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ADECCO Group Australia Breakfast

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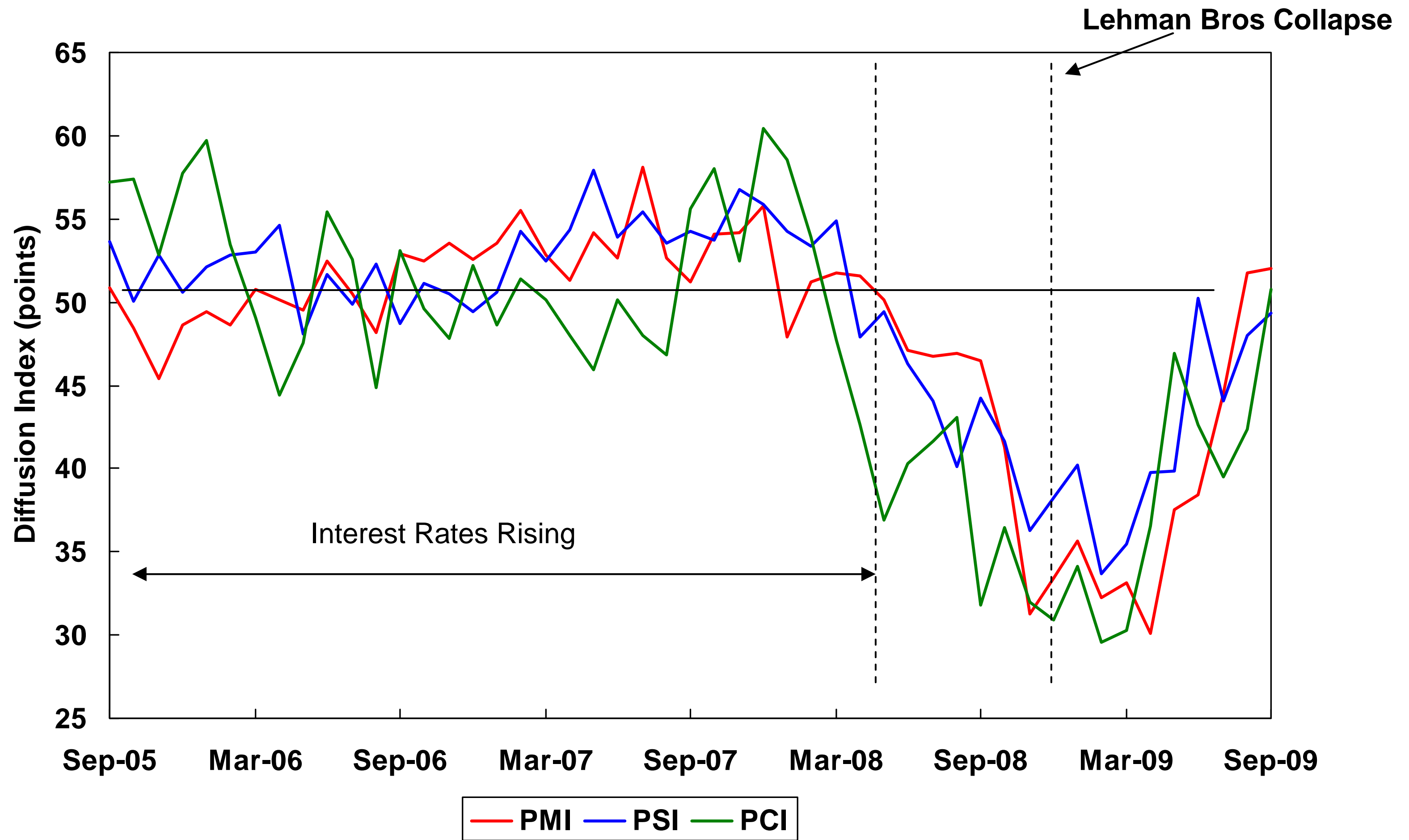
15 October 2009

