

**Senate Standing Committee on Education Employment and Workplace  
Relations**

**QUESTIONS ON NOTICE  
Supplementary Budget Estimates 2010-2011**

**Outcome 5 - Workplace Relations**

**DEEWR Question No.EW0597\_11**

**Senator Abetz asked on 20/10/2010, Hansard page 96.**

**Question**

**New enterprise agreements**

Senator ABETZ—Is there an echo in here? I want to ask about new enterprise agreements lodged under Labor's Fair Work system. We were told, courtesy of the parliamentary secretary, that two-thirds of them include flexibility provisions that vary minimum conditions. Are you able to make any comment on that as to the full breakdown of that and the raw data from which it was obtained? I understand Fair Work Australia provides to the department every agreement, and it is from that that this analysis was undertaken, which Senator Collins then provided to the public. Of course, when it is done via a ministerial office, I suppose one wonders how sanitised the material might be, whether it tells us the absolute full picture. Minister, can the full analysis, undoctored by the department, be made available to the committee?.....

Senator ABETZ—We know how you got the statistics. What I want to know is whether that which was put into the public domain by Senator Collins represented the totality of the statistics that the department put together from that information provided by Fair Work Australia. Senator Chris Evans—I will take that on notice. I suspect it is not because it is rare that you give all the statistics in a speech.

**Answer**

The Fair Work Act requires all enterprise collective agreements approved by Fair Work Australia to contain a clause that allows an individual and the employer to enter into an individual flexibility arrangement. In Senator Collins' speech of 18 October 2010, she stated that of the agreements analysed at that point, around 61.3 per cent, covering 64.9 per cent of affected employees, contain the model flexibility term or a term with greater flexibility than the model.

The flexibility provisions data used by Senator Collins came from the Workplace Agreements Database (WAD) maintained by the Workplace Relations Policy Group of the Department. The WAD contains information on all known collective agreements that have operated in the federal workplace relations system since the introduction of the Enterprise Bargaining Principle in October 1991. Information entered in the WAD is derived from copies of federal agreements that are lodged with Fair Work Australia or, formerly, the Workplace Authority or the Australian Industrial Relations Commission.

The full breakdown of data about flexibility provisions in enterprise agreements used in the speech is at [Attachment A](#). For the purposes of Senator Collins' speech, the proportion of agreements containing the model clause (or greater flexibility) was derived by adding the percentage totals for "Flexibility clause – general", "Model

flexibility clause” and “Model flexibility clause incorporated”.

We have received legal advice since Senator Collins speech that the model term would also apply to agreements that contained no flexibility provision, even if the model term was not specifically incorporated in the agreement by Fair Work Australia. Thus the actual proportion of agreements and employees with access to the model term or greater flexibility are slightly higher than the figures in Senator Collins’ speech – adding the percentage totals for “No flexibility clause” brings the totals to 67.4 per cent and 72 per cent respectively.

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## Attachment A

	Flexibility clause-general <sup>1</sup>		Flexibility clause-specific <sup>2</sup>		Model flexibility clause <sup>3</sup>		Model flexibility clause incorporated <sup>4</sup>		No flexibility clause <sup>5</sup>	
	Agreements	Employees	Agreements	Employees	Agreements	Employees	Agreements	Employees	Agreements	Employees
ANZSIC Division	%	%	%	%	%	%	%	%	%	%
Agriculture, Forestry and Fishing	9.2	12.3	8.0	10.0	79.9	75.1	4.0	4.1	1.1	2.0
Mining	18.3	25.7	38.0	28.2	28.2	32.4	11.3	8.9	7.0	7.1
Manufacturing	7.5	5.9	41.6	53.0	37.8	35.2	8.8	5.6	7.5	6.9
Electricity, Gas, Water and Waste Services	4.3	6.8	27.5	47.3	53.6	67.5	13.0	1.1	5.8	5.7
Construction	3.8	9.0	53.2	42.1	22.2	26.5	17.8	17.7	4.2	5.7
Wholesale Trade	5.1	0.8	35.9	32.6	46.2	53.0	7.7	12.2	5.1	1.3
Retail Trade	10.9	13.3	6.4	13.9	74.4	13.2	4.1	54.0	4.9	5.6
Accommodation and Food Services	20.3	3.8	14.4	34.6	60.9	61.3	2.0	0.4	5.4	1.1
Transport, Postal and Warehousing	6.3	19.5	35.3	37.6	44.6	34.7	8.0	6.8	11.6	5.3
Information Media and Telecommunications	0.0	0.0	24.2	7.6	66.7	88.0	3.0	0.1	9.1	4.4
Financial and Insurance Services	4.2	5.9	37.5	56.6	58.3	36.6	4.2	1.0	4.2	22.1
Rental, Hiring and Real Estate Services	0.9	0.3	5.6	46.5	90.7	93.0	1.9	0.5	1.9	3.6
Professional, Scientific and Technical Services	10.4	5.7	37.5	52.2	45.8	40.7	10.4	3.7	8.3	3.6
Administrative and Support Services	6.9	3.2	36.8	15.7	43.1	38.9	10.4	26.0	3.5	16.4
Public Administration and Safety	5.9	33.4	20.2	18.0	63.0	47.3	6.7	2.3	7.6	2.7
Education and Training	3.3	8.7	43.5	72.6	47.8	23.2	7.6	0.4	2.2	10.3
Health Care and Social Assistance	30.9	21.0	18.8	21.3	40.1	50.3	5.6	2.8	5.8	6.2
Arts and Recreation Services	3.7	1.0	8.3	25.2	56.9	62.6	2.8	1.0	29.4	33.4
Other Services	2.8	0.9	27.8	20.9	65.3	64.4	4.2	4.1	5.6	13.9
<b>TOTAL <sup>6</sup></b>	<b>9.3</b>	<b>14.6</b>	<b>34.9</b>	<b>33.8</b>	<b>41.8</b>	<b>41.6</b>	<b>10.3</b>	<b>8.7</b>	<b>6.0</b>	<b>7.1</b>

Note: When determining which agreements the model clause (or greater flexibility) applies to, the percentage totals for “Flexibility clause – general”, “Model flexibility clause”, “Model flexibility clause incorporated” and “No flexibility clause” are summed together.

<sup>1</sup> “Flexibility clause – general” does not limit the terms of the agreement that might be varied by an individual flexibility arrangement. This is broader than the model clause

<sup>2</sup> “Flexibility clause – specific” specifies which terms of the agreement may be varied by an individual flexibility arrangement, but differs from the model flexibility clause.

<sup>3</sup> “Model flexibility clause” means that the model flexibility clause is contained in the agreement document, or the agreement specifically mentions that it applies.

<sup>4</sup> “Model flexibility clause incorporated” means that the decision approving the agreement incorporates the model term into the agreement. This is usually because the agreement does not contain a flexibility clause.

<sup>5</sup> Section 202 of the Fair Work Act states that the model flexibility clause will apply in all agreements that do not contain a flexibility clause.

<sup>6</sup> Some agreements contain more than one flexibility term. Where an agreement contained the model term and a separate term that allowed other provisions of the agreement to be varied by agreement with groups of employees or with a union, this has been recorded in both the “Flexibility clause – specific” and “Model flexibility clause” columns.