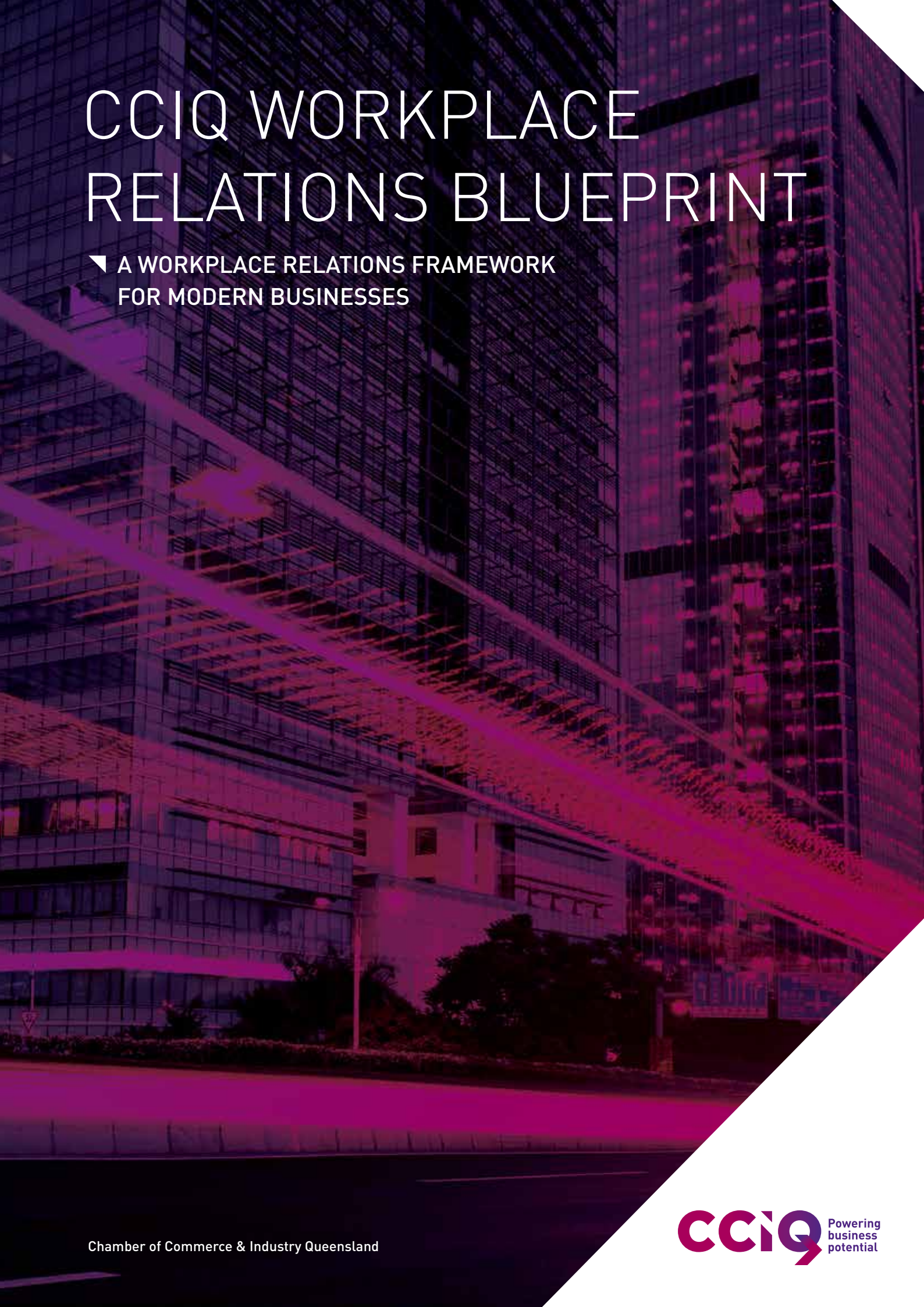
CCIQ WORKPLACE RELATIONS BLUEPRINT

A WORKPLACE RELATIONS FRAMEWORK FOR MODERN BUSINESSES



Chamber of Commerce & Industry Queensland

CCIQ Powering business potential

EXECUTIVE SUMMARY

The Australian economy is fuelled by businesses of all sizes, and the people that have the skills, motivation and resolve to run them. While being a business owner can be a challenging experience, it should also be a rewarding one.