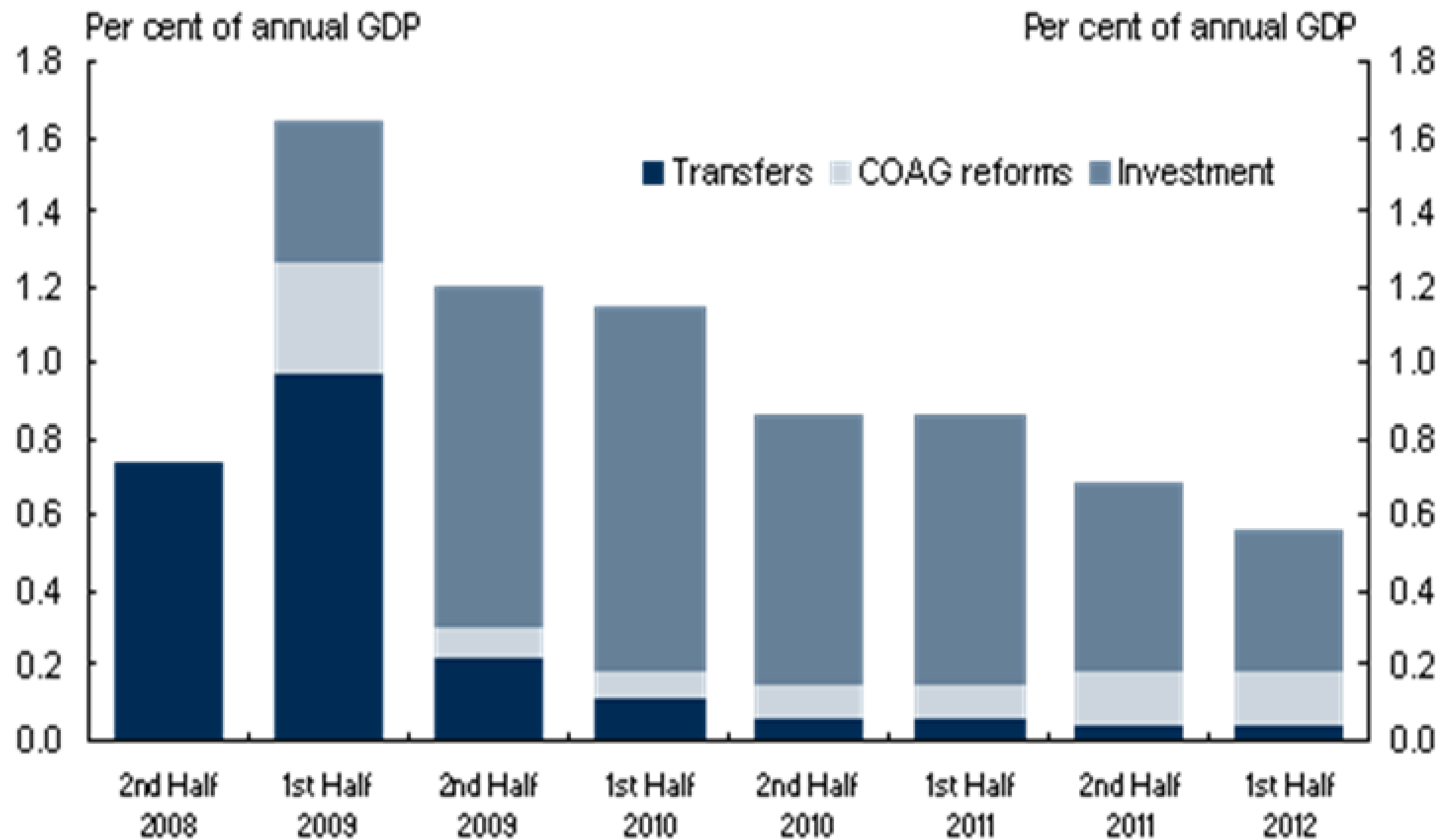
Interest Rate Rises, then GFC Slowed Activity



Ai Group's Indices are Leading Indictors

- Australian PMI®, Australian PSI® and Australian PCI® show tentative signs of recovery.
- Modest growth driven by consumer spending and housing construction.
- Sectors boosted by monetary and fiscal stimulus.

