| LW  | Legal professionals who deal with employees  |
| M   | HR/ER/line manager   |
| NES   | National Employment Standards  |
| NESB  | Non-English speaking background  |
| Paid Family and Domestic Violence Leave Act | <i>Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022</i>  |
| Secure Jobs Better Pay Act                  | <i>Fair Work Amendment (Secure Jobs, Better Pay) Act 2022</i> (Cth)  |
| U   | Officer or employee of a union (or peak council)   |



Fair Work  
Commission

# Executive summary

---

Under section 653 of the *Fair Work Act 2009* (Fair Work Act), every 3 years the General Manager of the Fair Work Commission (Commission) is required to conduct research into the operation of the National Employment Standards (NES) relating to employee requests for flexible working arrangements and extensions of unpaid parental leave. The General Manager must also 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.

This report presents findings for the reporting period 26 May 2021 to 25 May 2024. Under section 653(3) this report is due to the Minister within 6 months after the end of the reporting period (by 25 November 2024).

Research into these provisions was undertaken by The University of Sydney. Commissioned research is required because employee requests under these NES provisions are not centrally registered with the Commission or any other body. The research uses a similar approach to the General Manager's report 2018–2021 reporting period<sup>1</sup> into the operation of these NES provisions, by obtaining information from stakeholders with knowledge of and experience with these provisions, using both quantitative and qualitative methods.

This report also includes an overview of legislative developments that occurred during the reporting period.

This report is the fifth report on these NES provisions under the *Fair Work Act 2009* by a General Manager of the Commission since the reporting requirements commenced in 2009. While the research methods have changed over the course of the 5 reports, the broad findings in this report largely repeat those in the 2021 and prior reports. In particular:

---

<sup>1</sup> Furlong M (2021), *General Manager's report into individual flexibility arrangements under section 653 of the Fair Work Act 2009: 2018–2021*, November.





- common requests for flexible working arrangements were for changes to start/finish times and a reduction in work hours, with the main reason being to care for a child or children
- requests for flexible working arrangements were more likely to be made by women and most were granted, and
- requests for extensions of unpaid parental leave were limited and mostly made by women, with most requests granted.

### **Key findings based on observations from the research:**

#### ***Requests for flexible working arrangements***

- Parents caring for a child of school age or younger were the most common category of employees making requests for flexible working arrangements. However, parents returning from parental leave could often access flexible work arrangements through workplace policies, outside the NES.
- Requests for flexible working arrangements were more commonly made by women and by full-time employees.
- The most common requests were for changes to when work is performed and changing the location to a work from home/hybrid arrangement.
- There was an increase in requests to work from home after employers encouraged workers to return to the office following the COVID-19 pandemic.
- Generally, requests were granted and often were granted in full. Some interviewees reported that the legislative changes requiring an employer to explain why a request was refused had led to further discussions and at times to an alternative 'compromise' request being granted.
- There were some observations that the number of requests had increased during the reporting period, although it was uncertain whether this was due to the legislative changes or in response to directions from employers to return to the office.



Fair Work  
Commission

### **Requests for extensions of unpaid parental leave**

- Requests for extensions of unpaid parental leave were rare and only made when the employee could not access childcare arrangements or when there was a unique family circumstance.
- There was a preference to return to work given the current cost of living pressures and associated financial stress rather than seek further unpaid parental leave.
- The majority of requests were made by women.
- Requests were typically granted and refusals were rare, and it was not an area of significant disputation.
- Some interviewees did not notice a change in the number of requests as a result of the legislative changes, while others observed that the changes could have an impact in the future.

### **Key legislative changes during the reporting period:**

- *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)*
- *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)*



Fair Work  
Commission

# 1. Introduction

The Fair Work Commission (Commission) is the national workplace relations tribunal and is established by the *Fair Work Act 2009* (Fair Work Act). The Commission is comprised of Members who are appointed by the Governor-General under statute, headed by a President. The President is assisted by a General Manager, also a statutory appointee, who oversees the administration of Commission staff. The General Manager also has regulatory powers and functions under the *Fair Work (Registered Organisations) Act 2009* (Cth).

Under section 653(1) of the Fair Work Act, every 3 years the General Manager of the Commission must:

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

The General Manager must also 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.

This report presents findings for the period 26 May 2021 to 25 May 2024 on matters relating to the NES, including findings from research conducted on the operation of the provisions of the NES relating to employee requests.

Specifically, this report responds to the requirements in sections 653(1)(c) and 635(1)(d), that the General Manager must conduct research into the operation of the provisions of the NES relating to:

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



Fair Work  
Commission

In conducting this research the General Manager must 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
- from a non-English speaking background
- mature age persons
- young persons, and
- any other persons prescribed by the regulations.

No other persons are presently prescribed.

A written report of the research must be provided to the Minister within 6 months after the end of each reporting period. This report is due to the Minister by 25 November 2024.

## 1.1 Report structure

This report is structured as follows:

- Section 2 is an overview of the relevant NES provisions, including changes to the provisions made during the reporting period, and data and significant decisions on disputes under these provisions.
- Section 3 discusses the research methodology for the collection of data to meet the research requirements under sections 653(1)(c) and 653(1)(d) of the Fair Work Act.
- Section 4 presents the findings from the research.



## 2. Legislative overview

The right to request flexible working arrangements and the right to request extensions of unpaid parental leave are included in the NES in Part 2-2 of the Fair Work Act. The NES are 'minimum standards that apply to the employment of employees which cannot be displaced'.<sup>2</sup>

Sections 65-66 of the Fair Work Act govern requests for flexible working arrangements. Sections 76-76C of the Fair Work Act govern requests for extensions of unpaid parental leave of up to 12 months.

### 2.1 Legislative developments

This part of the report presents an overview of amendments made during the 26 May 2021 to 25 May 2024 reporting period to the provisions of the Fair Work Act governing:

- requests for flexible working arrangements
- requests for extensions of unpaid parental leave, and
- other provisions of the Fair Work Act relevant to such requests.

This part of the report also outlines consequential changes made by the Commission to modern award terms dealing with flexible working arrangements and parental leave. An overview of prior legislative developments relating to requests for flexible working arrangements and extensions of unpaid parental leave can be found in previous reports of the General Manager.<sup>3</sup>

---

<sup>2</sup> Fair Work Act, section 61.

<sup>3</sup> See O'Neill B (2012), *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; O'Neill B (2015), *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 section 653 of the Fair Work Act 2009 (Cth): 2012-2015*, Fair Work Commission, November; O'Neill B (2018), *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 section 653 of the Fair Work Act 2009 (Cth): 2015-2018*, Fair Work Commission, November.



Fair Work  
Commission

### 2.1.1 Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)

One of the circumstances in which an employee may request a change in working arrangements under section 65(1) of the Fair Work Act is where the employee is experiencing family and domestic violence or provides care or support to a member of the employee's immediate family or household who requires care and support because they are experiencing family and domestic violence.<sup>4</sup>

While the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022 (Cth)* (Paid Family and Domestic Violence Leave Act) did not amend the NES provisions governing requests for flexible working arrangements, it potentially affected the usage of section 65(1) by introducing an entitlement to paid family and domestic violence leave into the NES.

The development of an entitlement to family and domestic violence leave under modern awards and the NES is outlined in previous reports of the General Manager. As noted in the General Manager's 2021 report into the operation of the provisions of the NES relating to employee requests for flexible working arrangements and extensions of unpaid parental leave under section 653 of the *Fair Work Act 2009*<sup>5</sup> (2021 report), in August 2018 the Commission introduced a modern award entitlement of up to 5 days' unpaid leave for employees dealing with family and domestic violence.<sup>6</sup> In December 2018, the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018 (Cth)* amended the Fair Work Act to include an entitlement to unpaid family and domestic violence leave in the NES. The Commission subsequently replaced the modern award entitlement with a reference to the NES entitlement.<sup>7</sup>

In April 2021, the Commission commenced a review of family and domestic violence leave entitlements<sup>8</sup> and on 16 May 2022 the Commission expressed a provisional view that an entitlement

---

<sup>4</sup> Fair Work Act, sections 65(1A)(e) and 65(1A)(f).

<sup>5</sup> Furlong M (2021), *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 section 653 of the Fair Work Act 2009: 2018-2021*, Fair Work Commission, November, p. 5.

<sup>6</sup> [2018] FWCFB 3936.

<sup>7</sup> See [2019] FWCFB 5144 at [13] and [2022] FWCFB 57.

<sup>8</sup> [2021] FWCFB 2047 and *Family and domestic violence leave review 2021* (AM2021/55).



Fair Work  
Commission

of up to 10 days' paid family and domestic violence leave should be introduced into modern awards.<sup>9</sup> When the Fair Work Amendment (Paid Family and Domestic Violence Leave) Bill 2022 (Cth) was introduced to Parliament in August 2022, the Commission paused its review of family and domestic violence leave entitlements.