At CCIQ, **we want to help people running a business realise these rewards**. A huge part of this involves listening to what the business community has to say.

Any employer knows that workplace relations laws can significantly affect productivity, sustainability and competitiveness in their business – not just the bottom line, but the employment arrangements they have with their employees, hours of operation, willingness to take on apprentices, and more.

> **"Management of a business is now even more difficult without the ability to make decisions that might be necessary due to economic circumstances."**
>
> Brisbane Business Operator in the Retail Trade industry

CCIQ understands this. **We are taking charge of the workplace relations agenda in Queensland** to get a better outcome for the businesses of this state. We have developed this Workplace Relations Blueprint in close consultation with employers across Queensland to help shape our vision for a workplace relations system that gets the core elements right.

Contrary to what you often hear, workplace relations is not about ideology or what party is in power. The focus on workplace relations needs to get back to putting in place the best legislative framework possible in response to the needs of employers, employees and the broader economy.

There is no doubt that our current workplace relations laws need to be better. The foundations of the Fair Work system are steeped in ideology, and benefit employees and union groups at the expense of both employers, and the economy at large. **Because what is bad for business is bad for the economy**.

> **"Let's make it affordable for Australian employers to keep Australian workers employed."**
>
> – Far North Queensland Business Operator in the Services industry

So often, politicians on both sides have been unwilling to engage in a sensible discussion about the actual changes we need to make to our workplace relations laws, changes that would make a tangible difference to businesses in their everyday operations.

CCIQ has therefore developed a number of sensible recommendations that reflect the changes Queensland employers have told us they want to see in the Fair Work Act 2009 (Cth) (FW Act) or any future workplace relations legislation that comes into existence.

Most importantly, we provide a path forward, a vision for a workplace relations system that will stand the test of time.

Genuine change: In 2012, the Federal Government conducted a review of the FW Act, which yielded a number of recommendations of which several were endorsed by the government. The result of these changes is minimal and demonstrates a fundamental lack of understanding of the problems that plague the Act. Changing the name of **Fair Work Australia to the Fair Work Commission (FWC)** won't affect the way it works. Reducing application times for general protections claims to 21 days matters little when extensions are easily available. While some of the amendments are sensible, such as allowing the newly named Commission to make costs orders against parties in unfair dismissal matters, some aren't, such as prohibiting employees from opting out of enterprise agreements.

It is no wonder employers are frustrated. CCIQ wants to see **genuine change**.

A realistic approach to the minimum wage: Queensland employers brace themselves each year ahead of the minimum wage determination. Increases to the minimum wage are becoming **unsustainable** as they fail to take into account **employers' capacity to pay** the increases, and are not tied to productivity improvements.

Queensland employers have told us that the practical effects of the annual increases to the minimum wage are immediate: **they are forced either to lay off staff or reduce working hours**, which impacts negatively on both their business and their employees. Their capacity to provide above-award wages or to offer wage incentives is severely curtailed.

> **"The day is coming where we will have to let people go. The wage rates increase again in July. We are a seven day a week business - we will have to stop trading on Sunday and public holidays due to penalty rates."**
>
> Brisbane Business Operator in the Retail Trade industry

We need the Act's wage setting mechanism to take into account the everyday realities that businesses face. It must be amended to **direct** the FWC to take into account employers' capacity to pay any proposed increase to the minimum wage, and offset increases to the mandatory superannuation guarantee levy in future minimum wage increases.

Employers also need a six month transition period following an Annual Wage Review determination, to put in place any necessary changes required to ensure that they can pay the increased wages/rates.

Rethinking modern awards: The award modernisation process was a positive step. However, many Queensland employers believe that modern awards can be more streamlined, simpler and less prescriptive. In many instances, the modernisation process simply facilitated a transition to awards with higher rates and classifications of pay.