Composition of “Stimulus” Measures

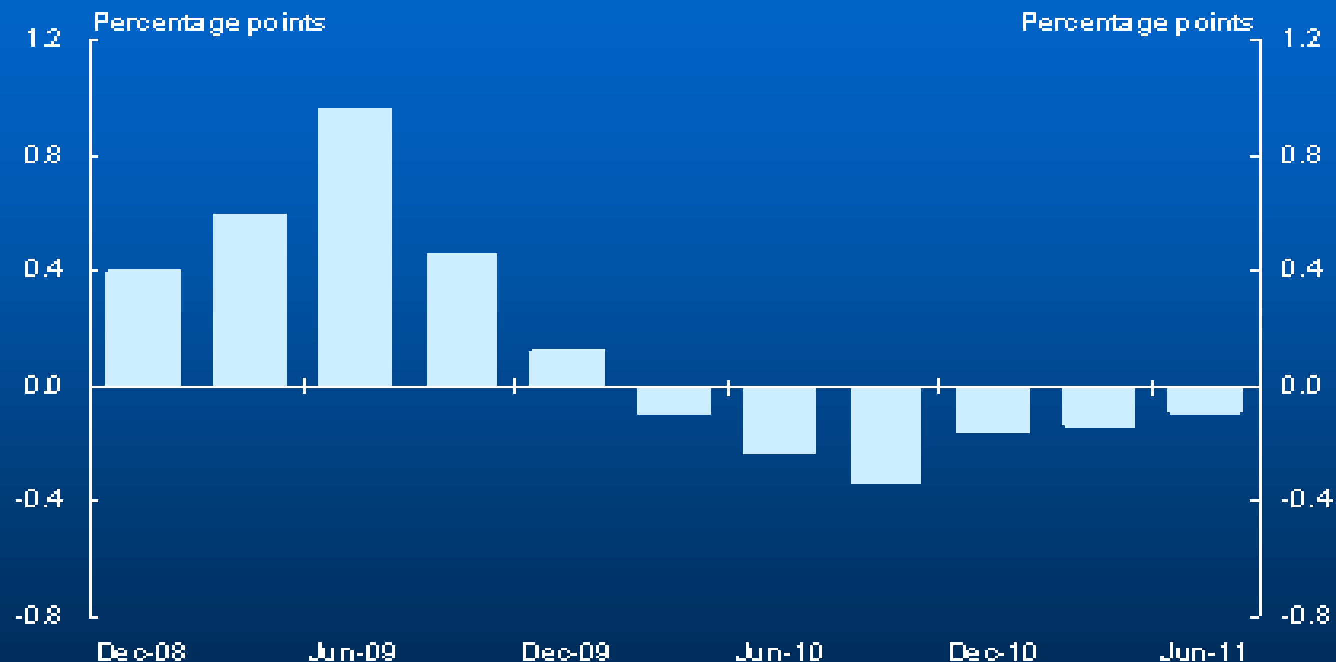


Source: 2009-10 Budget Papers Budget Paper No. 1, Statement 4

“Stimulus” Measures

- Stimulus includes investment and COAG reform payments, household payments and the age pension increase.
- Capacity of economy increased by investment and COAG spending.
- Self-sustaining rise in demand some way off.

Fiscal Stimulus and GDP Growth



Carbon Pollution Reduction Scheme

- Key areas of change required:
  - Better protection for trade exposed businesses that do not qualify for permits
  - Improvement of measures for EITEs
    - (coal, value added, Scope 3)
  - Security of electricity supply
  - Greater certainty
    - (removal of EITE support and increase in target)
  - Remove plethora of other regulation

Workplace Relations

- *“Fair Work Act Bargaining Provisions - The First 100 Days”* Booklet.
- Employers face a different industrial landscape with increased union power.
- Large number of agreements currently being negotiated, creating industrial risk.
- Decisions of FWA are very important in determining the reach of the new laws.

Important Principles which are emerging from FWA decisions

1. Parties have the right to “hard bargain” and cannot be forced to make concessions.
2. Right to “hard bargain” does not give unions the right to take industrial action in pursuit of pattern outcomes.
3. While industrial action does not need to be a last resort, it cannot be taken prematurely. Bargaining claims need to be explained and discussed.

Important Principles which are emerging from FWA decisions (contd)

4. Good faith bargaining does not prevent an employer introducing workplace changes while bargaining is taking place.
5. Substantive terms of enterprise agreements must be about "permitted matters". If a union is pursuing any other matters when applying for a protected action ballot then they are not "genuinely trying to reach agreement".

Areas of concern

- Union claims re. flexibility terms.
- Use by unions of bargaining orders to prevent approval ballots.
- Scope orders – upcoming Full Bench Case.