Amongst other amendments to the Fair Work Act, the Paid Family and Domestic Violence Leave Act amended the personal/carer's leave provisions of the NES with effect from 1 February 2023 to:

- provide full-time, part-time and casual employees with an entitlement of up to 10 days' paid family and domestic violence leave in a 12-month period (replacing the previous entitlement to 5 days' unpaid leave),<sup>10</sup> and
- extend the definition of 'family and domestic violence' in section 106B for the purposes of the new leave entitlement, to include conduct of 'a member of an employee's household, or a current or former intimate partner of an employee'.<sup>11</sup>

Following passage of the Paid Family and Domestic Violence Leave Act, the Commission varied the references in modern awards to the NES family and domestic violence leave entitlement, to ensure they reflected the new paid leave entitlement.<sup>12</sup>

### **2.1.2 Fair Work Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)**

The *Fair Work Amendment (Secure Jobs, Better Pay) Act 2022 (Cth)* (Secure Jobs Better Pay Act) amended the NES provisions governing requests for flexible working arrangements and requests for extensions of unpaid parental leave, with effect from 6 June 2023.

Key changes to the NES provisions in the Fair Work Act governing requests under section 65(1) for flexible working arrangements, were:

- Expanding the circumstances in which employees may make a request for flexible working arrangements as set out in section 65(1A) to include where:

---

<sup>9</sup> [\[2022\] FWCFB 2001](#).

<sup>10</sup> Paid Family and Domestic Violence Leave Act, Schedule 1, items 1–16, 19 and 20–21.

<sup>11</sup> Paid Family and Domestic Violence Leave Act, Schedule 1, item 18.

<sup>12</sup> [\[2023\] FWCFB 39](#).



- the employee is pregnant<sup>13</sup>
  - the employee is experiencing ‘family or domestic violence’ as defined in section 106B— which encompasses certain violent, threatening or other abusive behaviour by a close relative, a member of the employee’s household or a current or former intimate partner (rather than just violence from a member of the employee’s family, as previously),<sup>14</sup> and
  - the employee is providing care or support to a member of the employee’s immediate family or household who requires care and support because they are experiencing ‘family and domestic violence’ as defined in section 106B (rather than violence from the member’s family, as previously).<sup>15</sup>
- New section 65A which provides a more detailed procedure for how employers must consider, discuss and respond to requests for flexible working arrangements.<sup>16</sup> This section is based on the model family and domestic violence leave term the Commission inserted into modern awards during the 4-yearly review of modern awards.<sup>17</sup>
  - Amended sections 44 and 739 to provide an avenue for employees to challenge refusal of a request that is said to be for ‘reasonable business grounds’, under dispute resolution terms and in the courts.<sup>18</sup>
  - New sections 65B and 65C which provide for the Commission to deal with a dispute about an employer’s failure to respond to a request or refusal of a request (including a refusal said to be for reasonable business grounds), including by arbitration.<sup>19</sup>

Key changes to the NES provisions in the Fair Work Act governing requests under section 76(1) for extensions of unpaid parental leave were:

---

<sup>13</sup> Secure Jobs, Better Pay Act, Schedule 1, item 469A.

<sup>14</sup> Secure Jobs, Better Pay Act, Schedule 1, item 446.

<sup>15</sup> Secure Jobs, Better Pay Act, Schedule 1, items 447.

<sup>16</sup> Secure Jobs, Better Pay Act, Schedule 1, item 459.

<sup>17</sup> [Revised Explanatory Memorandum](#), Fair Work Amendment (Secure Jobs, Better Pay) Bill 2022, [618].

<sup>18</sup> Secure Jobs, Better Pay Act, Schedule 1, items 460–462, 464, 465 and 469.

<sup>19</sup> Secure Jobs, Better Pay Act, Schedule 1, items 463 and 466.





- New section 76A which provides a more detailed procedure for how employers must consider, discuss and respond to requests for extensions of unpaid parental leave.<sup>20</sup> This adapts the wording of new section 65A (see above) to requests for extensions of unpaid parental leave.
- Amended sections 44 and 739 to provide an avenue for employees to challenge refusal of a request that is said to be for reasonable business grounds, under dispute resolution terms and in the courts.<sup>21</sup>
- New sections 76B and 76C which provide for the Commission to deal with a dispute about an employer's failure to respond to a request or refusal of a request, including by arbitration and refusals said to be for reasonable business grounds.<sup>22</sup>

On 30 June 2023, the Commission decided to vary modern awards to deal with the interaction between the changes to the Fair Work Act made by the Secure Jobs Better Pay Act and modern award terms concerning requests for flexible working arrangements and unpaid parental leave. The modern award variations were to:

- replace the award model flexible work term with a reference to the NES provisions governing requests for flexible working arrangements and insert a note referring to the new dispute resolution jurisdiction under section 65B of the Fair Work Act
- insert into award parental leave terms a note referring to the new dispute resolution jurisdiction under section 76B of the Fair Work Act, and
- insert into award dispute resolution terms a note calling attention to the new dispute resolution provisions at sections 65B and 76B of the Fair Work Act.<sup>23</sup>

---

<sup>20</sup> Secure Jobs, Better Pay Act, Schedule 1, item 659G.

<sup>21</sup> Secure Jobs, Better Pay Act, Schedule 1, items 659H–659K, 659M and 659Y–659Z.

<sup>22</sup> Secure Jobs, Better Pay Act, Schedule 1, items 659L and 659Q.

<sup>23</sup> [\[2023\] FWCFB 107](#) at [2]–[7]. See further the consequential variation of the modern award model TOIL term at [13].



## 2.2 Operation of the NES provisions relating to requests for flexible working arrangements under section 65(1)

### 2.2.1 Eligibility and making a request

Section 65 of the Fair Work Act prescribes eligibility to make requests for flexible working arrangements and how requests are to be made. A 'national system employee'<sup>24</sup> is entitled to make a request under section 65(1) if the employee:

- has completed at least 12 months of continuous service with the employer immediately before making the request, or
- is a regular casual employee of the employer immediately before making the request, who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months and has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.<sup>25</sup>

An employee may request a change in working arrangements if any of the circumstances in section 65(1A) apply to them and they would like to change their working arrangements because of those circumstances.<sup>26</sup> The circumstances in section 65(1A) are that the employee:

- is pregnant
- 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* (Cth))
- has a disability
- is 55 or older
- is experiencing family and domestic violence,<sup>27</sup> or

---

<sup>24</sup> See sections 60 and 13 of the Fair Work Act.

<sup>25</sup> Fair Work Act, section 65(2). Also see definition of 'regular casual employee' in section 12.

<sup>26</sup> Fair Work Act, section 65(1).

<sup>27</sup> 'Family and domestic violence' is defined in section 106B of the Fair Work Act.



- 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 family and domestic violence.<sup>28</sup>

The request must be made to the employer in writing and must set out the details of the change sought and the reasons for the change.<sup>29</sup>

## 2.2.2 Responding to request

Section 65A of the Fair Work Act sets out an employer's obligations to consider, discuss and respond to a request for flexible working arrangements made under section 65(1). The employer must provide a written response to a request under section 65(1) within 21 days. The response must:

- state that the employer grants the request
- if following discussion between the employer and employee, changes to the employee's working arrangements that differ from those requested were agreed, set out the agreed changes, or
- state that the request is refused and include details of the reason for the refusal and the other matters prescribed in section 65A(6).<sup>30</sup>

The employer may refuse a request only if:

- the employer has discussed the request with the employee and has genuinely tried to reach an agreement about changes to the employee's working arrangements to accommodate the employee's circumstances
- the employer and employee have not reached agreement
- the employer has had regard to the consequences of the refusal for the employee, and
- the refusal is on reasonable business grounds.<sup>31</sup>

---

<sup>28</sup> Fair Work Act, section 65(1A).

<sup>29</sup> Fair Work Act, section 65(3).

<sup>30</sup> Fair Work Act, section 65A(2).

<sup>31</sup> Fair Work Act, section 65A(3).



Fair Work  
Commission

Section 65A(5) provides that 'reasonable business grounds' include that:

- the new working arrangements requested would be too costly for the employer
- there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested
- it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested
- the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity
- the new working arrangements requested would be likely to have a significant negative impact on customer service.<sup>32</sup>

An employer that contravenes these provisions is liable to a civil remedy, including imposition of a monetary penalty.<sup>33</sup>

### 2.2.3 Disputes about requests for flexible working arrangements

Section 65B of the Fair Work Act sets out the process for dealing with a dispute relating to a request under section 65(1) for flexible working arrangements, where the employer has refused the request or the employer has not given a written response within 21 days.<sup>34</sup>

---

<sup>32</sup> The note under section 65A(5) states that: 'The specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for the purposes of paragraph (3)(d) and subsection (4) [i.e. sections 65A(3)(d) and 65(4)—which provide for refusal on reasonable business grounds]. For example, if the employer has only a small number of employees, there may be no capacity to change the working arrangements of other employees to accommodate the request (see paragraph (5)(b) [i.e. section 65A(5)(b)]).'