We need to take a fresh look at the applicability of **penalty rates** and maximum averaging periods: why do employers have to pay an employee expensive Sunday rates when the employee prefers to work on weekends? Similarly, why limit the maximum averaging period to 26 weeks when an employee is happy for the arrangement to continue for longer?

"Weekend penalties are unfair to an industry trading seven days per week and an impediment to full time employment. They result in no productivity gain and are generally bad for the economy."

Central Coast Business Operator in the Accommodation, Cafes and Restaurants industry

There's more that doesn't make sense. This includes minimum engagement periods that require employers to give casual workers shifts of at least three hours: this restricts school kids from working in the afternoon and early evenings and gaining valuable work experience. For employers, it means they can't afford to put on employees in the time slots that need to be filled. While the Federal Court recently held that a ninety minute minimum engagement period was more appropriate for the Modern Retail Award, the three hour threshold remains a rigid feature of many other awards.

"Removal of flexible working hours has caused multiple issues with staff. Staff were happy to start work at 5am and work through their eight hours, but now the business has to pay overtime if the employee starts at 5am. We have lost eight staff members because of this one change. There is no room within the new award to alter an agreement to suit the employee's situation other than the business paying extra costs (overtime, penalty rates etc). Businesses cannot just keep absorbing these changes."

Brisbane Business Operator in the Construction industry

Regardless of how they feel about modern awards, most Queensland employers do their best to comply. This is made difficult, however, when the FWC and the Fair Work Ombudsman (FWO) cannot provide clear and binding advice in response to employer questions about their obligations under awards. Employers need an industrial umpire that is there to help them comply.

Making flexibility arrangements meaningful: Flexibility in the workplace is essential for all businesses, and it should underpin any modern workplace relations system. Flexibility is particularly important for small and medium enterprises (SMEs) in Queensland, which compete with the resources sector for employees and must be able to provide flexible arrangements that are attractive to employees but suit the requirements of the business.

But how do we get this flexibility? The basic mechanism is already in the FW Act – individual flexibility arrangements (IFAs). But take up of IFAs has been severely limited by the strict conditions that the FW Act has placed on them, which include a prohibition on IFAs being offered as a condition of employment but allow for unilateral termination by employees at short notice.

"There does not seem to be any flexibility to work out informal mutually beneficial arrangements with staff – for example, if a staff member would prefer to work weekends due to family or other commitments. In this situation, we would be required to pay penalty rates instead of treating the arrangement as normal working hours."

South West Queensland Business Operator in the Health Care and Social Assistance industry

While the FW Act requires employers not to unreasonably refuse an employee's request for flexible working hours, the limits on the use of IFAs highlight the lack of a reciprocal obligation on employees.

CCIQ believes that employers and employees should be entrusted to work together to put in place mutually beneficial arrangements. This means either reintroducing individual statutory contracts, which were a feature of Australian law long before the WorkChoices workplace relations regime, or enabling IFAs to be offered as a condition of employment. Such changes would allow employees to influence their working conditions while giving employers certainty. The contract or IFA would be terminable only on agreement between employer and employee.

Statutory agreements or individual flexibility arrangements would still need to satisfy the 'Better Off Overall Test' (BOOT).

It is also crucial that flexibility terms allowing employers to negotiate IFAs with employees be in all enterprise agreements, and that unions do not use bargaining processes to prevent this occurring.

A fairer superannuation system: Queensland employers cannot support the continued and intensifying efforts to shift the burden for employee retirement income on to employers.

The superannuation guarantee levy will rise by three per cent over the next decade to twelve per cent, with no associated productivity or wage trade-offs. This is not a fair deal for employers. The federal government needs to encourage employees to take greater responsibility for their own post-retirement futures through a mixture of compulsory and voluntary employee contributions.

> **"At some point in time, employees should be held responsible in part for their own future prosperity. Why is it always the employer who should carry the can?"**
>
> South West Queensland Business Operator in the Wholesale industry

It is also essential that increases to the superannuation guarantee levy be appropriately offset and that effective measures are in place to do this. CCIQ wants to see the FW Act amended to **direct** the FWC to offset any proposed increase to the federal minimum wage by the relevant annual instalment increase to the superannuation guarantee (i.e. by 0.25 per cent or 0.5 per cent).