ADECCO Group Australia Breakfast

Heather Ridout, Chief Executive
Australian Industry Group

15 October 2009

Slide 2

The Economy

While there is a lot to be pleased about in the Australian economy right now - certainly compared with how other developed countries are faring, the mood among many of our members is better described as relieved rather than buoyant.

There is relief that the dire possibilities that were very real only a year ago appear to have been averted. The extreme breakdown of credit markets is behind us and the downward spiral of demand now looks unlikely.

Conditions are anything but buoyant. For many, order books still look skinny and activity remains patchy.

As you will know Ai Group monitors industrial activity very closely through our Australian Performance of Manufacturing Index our Australian Performance of Services Index, and our Performance of Construction Index.

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This Chart combines all three indices over the past five or so years with measures below the 50 point line indicating contraction and above expansion.

They capture a slowdown and then a contraction that began – in large measure as a result of deliberate policy to slow the economy - well before the very intense period whose arrival was heralded by the collapse of Lehman Brothers in September last year.

Our series also showed the rapid erosion of activity in the last few months of 2008 and well into this year followed by a gradual slowdown and perhaps in the past month or so, the signs of tentative growth.

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These are "real time" measures of activity and serve as very good leading indicators.

In the detail behind the PMI, PSI and PCI we also see the key sectors leading the very modest recovery – those driven by consumer spending and those driven by housing construction.

These sectors have been boosted by low interest rates, the Government's cash payments, and the boost to the First Home Buyers Grant.

These findings give us reason to be somewhat wary of a hasty withdrawal of the fiscal stimulus measures. Indeed we are also very wary of the rise in interest rates by the RBA earlier this month.

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Of course the fiscal stimulus **does** need to be withdrawn (and then the associated debt cleared up) but we note a couple of points.

Firstly the stimulus measures are temporary in nature. There is a clear program to wind them back.

Secondly a fair proportion of what is called “stimulus” is more accurately characterised as capacity-expanding expenditure – which needs to be seen in somewhat of a different light than, say the cash transfers to households.

This is particularly true of the large commitments to infrastructure expenditure over the next few years.

We are already well past the peak in total expenditure and well into the infrastructure spending phase.

This winding back of stimulus does present some risks just as continuing it too long would pose risks. The risks of early winding back are that private demand does not grow to replace the retreating public sector spending.

Our measures of the economy do not suggest that we are yet at the point where demand is self-sustaining. We do look to be heading in that direction but too much of the activity we have seen to date is too closely linked to the stimulus measures themselves to give us a measure of confidence that we should wind back the stimulus more rapidly than is already allowed for.

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The Treasurer made this point early this week with this next Chart showing that, without any change in the current program of stimulus measures, the impact of spending on growth is set to fall back in the current quarter and then enter negative territory in the following period – the first quarter of 2010.

In other words we need to see the growth in the private sector take hold basically from now and then climb steadily to offset the detraction from growth caused by the retreat of public spending.

This in a nutshell is why we are not convinced by the calls to accelerate the shutting down of the stimulus measures.

Of course as we always do, we will be keeping a close eye on developments over the months ahead and in particular we will be watching our measures of industrial activity in case we have an unexpected surge of private sector activity.

For what it is worth, we think it more likely that we will see a more gradual return to normal conditions over the course of 2010 rather than some sort of bursting free of the legacy of the CFC. I would be interested in hearing from you on this.

Before that I want to touch on one further issue before looking more closely at the very interesting IR environment. This is the Carbon Pollution Reduction Scheme.

CPRS

Later on today I have a meeting with Ian Macfarlane the Acting Shadow Minister for Climate Change who is consulting on the amendments the Opposition is developing to form the basis of their negotiations with the Government over the month or so ahead.

The CPRS is one of the most difficult policy issues we have had to deal with. We are getting set to see costs imposed on a broad range of domestic businesses. We are looking at the real possibility of legislation being passed in Australia ahead of the UN Conference of Parties in Copenhagen.

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Frankly I am very doubtful that Copenhagen will deliver much more than a commitment to continue negotiations. This is certainly the impression I got in a recent visit to the US where I met with business representatives from the full range of G20 countries at a conference in Washington hosted by the US Chamber of Commerce.