<sup>33</sup> Fair Work Act, section 44.

<sup>34</sup> Fair Work Act, section 65B(1).



Fair Work  
Commission

The parties to the dispute must first attempt to resolve the dispute by discussions at the workplace level. If the discussions do not resolve the dispute, a party may refer the dispute to the Commission.<sup>35</sup> There is no time limit for referring a dispute to the Commission.

The Commission must first deal with the dispute by means other than arbitration (such as mediation or conciliation) unless there are exceptional circumstances.<sup>36</sup> If the Commission is satisfied there is no reasonable prospect of the dispute being resolved without arbitrating, the Commission may arbitrate by making any of the orders set out in section 65C(1). In making an order, the Commission must take into account fairness between the employer and the employee.<sup>37</sup> A person that contravenes such an order is liable to a civil remedy, including imposition of a monetary penalty.<sup>38</sup>

A dispute may also be able to be dealt with under a dispute resolution term in a modern award, enterprise agreement, contract of employment or certain other instruments.<sup>39</sup>

## 2.3 Operation of the NES provisions relating to requests for extensions of unpaid parental leave under sections 76–76C

### 2.3.1 Eligibility and making a request

An employee<sup>40</sup> is entitled to unpaid parental leave under the Fair Work Act and to request an extension of unpaid parental leave if the employee:

- has completed 12 months of continuous service with the employer at the applicable date, or
- immediately before the applicable date, is a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period

---

<sup>35</sup> Fair Work Act, sections 65B(2) and 65B(3).

<sup>36</sup> Fair Work Act, section 65B(4)(a).

<sup>37</sup> Fair Work Act, sections 65B(4)(b), 65C(1), 65C(2) and 65C(3).

<sup>38</sup> Fair Work Act, section 65C(6).

<sup>39</sup> Fair Work Act, sections 738 and 739.

<sup>40</sup> See Fair Work Act sections 60 and 744.



of at least 12 months and (but for the birth or placement of a child) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.<sup>41</sup>

An employee who takes unpaid parental leave under section 71 of the Fair Work Act for their 'available parental leave period'<sup>42</sup> may make a request to their employer under section 76(1) for an extension of unpaid parental leave for a further period of up to 12 months immediately following the end of the available parental leave period.<sup>43</sup>

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.<sup>44</sup>

The request must be in writing and given to the employer at least 4 weeks before the end of the available parental leave period.<sup>45</sup>

### 2.3.2 Responding to a request

Section 76A of the Fair Work Act sets out an employer's obligations to consider, discuss and respond to a request to extend unpaid parental leave made under section 76(1).

The employer must provide a written response to a request under section 76(1) within 21 days. The response must:

- state that the employer grants the request
- set out the agreed extended period if, following discussion between the employer and employee, an extension for a period that differs from that requested is agreed upon, or
- state that the request is refused and include details of the reason for the refusal and the other matters prescribed in section 76A(6).<sup>46</sup>

---

<sup>41</sup> Fair Work Act, section 67. See section 67(3) for the applicable date.

<sup>42</sup> 12 months less any periods of leave as set out in section 75(2).

<sup>43</sup> Fair Work Act, section 76(1).

<sup>44</sup> Fair Work Act, section 76(7).

<sup>45</sup> Fair Work Act, section 76(2).

<sup>46</sup> Fair Work Act, section 76A(2).



The employer may refuse a request only if:

- the employer has discussed the request with the employee and has genuinely tried to reach an agreement about an extension of unpaid parental leave for the employee
- the employer and employee have not reached agreement
- the employer has had regard to the consequences of the refusal for the employee, and
- the refusal is on reasonable business grounds.<sup>47</sup>

Section 76A(5) provides that 'reasonable business grounds' include where:

- the extension of the period of unpaid parental leave requested by the employee would be too costly for the employer
- there is no capacity to change the working arrangements of other employees to accommodate the extension of the period of unpaid parental leave requested by the employee
- it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the extension of the period of unpaid parental leave requested by the employee
- the extension of the period of unpaid parental leave requested by the employee would be likely to result in a significant loss in efficiency or productivity, and
- the extension of the period of unpaid parental leave requested by the employee would be likely to have a significant negative impact on customer service.<sup>48</sup>

---

<sup>47</sup> Fair Work Act, section 76A(3).

<sup>48</sup> The note to s 76A(5) states that 'The specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for the purposes of paragraph (3)(d) and subsection (4) [i.e. sections 76A(3)(d) and 76A(4)—which provide for refusal on reasonable business grounds]. For example, if the employer has only a small number of employees, there may be no capacity to change the working arrangements of other employees to accommodate the request (see paragraph (5)(b) [i.e. section 76A(5)(b)]).'



Fair Work  
Commission

### 2.3.3 Disputes about extensions of unpaid parental leave

Section 76B of the Fair Work Act sets out the process for dealing with a dispute relating to a request under section 76(1) for an extension of unpaid parental leave, where the employer has refused the request or the employer has not given a written response within 21 days.<sup>49</sup>

The parties to the dispute must first attempt to resolve the dispute by discussions at the workplace level. If the discussions do not resolve the dispute, a party may refer the dispute to the Commission.<sup>50</sup> There is no time limit for referring a dispute to the Commission.

The Commission must first deal with the dispute by means other than arbitration (such as mediation or conciliation), unless there are exceptional circumstances.<sup>51</sup>

If the Commission is satisfied there is no reasonable prospect of the dispute being resolved without arbitrating, the Commission may arbitrate by making any of the orders set out in section 76C(1). In making an order, the Commission must take into account fairness between the employer and the employee.<sup>52</sup> A person that contravenes such an order is liable to a civil remedy, including imposition of a monetary penalty.<sup>53</sup>

A dispute may also be able to be dealt with under a dispute resolution term in a modern award, enterprise agreement, contract of employment or certain other instruments.<sup>54</sup>

## 2.4 Disputes

### 2.4.1 Number of dispute applications lodged with the Commission

Table 1 presents information from the Commission's administrative database. It shows that in the period 1 July 2021 to 30 June 2024, there were 112 applications lodged with the Commission under

---

<sup>49</sup> Fair Work Act, section 76B(1).

<sup>50</sup> Fair Work Act, sections 76B(2) and 76B(3).

<sup>51</sup> Fair Work Act, section 76B(4)(a).

<sup>52</sup> Fair Work Act, sections 76B(4)(b), 76C(1), 76C(2) and 76C(4).

<sup>53</sup> Fair Work Act, section 76C(7).

<sup>54</sup> Fair Work Act, sections 738 and 739.





section 739 of the Fair Work Act to deal with a dispute in relation to flexible working arrangements under a dispute resolution term. The number of applications declined across each year.

The provision for the Commission to deal with disputes about flexible working arrangements and disputes about extensions of unpaid parental leave under sections 65B and 76B of the Fair Work Act respectively, commenced on 6 June 2023.

Table 1 shows that there were 213 applications under section 65B for the period it was in operation. There were 84 applications from 6 June 2023 to the end of 2023 and 129 applications in the first 6 months of 2024.

Table 1 shows there were 7 applications under section 76B from 6 June 2023 to 30 June 2024.

**Table 1: Number of applications under the Fair Work Act to deal with disputes in relation to flexible working arrangements and disputes in relation to extensions of unpaid parental leave**

| Matter type  | 1 July 2021–<br>30 June 2022 | 1 July 2022–<br>30 June 2023 | 1 July 2023–<br>30 June 2024 | Total |
|--|------------------------------|------------------------------|------------------------------|-------|
| Section 739 - to deal with a dispute in relation to flexible working arrangements  | 47                           | 36                           | 29                           | 112   |
| Section 65B - to deal with a dispute about requests for flexible work arrangements | -                            | 6                            | 207                          | 213   |
| Section 76B - to deal with a dispute about extension of unpaid parental leave      | -                            | 1                            | 6                            | 7     |

Source: Fair Work Commission, *Annual Report 2021–22*; Fair Work Commission, *Annual Report 2022–23*; Fair Work Commission, *Annual Report 2023–24*.

Chart 1 shows the applicant type across each of the above matter types. As reported in the 2021 report in respect of 2018–2021 lodgements,<sup>55</sup> most applications during the 2021–2024 reporting period were lodged by individuals. Women were the majority of applicants for the Commission to deal with disputes about flexible working arrangements under section 65B and women comprised all of the

---

<sup>55</sup> Furlong M (2021), *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 section 653 of the Fair Work Act 2009: 2018–2021*, Fair Work Commission, November, p. 12.