Getting the balance right with unfair dismissal and general protection claims: CCIQ considers that employee access to unfair dismissal claims under the FW Act is operating to unduly infringe on the capacity of employers to make appropriate employment decisions in their business. Contesting these claims places a significant burden on already limited resources, and is particularly onerous for small businesses.

> **We sacked a worker for repeated serious breaches of our workplace health and safety policy, and were taken to Fair Work where a payout was awarded. Where does commonsense and accountability fit in? We can't 'hand hold' all the time!"**
>
> South West Queensland Business Operator in the Manufacturing industry

We respect the right of employees to access relief through an unfair dismissal claim where employers have clearly done the wrong thing. However, the significant increase in the number of claims being made by employees indicates that making an unfair dismissal claim is becoming all too easy. Indeed, with the FW Act has come the return of '**go away' money**.

The FWC has given the provisions a broad construction, finding in favour of the employee where there have been valid reasons for dismissal, or on grounds relating to the employee's personal circumstances.

CCIQ believes **small businesses should be exempt from unfair dismissal claims**, and that the FWC should be empowered to dismiss claims where employment was terminated for a valid reason. We also consider that consideration of whether a dismissal is unfair should be strictly limited to matters relating directly to` the employment relationship.

The cost of lodging an unfair dismissal claim should be increased, and applicants must be required to make a strong initial case for unfair dismissal before the claim proceeds further. Penalties and costs orders should apply to employees and their representatives where the FWC determines that a claim is false, vexatious or significantly exaggerated.

With respect to **general protection claims**, employees who have had their employment terminated are increasingly seeking recourse under these provisions, as successful claims can give rise to virtually uncapped levels of compensation. Further, the onus is on employers to prove that adverse action taken by them (for example, dismissing an employee) was not taken for a prohibited reason. What this means is that whenever an employee makes a general protection claim, even if it is false or spurious, they do not have to prove their case. Rather, it is their employer who is automatically burdened with the time and expense of demonstrating that they have not done the wrong thing.

> **"Employees have no burden of proof and employers have to prove that the employee is making a false allegation. There is also no consequence for employees making false allegations."**
>
> Far North Queensland Business Operator in the Services industry

This is clearly unacceptable. Reducing the time applicants have to make a claim under these provisions is insufficient. The FW Act must be changed to remove the onus of proof from employers, or to at least require the employee to establish that adverse action actually occurred before there is any presumption that the action was for a prohibited reason. There should also be an amendment to ensure that it is the employer's personal intention that matters in this instance – there should not be room for their state of mind or reasoning to be guessed at. Finally, to prevent people 'shopping' the FW Act for remedies, compensation available to employees who have brought a general protections claim following termination of their employment should be capped at 26 weeks' pay – the maximum remedy available in a successful unfair dismissal claim.

Protecting casual working arrangements: Casual working arrangements are at the heart of industries that are at the core of the Queensland economy, including retail, hospitality and tourism, and provide both employers and employees with the flexibility that these industries demand.

This issue is also central to managerial prerogative – that is, the right of employers to determine the basis on which employees are hired and to tailor employment arrangements in accordance with the logistical requirements and financial capacity of a given business.

"Because of the requirement of a minimum three hour call, I can't utilise juniors."

Brisbane Business Operator in the Arts and Recreational Services industry

Recently, unions have targeted casual working arrangements, in addition to their rally against labour hire and contracting arrangements. CCIQ knows that Queensland employers cannot afford increased casual loadings, for the National Employment Standards (NES) to apply in full to casual workers, or for labour hire workers to be deemed employees.

Not only does CCIQ oppose these moves, but we will continue to advocate for genuine flexibility in the workplace. This includes **removing minimum engagement periods from awards**, which would mean employers could afford to put on more staff during busy periods.

Common sense application of the safety net: Queensland employers support and respect the existence of an employee safety net in the form of the NES. What they would like to see, however, is for the NES to be less rigid and more common sense.