While there are clear risks for Australia in going ahead with the CPRS before December, I am very doubtful that waiting until after Copenhagen will make all that much difference. Rather, we are likely to be in a very similar position in a couple of months as we are in now.

To make matters more complicated, we may well have to wait for a couple of years before things crystallise at the international level.

In the meantime many of our members are telling us that they are holding off making investments until there is a greater degree of clarity around domestic climate change legislation.

Our position has been developed in very close consultation with our members. We maintain that that whatever is legislated and whenever it is legislated, it needs to be able to cope with the full range of possible outcomes at international negotiations not just at Copenhagen but also well beyond that.

We do need to improve the certainty for business. More than that however we need to ensure that the CPRS contains measures that will provide domestic industries with strong protections against the competitive risks of imposing costs here that are not imposed by competitors in other countries. This is the essential challenge – that and making sure our electricity supply is not disrupted as we transition towards the carbon-constrained future.

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When we meet with Ian Macfarlane later today, I will reiterate what we have been saying to him, to Andrew Robb and Malcolm Turnbull, to Senator Xenophon and Senator Fielding, the Greens and of course to the Government for some time. This is that we want to see improvements to the current proposals that will enable the legislation to be passed so that our members can get on with the job of planning and investing.

We are looking for:

- Better protection for trade exposed businesses that do **not** qualify for permits;
- Improvements to measures for Emissions Intensive Trade Exposed businesses that do qualify for permits (EITE)s to address a number of outstanding concerns
- Measures that will secure the supply of electricity over the transitional years

- A range of measures to provide greater certainty – particularly in relation to the potential to increase targets and the phased down and removal of EITE permits
- And last but not least, steps need to be put in place to see the removal of the incredible array of other regulation in this area.

Taking action to address climate change will be one of the most far-reaching changes that we have made to our economy. Ai Group has been at the forefront of this debate for some time now and we are certainly looking to continue to play a constructive role making sure business interest has not just a voice in the debate but a seat at the table as these policies are being developed and finalised.

Turning now to workplace relations….

Workplace Relations

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Last Thursday marked 100 days since the *Fair Work Act* came into operation.

To mark the occasion we have produced a booklet which analyses the decisions of Fair Work Australia and other developments relating to bargaining. Complimentary copies of the booklet will be available after the breakfast and I hope that you find it useful.

We are closely monitoring how the *Fair Work Act* is being applied and interpreted.

The Fair Work legislation was a massive drafting exercise and it will be some time before the law is tested and settled.

While Ai Group was active in achieving hard won amendments which wound back some of the sharper ends of the legislation, there is no doubt employers face a different industrial landscape with increased union power.

There is certainly a great deal of bargaining going on and unions are pursuing claims with some vigour, particularly here in Victoria.

Every day the industrial environment is getting hotter, although there is still a relatively low level of industrial action at this stage.

In the manufacturing industry a large number of agreements expired on 31 March or 30 June, and the unions delayed re-negotiating them until after the new laws came into operation.

The common expiry dates for agreements in the industry are a product of the unions' pattern bargaining campaigns in 2000 and 2003 where they succeeded in lining up the expiry dates of hundreds of agreements, even though they did not succeed in establishing pattern agreements across the manufacturing industry.

Replacement agreements have not yet been finalised in most workplaces creating considerable industrial risk over the next few months. There are a number of reasons for the delay:

1. The economic environment has led to an emphasis on preserving jobs, rather than improving wages and conditions. In many workplaces wage freezes have been implemented.
2. The *Fair Work Act* contains a new bargaining system which employers, employees and unions have needed to learn about.
3. Most employers and union officials prefer not to end up in test cases, but rather to take things slowly and monitor developments in other workplaces.

The decisions of Fair Work Australia (FWA) are very important in determining the reach of the new bargaining system. A number of important decisions have already been made as summarised in our "First 100 days" booklet.

Many of the decisions relate in one way or another to the good faith bargaining requirements, and the requirement for unions to be "genuinely trying to reach agreement" when industrial action is taken.

There have been a number of positive developments.

The decision by the Government to appoint all of the former members of the Australian Industrial Relations Commission as members of Fair Work Australia is proving to be a wise one. Many of the early decisions of FWA are based on principles established in sensible earlier AIRC decisions and the continuity of tribunal members has facilitated this outcome.