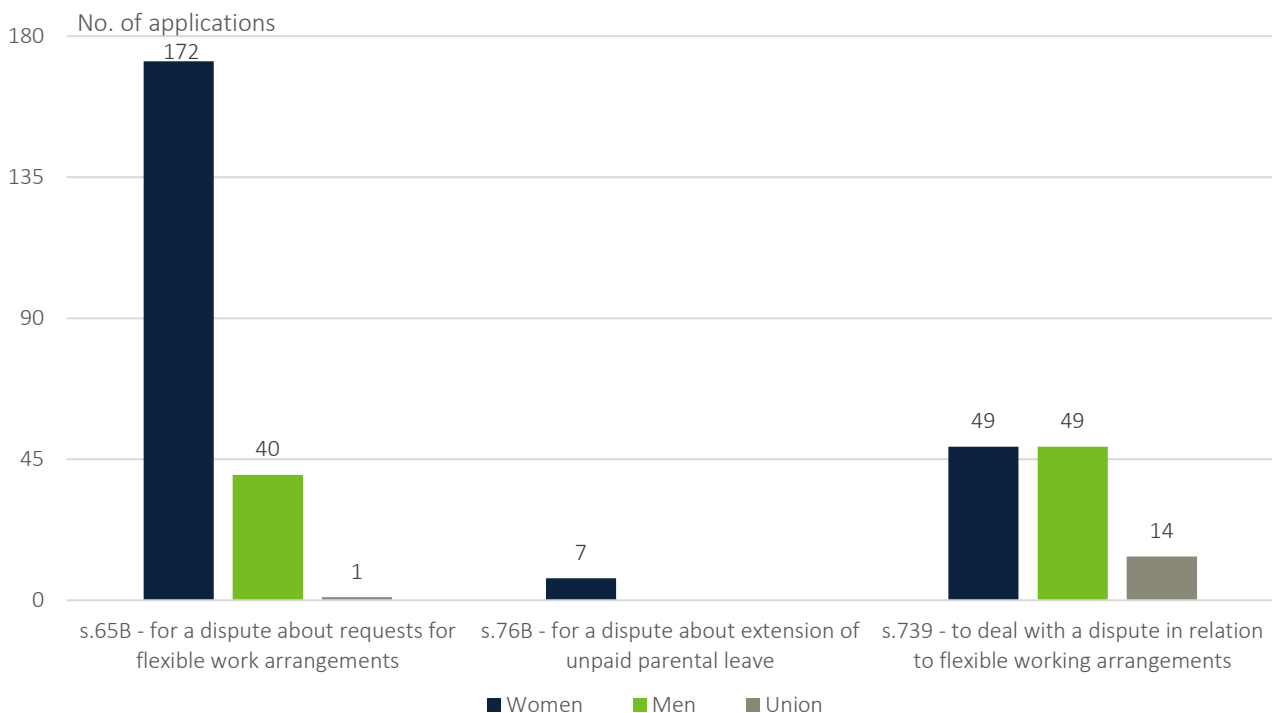


Fair Work  
Commission

applicants for the Commission to deal with disputes about extensions of unpaid parental leave under section 76B.

There was an equal number of women and men applicants for the Commission to deal with disputes about flexible working arrangements under section 739, while around one in 8 applications under section 739 were lodged by an employee organisation.

**Chart 1: Number of applications under the Fair Work Act to deal with disputes in relation to flexible working arrangements and disputes in relation to extensions of unpaid parental leave, by type of applicant, 1 July 2021–30 June 2024**



Source: Fair Work Commission

Table 2 shows the industry of employment of persons who made applications to the Commission to deal with a dispute in relation to a request for flexible working arrangements or a request for extension of unpaid parental leave.

The largest number of applications made under section 65B were in Health and welfare services (25), followed by Banking, finance and insurance industry (19) and Educational services (17). These industries accounted for almost 3 in 10 applications made under section 65B. The most applications



under section 739 were in State and Territory government administration (12) and Social, community, home care and disability services (11).

**Table 2: Number of applications under the Fair Work Act to deal with disputes in relation to flexible working arrangements and disputes in relation to extensions of unpaid parental leave, by industry, 1 July 2021–30 June 2024**

| Industry   | Section 65B | Section 76B | Section 739 |
|--|-------------|-------------|-------------|
| Aged care industry                                 | 9           | 1           | 2           |
| Agricultural industry                              | 1           | -           | -           |
| Airline operations                                 | 9           | -           | 4           |
| Airport operations                                 | 2           | -           | 1           |
| Aluminium industry                                 | -           | -           | 1           |
| Ambulance and patient transport                    | 2           | -           | 7           |
| Amusement, events and recreation industry          | 2           | -           | -           |
| Australian Capital Territory                       | 1           | -           | 2           |
| Banking, finance and insurance industry            | 19          | 1           | 2           |
| Broadcasting and recorded entertainment industry   | 2           | -           | -           |
| Building, metal and civil construction industries  | 4           | -           | 1           |
| Business equipment industry                        | -           | -           | 1           |
| Cemetery operations                                | -           | -           | 2           |
| Children's services                                | 2           | -           | 3           |
| Cleaning services                                  | 1           | -           | -           |
| Clerical industry                                  | 12          | -           | 4           |
| Clothing industry                                  | 1           | -           | -           |
| Commercial sales                                   | -           | -           | 2           |
| Commonwealth employment                            | 10          | -           | 6           |
| Contract call centre industry                      | 2           | -           | 2           |
| Corrections and detentions                         | 1           | -           | -           |
| Defence support                                    | 2           | -           | -           |
| Dry cleaning and laundry services                  | -           | -           | 1           |
| Educational services                               | 17          | -           | 5           |
| Electrical contracting industry                    | 1           | -           | -           |
| Electrical power industry                          | 1           | -           | -           |
| Fast food industry                                 | 1           | -           | 2           |
| Fire fighting services                             | 2           | -           | -           |
| Food, beverages and tobacco manufacturing industry | 2           | 1           | 2           |



| Industry   | Section 65B | Section 76B | Section 739 |
|--|-------------|-------------|-------------|
| Health and welfare services                          | 25          | 2           | 7           |
| Hospitality industry                                 | 4           | -           | 2           |
| Indigenous organisations and services                | -           | -           | 2           |
| Industries not otherwise assigned                    | 2           | -           | -           |
| Local government administration                      | 6           | -           | 1           |
| Manufacturing and associated industries              | 8           | -           | 5           |
| Maritime industry                                    | 1           | -           | -           |
| Market and business consultancy services             | 3           | -           | -           |
| Mining industry                                      | 6           | -           | 2           |
| Miscellaneous  | -           | -           | 1           |
| Oil and gas industry                                 | 1           | 1           | -           |
| Passenger vehicle transport (non rail) industry      | -           | -           | 1           |
| Port authorities                                     | 1           | -           | -           |
| Postal services                                      | 1           | -           | 1           |
| Publishing industry                                  | 1           | -           | -           |
| Racing industry                                      | 1           | -           | -           |
| Rail industry  | 3           | -           | 6           |
| Real estate industry                                 | 2           | -           | -           |
| Restaurants  | 1           | -           | -           |
| Retail industry                                      | 8           | 1           | 5           |
| Road transport industry                              | 1           | -           | 2           |
| Seafood processing                                   | 1           | -           | -           |
| Security services                                    | -           | -           | 1           |
| Social, community, home care and disability services | 14          | -           | 11          |
| State and Territory government administration        | 4           | -           | 12          |
| Storage services                                     | 5           | -           | -           |
| Technical services                                   | 5           | -           | -           |
| Telecommunications services                          | 1           | -           | 1           |
| Timber and paper products industry                   | 1           | -           | -           |
| Tourism industry                                     | 1           | -           | -           |
| Vehicle industry                                     | -           | -           | 2           |
| <b>Total</b>   | <b>213</b>  | <b>7</b>    | <b>112</b>  |

Source: Fair Work Commission

The following sections discuss decisions in disputes brought to the Commission under sections 65B and 76B.



Fair Work  
Commission

## 2.4.2 Decisions in disputes brought to the Commission under section 65B

As shown in Table 1, Commission administrative data show that, from 1 July 2021 to 30 June 2024, 213 disputes relating to requests for flexible working arrangements under section 65(1) of the Fair Work Act were brought to the Commission under section 65B. Three disputes were resolved during the reporting period by the Commission conducting a hearing and making orders. In all 3 cases, employees unsuccessfully disputed refusal of their request for flexible work arrangements. Two of these matters are discussed below. There were other disputes partly resolved by the Commission during the reporting period however these applications were withdrawn by the applicant.