Currently, the NES operate to hinder the effective use of IFAs. If an employer is able to offer a staff member over 38 hours a week, and the employee is willing to work those hours, then this arrangement should be able to proceed on normal rates of pay.

CCIQ stands with employers on opposing an expansion of the NES, either by extending their full application to casual employees, or adding additional standards. The result of this would be more red tape and additional expenses that employers do not need and cannot afford.

"Unless there are offsetting productivity gains the savings must come from reduced employment."

Wide Bay Business Operator in the Retail Trade industry

While Queensland employers support the right of employees to take parental leave, they do not believe that they should be required to administer this Federal Government's Paid Parental Leave scheme through their own payroll.

Enterprise agreements, bargaining and union involvement in the workplace: We have a well-established system of enterprise bargaining in Australia, and those employers who implement enterprise agreements (EAs) in their workplaces work with employees in good faith to arrive at a mutually acceptable outcome.

"There is now too much opportunity for unions to interfere in the business."

Central Queensland Business Operator in the Property/Business Services (Including ICT) industry

Increasingly, the bargaining process has become complex and fraught, as under the FW Act the BOOT has been applied too rigidly. Further, the limits on bargaining content have expanded significantly, so that bargaining no longer pertains simply to wages and conditions but to **all aspects of the employment relationship** – including employers' ability to hire contractors, use casual workers and union access to business financial documents.

The role of unions in the workplace is at the heart of the workplace relations system, because it has the capacity to affect so many other aspects. Given that **only thirteen per cent of private sector employees are union members**, the fact that employees are now prohibited from opting out of an EA is even more unbelievable. Union endeavours to dictate employment and operational arrangements in workplaces are inappropriate and need to be moderated.

"Renewal of employee collective agreement was slow, required additional legal input, union engagement in negotiations was more disruptive, review process by Fair Work was slow."

Brisbane Business Operator in the Manufacturing industry

What we are seeing is a return to the 'bad old days' where unions want to include terms in EAs imposing restrictions on the engagement of independent contractors or labour hire workers but refuse to insert a meaningful flexibility term. They demand that employers negotiate on their terms and the right to enter the workplace as they like, but then proceed with a 'strike first and bargain later' approach. Indeed, industrial action is taking place when only a minority of employees have voted for it!

Queensland employers cannot afford the significant time and expense that is involved in negotiating an EA under the FW Act, the cost to their business that comes from EAs that limit their capacity to run their business in an efficient manner, or the financial and reputational loss caused by industrial action.

CCIQ wants to expand the list of unlawful terms that cannot be included in EAs to include any term that is not a 'permitted matter' to ensure that negotiations are confined strictly to the employer-employee relationship and do not intrude on managerial prerogative. Industrial action should only be taken where a majority of employees support the move, not just the majority of union's employees, and union officials must only enter a workplace on the request of one of their members.

Improving workforce participation: Queensland has historically been hard hit by skill shortages and labour mobility problems, and employers are acutely aware of this. Accordingly, businesses support measures to encourage more people from all backgrounds into the workforce and to ensure that they have assistance in obtaining appropriate skills and training.

What will **not** fix these problems are additional regulatory and compliance measures that add to the burdens that already weigh heavily on employers. More paperwork and reporting is not the answer.

Government needs to use the levers that reside with it, including working to increase the accessibility of child care facilities, funding initiatives to encourage the hiring of mature-aged people and people with a disability, and ensure that training and skills programs are relevant to, and developed in close consultation with industry.

Creating an environment where employers can take on apprentices and trainees: Apprentices and trainees are a key part of addressing future skills shortages and labour mobility problems.

Small businesses have traditionally been predominantly responsible for taking on apprentices and trainees. However, these numbers are falling as employers struggle with diminished markets and increasing costs that come with employing an apprentice or trainee under the modern awards. At the same time, employers find that designated VET courses do not provide relevant skills or training.

We need government to communicate with industry to make sure training courses are relevant to the work that apprentices and trainees are and will be doing.

It is also crucial that the federal government recognises that driving up the wages and conditions of apprentices and trainees benefits neither employer or employee - the value of an apprenticeship or traineeship lies in the skills, training and on-the-job experience they offer.