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Not all of the decisions have gone the employers' way of course, but some important principles are emerging, including:

1. Parties have the right to "hard bargain" and cannot be forced to make concessions.
2. The right to "hard bargain" does not give unions the right to take industrial action in pursuit of pattern outcomes. They are required to genuinely negotiate at the enterprise level.
3. While industrial action does not need to be a last resort, it cannot be taken prematurely. Bargaining claims need to be explained and discussed.

Slide 11

4. Good faith bargaining does not prevent an employer introducing workplace changes while bargaining is taking place, provided that existing awards and agreements are complied with and adequate consultation occurs.
5. The substantive terms of enterprise agreements must be about "permitted matters" and if a union is pursuing any other matters when applying for a protected action ballot then they are not "genuinely trying to reach agreement".

The cases which point to these principles are explained in the "First 100 Days" booklet.

Slide 12

Despite these positive developments, there are some areas of concern. I'll mention just two (others are dealt with in the booklet):

1. Union attempts to negate the intent of flexibility terms in agreements
2. The use by unions of bargaining orders to prevent ballots to approve an agreement

There has been a great deal of media commentary about flexibility terms, which all enterprise agreements made under the *Fair Work Act* are required to contain.

The concept of flexibility terms arose from the debate, prior to the last Federal Election, about Labor's policy to abolish Australian Workplace Agreements.

Prior to the Election, Labor gave a commitment that all modern awards and all new enterprise agreements would be required to contain a flexibility term which allowed individual employees and their employer to agree on arrangements which depart from those in the award or enterprise agreement, subject to the employee being better off overall.

If an enterprise agreement does not contain a flexibility term, a model flexibility term in the *Fair Work Regulations* is taken to be a term of the agreement. The model term in the Regulations is very similar to the AIRC's model term for awards, and contains very strong protections for employees.

The unions oppose the concept of flexibility terms and are endeavouring to secure clauses in enterprise agreements which have the effect of providing no flexibility, or very limited flexibility.

Their position harks back to the old days when there was either no ability to enter into flexible arrangements with individual employees, or flexibility was only possible if all employees agreed. The idea that every employee in the workplace should decide whether a mother will be allowed to reach agreement with her employer on working hours which enable her to pick her kids up from school, is ridiculous.

Fortunately employers are resisting the unions' claims and the model clause is being used in over 75 per cent of agreements.

Another area of concern is the use by unions of bargaining orders to stop employees voting on agreements which they do not support.

Orders of this type are undemocratic, because they stop employees expressing their approval or rejection of an agreement.

In August we were alarmed that in one two week period, FWA ordered that scheduled votes be cancelled in three workplaces. We intervened in one of the matters and tendered a detailed submission on FWA's powers in this area and why we believed that the tribunal had gone beyond its powers in issuing the three orders.

The situation has fortunately quietened down and it appears that there have been no further orders of this type made since the third order was issued in mid-August.

Another area that we are watching closely is FWA's power to issue Scope Orders. These can be issued to determine the scope of an agreement which parties are bargaining over. In the past, blue-collar unions have unsuccessfully attempted to cover white-collar admin., sales and professional staff under the collective agreements which apply to blue-collar employees. Most companies have understandably refused to change their existing merit based pay arrangements for white collar staff.

An important FWA Full Bench case has been scheduled for hearing over five days in December relating to the scope of agreements being negotiated between the Metropolitan Fire and Emergency Services Board and the United Fire Workers' Union.

The union wants a scope order requiring the Board to negotiate a single agreement covering middle-management and senior-management, as well as operational employees. The Board is not surprisingly strongly opposing this.

Both Ai Group and the ACTU have applied to intervene in the case, given the potential wide implications of FWA's decision.

After 100 days, it is too early to say what the final shape of the new *Fair Work* bargaining laws will be, and the impact on workplaces. Much will depend on how the case law develops and the way that the legislation is interpreted.

Decisions of individual members of FWA are being made every day but so far there have been few Full Bench decisions of FWA and few decisions of the Fair Work Division of the Federal Court. These decisions will be particularly significant over the months and years ahead.

Ai Group will continue to monitor developments closely and to pursue legislative amendments if problems become apparent.

It is vital that Australia maintain a fair and productive workplace relations system which enables Australian employers to remain flexible and globally competitive.