### **Jordan Quirke v BSR Australia Ltd [2023] FWCFB 209**

In this case the applicant sought an order under section 65C of the Fair Work Act requiring the employer to grant the applicant's request for flexible working arrangements due to disability. Prior to making the request, the applicant had discussed changing her working hours with her manager and Human Resources staff. The applicant's evidence was that she had explained that the change in working hours was recommended by her doctor.

The applicant then made a written request, which referred to the doctor's recommendations but not to her disability.<sup>56</sup> This request was denied.<sup>57</sup> The applicant subsequently lodged an application under section 65B with the Commission. As this was the first application to the Commission of its type, a Full Bench was convened to hear the case.

The Full Bench set out the requirements for the Commission to have jurisdiction under section 65B to deal with a dispute. This requires that the dispute relate to a request under section 65A(1). The 6 requirements for a valid request under section 65A(1) are:

- at least one of the circumstances in section 65(1A) must apply to the employee at the time of the employee's request
- the employee's desire for changed working arrangements must be 'because of' the relevant circumstance, so that there is a nexus between the request and the relevant circumstance

---

<sup>56</sup> [2023] FWCFB 209 at [9] and [12].

<sup>57</sup> [2023] FWCFB 209 at [11].



- the employee must have completed the minimum period of service prescribed in section 65(2)
- the request must be in writing
- the written request must set out details of the change sought and reasons for the change, by identifying the relevant circumstance in section 65(1A) and explaining how the proposed change relates to that circumstance, and
- the request must be made on or after 6 June 2023.<sup>58</sup>

The Full Bench found several problems with the applicant's request. First, the applicant had not completed the minimum period of service at the time the request was made. Second, the written request did not identify the reasons for the change sought by reference to any of the circumstances in section 65(1A). Third, the request predated the 6 June 2023 commencement of section 65B. Accordingly, there was no valid request under section 65(1) and the Commission had no jurisdiction to deal with the dispute under section 65B.<sup>59</sup>

Despite this finding, the Full Bench considered whether the applicant established that she had a disability within the meaning of section 65(1A)(c). The Full Bench observed that 'disability' should be given its ordinary meaning rather than the definition in section 4 of the *Disability Discrimination Act 1992* (Cth) (as this definition was with respect to a different statutory scheme).<sup>60</sup> On the evidence before the Full Bench, it was difficult to conclude the applicant had a disability in the absence of clear evidence of a medical diagnosis.<sup>61</sup> The Full Bench dismissed the application.

### **Shane Gratton v Bendigo Bank [2024] FWC 717**

In this case, the employer required all employees to work in the office 2 days a week. The applicant made a request to work from home full time on the basis that he needed to assist his injured partner with recovery and provide care for a school-age child. This initial request was refused by the employer

---

<sup>58</sup> [2023] FWCFB 209 at [21]–[25] and [28].

<sup>59</sup> [2023] FWCFB 209 at [36] and [38].

<sup>60</sup> See further [2023] FWCFB 209 at [39]–[41].

<sup>61</sup> [2023] FWCFB 209 at [45].



Fair Work  
Commission

on business grounds and the applicant lodged an application under section 65B with the Commission. At a directions conference following unsuccessful conciliation, the applicant agreed to make a revised flexible working arrangement request. This was also rejected by the employer on what were contended to be reasonable business grounds.

The Commissioner considered the employer's contentions that the applicant's request did not meet the requirements for a request under section 65(1). In considering whether the applicant's request met the requirements under section 65(1A)(b)<sup>62</sup> the Commissioner found the applicant's registration with Carers SA was not itself determinative and that it was not possible to conclude he was a carer in the relevant sense. Further, there was insufficient evidence to establish that the applicant's partner's condition fell within the ordinary meaning of disability.<sup>63</sup> The applicant's request did satisfy section 65(1A)(a), as he was the parent of a child of school age or younger.<sup>64</sup>

The Commissioner observed that the employer had undertaken that insofar as there was a need for the applicant to provide care and support for his child on any given day, he would have access to carers leave and/or be permitted to work from home. The Commissioner accepted that there were benefits to the employer, the applicant and his colleagues from face-to-face interactions. The Commissioner observed that the 'employment relationship is a two-way street' and found the employer's refusal of the request to be soundly based on reasonable business grounds.<sup>65</sup>

#### **2.4.4 Decisions in disputes brought to the Commission under section 76B**

As shown in Table 1, Commission administrative data show that from 1 July 2021 to 30 June 2024, 7 disputes were brought to the Commission under section 76B of the Fair Work Act. None of these cases resulted in decisions during the reporting period, with 3 applications being withdrawn, 3 disputes resolved, and one case still in progress at the end of the reporting period.

---

<sup>62</sup> 'the employee is a carer (within the meaning of the *Carer Recognition Act 2010*)'.

<sup>63</sup> [\[2024\] FWC 717](#) at [43]–[49].

<sup>64</sup> [\[2024\] FWC 717](#) at [40].

<sup>65</sup> [\[2024\] FWC 717](#) at [40] and [50].



Fair Work  
Commission

## 3. Research approach

The General Manager is required to conduct research into the operation of the provisions of the NES relating to employee requests for flexible working arrangements and extensions of unpaid parental leave.

NES requests and/or their outcomes are not lodged with the Commission, or any agency. As such, no administrative data source exists from which to report on the operation of these provision. This creates difficulty in conducting research about provisions such as sections 65 and 76. Undertaking large cross-sectional surveys where the object is to obtain data relating to persons who had made requests for flexible working arrangements or extensions of unpaid parental leave has been difficult due to the very low numbers of respondents that have reported accessing either sections 65 or 76.<sup>66</sup>

### 3.1 Research methodology

The University of Sydney were commissioned to undertake research and provide insights during the reporting period relating to employee requests for flexible working arrangements and extensions of unpaid parental leave.

As with the research that informed the 2021 report, in order to obtain relevant and detailed information on the topics of interest, a mixed-methods approach was devised that comprised both quantitative and qualitative elements. To locate and extract information from those with detailed knowledge and expertise in flexible working arrangements arising from sections 65 and 76, a purposive sample method was used. The aim was to sample stakeholders from employer associations, unions, legal professionals representing major employers or employees, Human Resources/Employee Relations (HR/ER) and line managers in organisations, as well as state-based Working Women's Centres and relevant Community Legal Centres. While the results could not be considered to apply

---

<sup>66</sup> O'Neill B (2015), *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: 2012-2015*, Fair Work Commission, November, pp. 12-13; O'Neill B (2018), *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: 2015-2018*, Fair Work Commission, November, p. 3.





Fair Work  
Commission

more broadly to the Australian working environment, they would be based on the observations of those with knowledge and experience with industrial relations instruments.

This approach was devised given the consistent findings in previous reports that only a small proportion of the workforce have accessed these provisions. The research also examined the effects of the changes in legislation during the reporting period.

For the quantitative element, an online survey was conducted from 17 June 2024 to 31 July 2024 and survey respondents were directed to reflect on their experience with these NES provisions during the 26 May 2021 to 25 May 2024 reporting period. Survey participants were not required to respond to each question if they did not choose to, and if the question did not apply to the respondent the next set of questions in the section did not display for them. For some questions, participants could select more than one response.

Participants were invited to respond to the online survey through an email invitation and LinkedIn post distributed through Australian Labour and Employment Relations Associations (ALERA), as well as through social media alerts. There were 103 survey participants, with just over half representing employees (through their role as a union or legal professional) (Table 2).

**Table 3: Categories of online survey respondents**

| Role category  | Per cent (%) |
|--|--------------|
| I am an officer / industrial officer / organiser / lawyer / employee of a union (or peak council) [U]                            | 43           |
| I am a HR / ER manager (or similar) [M]  | 24           |
| I am an employer association officer / lawyer / employee of an employer association [E]  | 11           |
| I work for a Working Women's Centre, Community Legal Centre or a legal professional who advises and/or represents employees [LW] | 8            |
| I am a line manager [M]  | 4            |
| I am a legal professional who advises and/or represents employers [LE]   | 4            |
| Other  | 7            |

Note: There were 103 responses to this question. 'Other' included business owners, in-house counsel or employment lawyers and company directors.



Fair Work  
Commission

Survey respondents were found across a broad range of industries, with only 4 industries not being represented (Table 4).<sup>67</sup> Respondents most commonly worked closely with the following industries: Health care and social assistance (24 per cent); Financial and insurance services (16 per cent); Professional, scientific and technical services; and Administrative and support services (both 14 per cent). More than one in 5 (21 per cent) responded that they advise across a number of different industries.

**Table 4: Industry of online survey participants**

| Industry  | Per cent (%) |
|---|--------------|
| Health care and social assistance               | 24           |
| Financial and insurance services                | 16           |
| Professional, scientific and technical services | 14           |
| Administrative and support services             | 14           |
| Transport, postal and warehousing               | 13           |
| Education and training                          | 11           |
| Retail  | 9            |
| Public administration and safety                | 9            |
| Accommodation and food services                 | 7            |
| Electricity, gas, water and waste services      | 7            |
| Manufacturing                                   | 7            |
| Mining  | 6            |
| Construction                                    | 5            |
| Other services                                  | 3            |
| Agriculture, forestry and fishing               | 1            |
| Rental, hiring and real estate services         | 0            |
| Information media and telecommunications        | 0            |

<sup>67</sup> Industries were based on the Australian and New Zealand Standard Industrial Classification (ANZSIC).



Fair Work  
Commission

| Industry   | Per cent (%) |
|--|--------------|
| Arts and recreation services                     | 0            |
| Wholesale trade                                  | 0            |
| I advise across a number of different industries | 21           |

Note: There were 100 responses to this question. Participants could provide more than one response.

The quantitative survey was comprised of questions relating to 3 topics: IFAs, requests for flexible working arrangements and requests to extend unpaid parental leave. The results presented below are based on:

- 66 survey respondents who had been involved in the making of, or responding to, a formal (i.e., in writing) request for flexible working arrangements under the NES during the reference period.
- 32 survey respondents who had been involved in the making of, or responding to, a formal (i.e., in writing) request to extend unpaid parental leave during the reference period.

As part of the qualitative element, the research team interviewed 23 participants who self-selected to participate in an in-depth interview via Zoom.<sup>68</sup> The interview questions were related to the topics from the online survey and the interview lasted for around an hour. Interviewees were asked to reflect on their experience with NES provisions during the 26 May 2021 to 25 May 2024 reporting period. Approximately half of the interviewees represented or dealt with employees and around half with employers. While the largest group of interviewees worked in New South Wales, interviews were also held with participants from Victoria, the Australian Capital Territory, Queensland, South Australia and Western Australia.

The report provided to the Commission from The University of Sydney collated and summarised the findings and themes from the online survey and interviews. A summary of these findings and themes are presented in Section 4.

---

<sup>68</sup> Initially there were 26 self-selected participants, however 3 were unable to participate in an interview.



## 4. Findings

This section presents findings from the research by The University of Sydney. Many findings were consistent with those in the 2021 report, while some new aspects were discovered in this process, particularly in relation to changing circumstances following the COVID-19 pandemic and legislative changes.

Interviewee quotes presented in this section denote the role category of the interviewee as identified by the corresponding abbreviations provided in Table 3.

### 4.1 Section 65 requests for flexible working arrangements

The majority of survey respondents had been directly involved in the implementation of formal requests for flexible working arrangements (Table 5). However, interviewees from employers and employer associations observed that flexibilities commonly accessed by parents returning from parental leave were being facilitated by flexible workplace policies which provided entitlements above the NES, and therefore reduced the need of formal requests for flexible working arrangements under section 65.

**Table 5: Have you had any direct experience with the implementation of formal requests (i.e. in writing) for flexible working arrangements (section 65) during the reporting period?**

|     | Per cent (%) |
|-----|--------------|
| Yes | 78           |
| No  | 22           |

Note: There were 85 responses to this question.

#### 4.1.1 Who makes requests and the reasons for making requests

It was observed in both the online survey and interviews that the most common category of employees reported to be making requests for flexible working arrangements were parents caring for a child who is of school age or younger. Around 5 in 6 online survey respondents ranked this as the most



common category (Table 6). Employees who have a disability, who are pregnant or who are carers were much less likely to be found to have made requests.

**Table 6: Most common category of employees formally requesting flexible working arrangements**

|   | Per cent (%) |
|---|--------------|
| Employees who are parents, or carers, of a child who is school age or younger                     | 83           |
| Employees who have a disability   | 7            |
| Employees who are pregnant  | 7            |
| Employees who are carers (within the meaning of the <i>Carer Recognition Act 2010</i> )           | 4            |
| Employees who are aged 55 years or older  | 0            |
| Employees experiencing family and domestic violence   | 0            |
| Employees who are providing care or support for someone experiencing family and domestic violence | 0            |

Note: There were 46 responses to this question. Survey participants were asked to rank from 1 to 7 the categories of employees that they have observed to be the most common. The table presents the percentage of response that ranked the type of employees as the most common. Sum may not add to 100 due to rounding.

All interviewees observed parents caring for a child who is of school age or younger as the most common category of employees formally requesting flexible working arrangements. The next most common circumstance was employees who are carers, while requests from employees who were pregnant or experiencing, or supporting someone experiencing, family and domestic violence were reported to be rare.

Similar to the 2021 report, requests from parents were reported to be generally made when returning from parental leave or for managing school-age children. However, some parents returning to work were facilitated by workplace policies that provided entitlements above the NES and therefore did not need a flexible working arrangement. Other circumstances for requesting flexible working arrangements were reported to be caring for those with disability, elderly parents or someone with a chronic illness. Some employer interviewees noticed an increase in requests to work from home due to disability and mental health reasons during the reporting period.



Fair Work  
Commission

*There's been an uptick in request[s] to work remotely due to an immunocompromised disability and or mental disability. There are a lot more flexible work requests that are coming in with support of medical certificates than they used to be. (M)*

### Requests and the reasons for making requests by designated groups

According to the online survey, a higher proportion of respondents were aware of requests made by women than men (Table 7). This is consistent with the 2021 report. Part-time employees, mature-aged persons and salaried workers were also relatively common types of workers that respondents were aware had made requests.

**Table 7: During the reference period, are you aware of employees from the following groups making formal requests (i.e. in writing) for flexible working arrangements (section 65)?**

|  | Per cent (%) |
|--|--------------|
| Women  | 95           |
| Men  | 64           |
| Non-binary persons                             | 13           |
| Part-time employees                            | 64           |
| Persons from a non-English speaking background | 34           |
| Mature aged persons (aged 45+ years)*          | 57           |
| Young persons (aged under 18 years)*           | 8            |
| Shift workers                                  | 28           |
| Salaried workers                               | 57           |

Note: There were 61 responses to this question. Participants could select more than one response. \* The Fair Work Act does not define a mature age or young person, and these age categories were asked during the online survey.

Among the interviewees, it was also observed that more women made formal requests for flexible working arrangements. Interviewees remarked that women sought flexible working arrangements for all types of reproductive health matters and natural life events, from pregnancy to menopause. Interviewees noted that stereotypes around caring responsibilities may be a reason, while one interviewee commented that men were more likely to make an informal arrangement, another



Fair Work  
Commission

observed that men were more likely to have their requests refused. However, it was observed that a growing proportion of men had made requests during the reference period.

*Definitely more women, I'd say about 70/30 split. (M)*

*... there's probably a 65/35 distribution, 65% being women, the other being men. (U)*

*It's typically female. But I have noticed more men particularly in the last 3 years. Not a lot, but yes, more so than the previous 3 years. (E)*

*I think we've seen probably more men make requests more recently than what I've historically seen, but it's still proportionally more women. (M)*

Some employee representatives noted during interviews that women in low-paid work have difficulties making requests or negotiating outcomes in a challenging environment where power imbalances may exist, while others may not want to risk damaging the employment relationship.

When asked about their experience, based on an average of survey responses, it was found that 65 per cent of requests were thought to be made by full-time employees and 35 per cent by part-time employees. Interviewees also observed a higher proportion of requests from full-time employees.

*The majority of them are full-time employees. The majority of part-time workers already make their own arrangements around the hours. (M)*

Most survey respondents were not aware of formal requests by long-term casual employees, with only 8 per cent aware of requests made by these employees. Interviewees explained that casual employees noted that such arrangements were already sufficiently flexible.

Around one-third of survey respondents were aware of employees from a non-English speaking background (NESB) making formal requests for flexible working arrangements. Interviewees remarked that workers from a NESB may not be aware of, or ask about, the entitlement.

Mature age persons was also a common category referred to by all types of respondents, and many interviewees cited an increase in the number of requests from this age group. The most common reasons cited by interviewees for these workers to make a request was to support a transition to



Fair Work  
Commission

retirement, care for grandchildren, to engage in charity work or community involvement, and to manage difficulties or changes to their physical capacity due to ageing. For example:

*Sometimes it's a truncated working week or they've got a partner who's already retired, and they want to have a longer weekend or it's about their actual physical capacity to continue doing their job. (U)*

While requests were not commonly observed from young workers, some interviewees noted that they were increasing as younger workers wanted to support their wellbeing.

Few participants had experience with requests made by pregnant workers, given that it was only available recently. Some respondents remarked that the circumstances of pregnant workers could be accommodated informally or through other mechanisms that relate to their safety rather than improving flexibility.

Interviewees that received queries from workers experiencing or supporting a family member experiencing domestic violence noted that these were to do with entitlements rather than flexibility. Respondents reported that often the worker considered this circumstance as a private matter that they were unwilling to share, or they did not want to reduce their time at the workplace as it was considered to be a safe place. Employers and those from employer associations observed that these employees were supported informally.

#### **4.1.2 Types of flexibilities requested**

The most common requests for flexible working arrangements by employees according to the online survey were changing start times and finish times, reducing the number of days worked, changing to working from home/hybrid working, change in days worked and changing from full-time to part-time hours (Table 8).





**Table 8: Types of flexible working arrangements formally requested**

|   | Per cent (%) |
|---|--------------|
| Change in start times                           | 85           |
| Change in finish times                          | 81           |
| Reduction in number of days worked              | 76           |
| Change to work from home/hybrid working         | 73           |
| Change in days worked                           | 68           |
| Change from full-time to part-time              | 68           |
| Reduce hours                                    | 53           |
| Compressed work week                            | 47           |
| Change in location                              | 34           |
| Maintain consistent shifts/consistent rostering | 29           |
| Change in breaks                                | 19           |
| Change in averaging of hours                    | 10           |
| Other   | 3            |

Note: There were 59 responses to this question. Participants could select more than one response.

Changes related to when work is performed, i.e. changes to working hours, days worked and where work is performed, such as working from home, were also the most common types of flexibilities identified by interviewees.

*I'd say the most common circumstances we see sometimes fall into 2 categories. One is women who have existing part-time arrangements. But perhaps they're wanting to change the location or the start and finish times or how they're working and the second would be women who are coming back from parental leave who are wanting to move from full time to part time. (LW)*

*Change of location to work from home. The next one would be change to part-time working arrangements which is predominantly female, and changing hours of work,*



Fair Work  
Commission

*whether they change the hours of working each day. So, some looking to do drop off and pick up of kids, or to go to medical appointments, etc. (M)*

Other requests were related to consistency in rostering rather than obtaining flexibility. For example, a union official explained that:

*Our members seek rigidity as opposed to flexibility ... Due to our members having a rolling 24-hour, 7-day type roster, they usually tend to ask for a specific span of hours. (U)*

For employees who have rosters, requests were often limited due to the operations of the business.

*They tend to do either a 4pm start or a 9pm start on the weekends, so they've got the rigidity. So, the level of requests that come through from that cohort is ... a lot lower than that of the other members. (U)*

According to the in-depth interviews, full-time employees were predominately seeking to move to part-time hours to support caring responsibilities. This was also found in the 2021 report.

*It is probably most commonly the full-time employees ... because they're the ones that are asking for the truncated working weeks, or the reduced hours, or the altered starting and finishing times, because they're trying to balance all of their working hours around whatever else they've got going on in their lives. (U)*

The type of flexibility requested was often related to the nature of the work, particularly for those in customer-facing roles. Requests to work from home were very common when available, but in highly scheduled environments and customer interactive workplaces, requests related to working hours and rosters.

Most interviewees had experience with a request to work from home and noted an increase in requests following employers changing their work from home policies to encourage more employees to return to the office following the COVID-19 pandemic.

*Clients [employees] who have been working from home almost in many cases exclusively, and the directive has been to return to the office. And so, the requests have been about trying to either maintain that work from home status or improve the ratio of how much*



Fair Work  
Commission

*work gets done at home versus how much in the office that the employer might have fairly arbitrarily set. (LW)*

*I've seen a lot of issues with having to travel, if someone can work from home, especially for someone older and when you get older, you're in a different physical capacity. (E)*

Requests to reduce hours sometimes resulted in job-sharing arrangements. One interviewee observed the success of a job-share trial at an organisation that would not have previously considered such an arrangement to work.

*These were frontline male production workers where 4 of them, 2 pairs of 2 got together and said, 'Hey, wouldn't it be great if we could share a job, you do 19 h, I'll do 19 h [a week].' And basically, it was a plan for those 4 to transition to retirement. And ... from a business perspective, it actually really worked well, because we've gone from ... 4 full-time equivalent to 2 full-time equivalent, but with 4 of them. We were able to recruit for the 2 vacancies for the 2 full-timers, and then we had 4 individuals, all working 19 h each who had the ability to flex up the hours, to cover people away on leave, people on training. So, it actually was a great case study for us as an organisation around how something like that could work really well from a flexibility perspective. (M)*

### 4.1.3 Granting and refusing requests

The majority of online survey respondents were aware of formal requests for flexible working arrangements being refused during the reference period (Table 9).

**Table 9: Have you observed any formal requests for flexible working arrangements being refused during the reference period?**

|     | Per cent (%) |
|-----|--------------|
| Yes | 78           |
| No  | 22           |

Note: There were 59 responses to this question.



Fair Work  
Commission

On average, survey respondents suggested that just over half of requests were granted in full, based on their experience. However, interviewees generally remarked that most requests were granted, even if it required some novel considerations to accommodate the arrangement.

*It's difficult to say [the proportion of refusals] because we only see the people who don't get their requests granted who have problems. So, I'd be sort of guessing, but my feeling is that actually, in the vast majority of matters clients make a request, and it's accommodated, or there's a negotiation, and things are able to be resolved. There's only in a minority of matters where there's a blanket refusal. (LW)*

*The sky is high to accommodate different working arrangements. It just requires a little bit of thinking and good will (U)*

The most common types of requests that were observed to have been refused were a change to work from home/hybrid working, change in start/finish times and a reduction in the number of days worked (Table 10).

**Table 10: Types of flexible working arrangements that you have observed being refused**

|  | Per cent (%) |
|--|--------------|
| Change to work from home/hybrid working                      | 78           |
| Change in start times  | 65           |
| Change in finish times                                       | 65           |
| Reduction in number of days worked                           | 61           |
| Change in days worked  | 43           |
| Reduce hours   | 41           |
| Change from full-time to part-time                           | 35           |
| Maintain consistent shifts/consistent, predictable rostering | 33           |
| Compressed work week   | 33           |
| Change in location   | 26           |
| Change in shifts   | 26           |



Fair Work  
Commission

|                              | Per cent (%) |
|------------------------------|--------------|
| Change to breaks             | 11           |
| Change in averaging of hours | 11           |
| Increase hours               | 7            |
| Other                        | 2            |

Note: There were 46 responses to this question.

There were several common reasons provided for refusing requests based on 'reasonable business grounds', such as the impracticality of the arrangement or the negative impact it would have on customer service (Table 11).

**Table 11: Reasonable business grounds given for a refusal of a request for flexible working arrangements**

|   | Per cent (%) |
|---|--------------|
| It was considered 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 | 67           |
| There was no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee   | 64           |
| The new working arrangements requested by the employee were seen as likely to have a significant negative impact on customer service  | 64           |
| The new working arrangements requested by the employee were seen as likely to result in significant loss of efficiency or productivity  | 58           |
| The new working arrangements requested by the employee could not be accommodated within an existing shift work pattern  | 53           |
| The new working arrangements requested by the employee were seen as too costly for the employer   | 36           |
| The new working arrangements requested by the employee could not be accommodated because of COVID-19  | 4            |
| Other   | 18           |

Note: There were 45 responses to this question. Participants could select more than one response.



Fair Work  
Commission

Interviewees also highlighted that a reason for refusals was the employer being unable to arrange the work of other employees around the new working arrangements, particularly frontline or customer-facing roles.

*The refusals that we get for a reduction in hours, altering starting and finish times is that it would be too expensive to backfill, or it would be too much work for us to try and find somebody to fill in the hours that you're not going to work, or who's going to cover the 2 hours that you're not going to be there. (U)*

It was also observed in interviews that requests to work from home had been refused following the COVID-19 pandemic as more employees were required to return to the workplace.

*COVID brought about a lot of flexibility, and so we didn't have as many working from home related arrangements being referred to us for the purposes of advocacy. However, the shift post COVID has seen a greater number of people who are in a position to work from home being rejected, whether it be underpinned by Section 65 of the Fair Work Act or not, which has now led to a greater number of people getting in touch with us. (U)*

*Some refusals are because of – as an example, people have been working from home, and now we have mandated everyone has to be back in the office 4 days a week. People [employers] wish to retain the 3 days a week in the office – obviously as a business, you've communicated that policy decision, so there's a push to maintain that, and not see that diluted straight away through a large number of requests for flexible work. So, there's that friction that exists there between the business's direction versus the request for flexible working arrangements. (M)*

*Probably the most common one is the work from home and that's one that we get a lot of refusals about. We have a lot of difficulties in relation to that request as well, because, of course, we've had this arrangement of people working from home for a significant period of time. (U)*

However, most employee representatives observed fewer refusals by employers and an increased willingness to negotiate a suitable outcome.



Fair Work  
Commission

*The shift is that more are being approved and there is more meeting halfway. Before, it was just a blanket no, and I think that's because what the change to the legislation has done is actually force employers to consider requests genuinely. But it's also forced the employer to engage in a conversation with their employee about it, and not get fixed in their position about this is what I want, and it's only what I want. It forces them both to sit at the table and say alright, we can't give you what you want entirely, but we could give you this. (U)*

*I found that actually, for the most part, requests were accommodated and where they couldn't be, it was because there was a particular impact on the business or other workers where the employer needed somebody to fill in for the absence ... there was certainly at times, problems in accommodating the odd one, a compromised outcome for both sides. (E)*

Based on the online survey, several respondents were aware of formal requests that had been granted in part after negotiation (Table 12).

**Table 12: Have any formal requests for flexible working arrangements (section 65) been granted in part, after negotiation between the employer and the employee?**

|     | Per cent (%) |
|-----|--------------|
| Yes | 76           |
| No  | 24           |

Note: There were 46 responses to this question.

#### 4.1.4 Applications to the Commission

Most online survey respondents were not aware of applications to the Commission regarding disputes or for failure to follow procedure under section 65, while the majority of respondents explained that requests had been granted in part after further negotiation, obviating the need to go to the Commission (Table 13).



Fair Work  
Commission

**Table 13: In your experience, have any employees applied to the Fair Work Commission for review following any refusals of requests or failure to follow procedure under section 65 of the NES?**

|     | Per cent (%) |
|-----|--------------|
| No  | 74           |
| Yes | 26           |

Note: There were 46 responses to this question.

One union official commented that most employers would try to resolve a request before it reached the stage of going to the Commission. It was not common for the Commission to review requests that were partially refused (Table 14). Partially refused requests were reviewed by the Commission because negotiations, compromise and partial accommodation of requests were considered to be common.

**Table 14: In your experience, have any employees applied to the Fair Work Commission for review following flexible working arrangements (section 65) that have been granted in part?**

|     | Per cent (%) |
|-----|--------------|
| No  | 89           |
| Yes | 11           |

Note: There were 46 responses to this question.

#### 4.1.5 Impact of legislative changes

Employers and employer representatives that were interviewed generally had not observed any change in behaviour following changes to section 65 during the reporting period other than revisions to policies. One remarked that there is a possibility that employers have given requests more consideration than previously. Some commented that there had been a larger impact from the COVID-19 pandemic and the tendency to grant requests for flexible working arrangements during this period, which had continued.

Some employers also observed that there had been an increase in requests for flexible working arrangements over the last 3 years, although there was uncertainty as to whether this was due to legislative changes or to employers demanding workers come back to the office and employees wanting to keep those arrangements.





Fair Work  
Commission

Interviewees representing employees remarked that there had been an increase in the number of requests and that more requests were being accepted, coupled with more thorough processes and requirements that were consistently followed, with alternatives being genuinely considered.

Some commented that the legislative requirement to explain why changes could not be accommodated had led to further discussions and alternatives being proposed.

*I can say that there has actually been a change since the changes have come into effect, which are requiring employers to actually propose alternatives not just refuse, but fully explain the reasons why it can't happen and propose alternatives. It might not be the exact arrangement that they want, but it kind of like meets them halfway. We haven't actually taken one to the Fair Work Commission, but now that we have the ability to, it means we can actually support a member in that rather than just saying, 'well, sorry, they've said it's operationally not viable, I can't do anything about it, sorry.' (U)*

*I think that having to be specific about the business grounds you're relying on is really important. That's been a really significant change, that requirement to have discussions before and to outline in the refusal ... the changes you would have been prepared to make is really powerful. It opens up that scope for negotiation about alternatives that didn't previously exist, which is really good. (U)*

*The changes to the legislation and the employee's ability to file a dispute, the process is being followed more closely in that employees making a request are getting a written response and are getting it within 21 days. So yes, certainly. I think that process is being taken more seriously by employers. (LW)*

## **4.2 Section 76 requests for an extension of unpaid parental leave**

Fewer than half of online survey respondents had direct experience with formal requests to extend unpaid parental leave during the reference period (Table 15).



Fair Work  
Commission

**Table 15: Have you had any direct experience with the implementation of formal requests to extend unpaid parental leave during the period 26 May 2021 to 25 May 2024?**

|     | Per cent (%) |
|-----|--------------|
| No  | 58           |
| Yes | 42           |

Note: There were 77 responses to this question.

Most interviewees viewed requests for extensions of unpaid parental leave to be rare and only requested when the employee could not access childcare or when there were unique or difficult family circumstances. Interviewees also observed that parents preferred to return to work given the current cost-of-living pressures and associated financial stress rather than extend a period of unpaid parental leave.

Some employer interviewees noted a reduction in requests because their parental leave policies had improved, and employees did not need to extend unpaid parental leave under section 76.

#### 4.2.1 Who makes requests

Almost all online survey respondents were aware of women making requests and over half were also aware of requests made by part-time employees (Table 16). Based on an average of survey responses, the experience of the respondents was that around 95 per cent of extensions of unpaid parental leave were requested by women. Interviewees also noted that requests from men were rare.



**Table 16: During the reference period, are you aware of employees from the following groups making formal requests (i.e., in writing) for an extension of unpaid parental leave?**

|  | Per cent (%) |
|--|--------------|
| Women  | 96           |
| Men  | 23           |
| Non-binary persons                             | 3            |
| Part-time employees                            | 58           |
| Persons from a non-English speaking background | 23           |
| Mature aged persons (i.e. aged 45+)            | 0            |
| Young persons (i.e. aged under 18)             | 3            |
| Shift workers                                  | 23           |
| Salaried workers                               | 52           |

Note: There were 31 responses to this question. Participants could select more than one response.

An average of responses found that 53 per cent of requests were perceived to have been made by full-time employees, based on the experience of online survey participants. However, interviewees commented that while both part-time and full-time employees made requests, it was more common for requests to be made by a full-time employee, unless the request was related to the birth of a second or subsequent child. However, it was observed to be more common for part-time employees to have made requests in female-dominated industries with a high proportion of part-time employment.

Almost one quarter of online survey respondents had experience with persons from a NESB making requests for extensions of unpaid parental leave, while only 3 per cent had experience with requests from young workers. Some also had experience with requests from casual workers.

## 4.2.2 Granting and refusing requests

Based on the experience of online survey respondents, it was perceived that over 80 per cent of requests for an extension of unpaid parental leave had been granted in full.

Most interviewees typically observed that requests were granted, that refusals were rare, and it was not an area of significant disputation.



Fair Work  
Commission

*I would suspect that those sorts of requests would probably be agreed. It's not on my radar as a significant issue. (U)*

*... it's something that is quite commonly acceded to, because it's unpaid leave, so it's kind of no skin off the employers back. They'll generally find somebody to backfill the position for the first period, and they just continue that person on. (U)*

The most common reasonable business grounds cited by survey respondents for refusing a request for an extension of unpaid parental leave were related to the impracticalities involved in either changing or accommodating new working arrangements and having no capacity to change the new working arrangements of other employees to accommodate the employee making the request (Table 17).

**Table 17: Reasonable business grounds given for a refusal of a formal request for an extension of parental leave**

|  | Per cent (%) |
|--|--------------|
| The employer considered it was impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the extension requested by the employee | 69           |
| The employer considered that there was no capacity to change the working arrangements of other employees to accommodate the extension requested by the employee                    | 69           |
| The extension requested by the employee was seen by the employer as likely to result in significant loss of efficiency or productivity   | 38           |
| The extension requested by the employee was seen by the employer as likely to have a significant negative impact on customer service   | 31           |
| The extension requested by the employee was seen as too costly for the employer  | 6            |
| Other  | 6            |

Note: There were 16 responses to this question. Participants could select more than one response.

Interviewees elaborated that the operational reasons included difficulties with backfilling or replacing an employee in senior or specialist roles.



Fair Work  
Commission

*The reasons for refusal are that they need that person back, sometimes they've left the position open, and they can get through for 6 months, but they don't want to get through for another 6 months ... perhaps it's not working out with the person who is the replacement. Perhaps the person's role is important. (E)*

Another determinant for refusing requests included not providing the employer with much notice. Refusals were also seen to be more common in small businesses who have fewer staff to cover the employee.

*The companies that I'm representing are large enough that there's really no reason why they can't accommodate it. In a small business environment, I imagine that's where those refusals would most likely come from. (LE)*

Some interviewees observed that negotiation would sometimes occur that would result in granting some form of extension. The online survey found 9 of 30 respondents were aware of requests for an extension of unpaid parental leave being granted in part after negotiation.

### **4.2.3 Impact of legislative changes**

Interviewee responses were mixed regarding the impact of legislative changes to the Fair Work Act on requests under section 76, with some not observing any change in the number of requests while others observed that, while it was too early to be sure, the greater flexibility for both parents to take parental leave may have an impact.