A fair and independent industrial umpire and watchdog: The FWC and the FWO together constitute the industrial umpire and watchdog under the Fair Work system.

However, there is an ingrained perception among employers that these entities are tools for employees, particularly in the case of unfair dismissal and general protections claims. Recent calls for the FWC to have capacity to intervene in disputes on its own motion, or for its hearings to be informal and final, would give a quasi-judicial tribunal an inappropriate role. It is essential that the FWC be an impartial body and that rights of appeal from its decisions continue to be available.

"Basically Fair Work is only there to protect the employee and their officers advise to settle any claim in mediation as it will cost a lot more by going to the commission."

Brisbane Business Operator in the Accommodation, Cafes and Restaurants industry

CCIQ has received numerous reports of employer requests for assistance being met with untimely and inaccurate advice that is not binding – for example, an employer who has paid an incorrect award rate on the advice of the FWO and is then penalised. Not only does this reiterate the need for a simpler awards system, but the necessity of an expert industrial watchdog on whose advice and representations employers can safely rely. Where employers do rely on incorrect advice to their detriment, there should be no penalties or compensation payable.

"I have issues with the advice from the Fair Work Ombudsman as I often wait for long periods on the phone only to be told when eventually answered that they cannot help with my query."

Brisbane Business Operator in the Wholesale Trade industry

RECOMMENDATIONS

1:
Minimum Wage Increases

RECOMMENDATION 1: Implement changes to Australia's minimum wage setting process to ensure that it reflects the key considerations of productivity, economic growth and business conditions, particularly in award-reliant industries. This involves:

- A requirement that Annual Wage Reviews must take into account employers' capacity to pay any proposed wage increase; the economic and business conditions within those industries in which the minimum wage has the greatest impact; and the flow-on impacts of the decision;
- Implementing mechanisms to ensure phased annual instalment increases to the mandatory superannuation guarantee levy are offset in future increases to the National Minimum Wage (NMW);
- Implementing a six month transition period following the announcement of the wage increases to allow businesses to make arrangements in light of employee cost increases; and
- Consideration of initiatives to enhance productivity in award-reliant industries to correspond with wage increases.

2:
Individual Flexibility Arrangements

RECOMMENDATION 2: Provide for the reintroduction of individual statutory agreements that allow trade-offs between financial and non-financial benefits, subject to the 'Better Off Overall Test' (BOOT).

If no provision is made for the reintroduction of statutory contracts, the alternative step should be to:

Amend the FW Act to better provide for the negotiation and implementation of individual flexibility arrangements (IFAs) that give genuine flexibility to employers and employees. This requires:

- Limiting union involvement in the negotiation of flexibility terms in enterprise agreements and prohibiting union interference in the negotiation of IFAs between an employee and an employer;
- Allowing IFAs to contain trade-offs between financial and non-financial benefits;
- Increasing the scope of flexibility terms to include a greater number of matters to which an IFA may relate;
- Allowing IFAs to be offered as a condition of employment; and
- Creating a defence to an alleged contravention of the IFA provisions with respect whereby en employer will not be guilty of a contravention where they reasonably believed that in creating an IFA, they had met their statutory obligations (for example, to leave the relevant employee better off overall).

3:
Superannuation policy

RECOMMENDATION 3: Introduce measures to grow Australia's superannuation pool to ensure the challenges faced by Australia's ageing population are met and that employees have a greater understanding about the importance of retirement income. This requires:

- The introduction of employee contributions through soft compulsion;
- More initiatives to encourage voluntary employee contributions, and savings measures that enhance the responsibility of employees to fund their own retirement – this may including tax incentives, government co-contributions and educational campaigns about the function and importance of superannuation;
- Mandatory wage trade-offs for the increases to the mandatory superannuation guarantee; and
- Initiatives to boost workforce participation.

4/5:
Protection of Employee Rights and Responsibilities – Unfair Dismissal and General Protections claims

RECOMMENDATION 4: Access to unfair dismissal claims should be subject to reasonable limits that restore balance to the employer-employee relationship. This requires the following:

- An unfair dismissal exemption for small businesses;
- Dismissal of claims where the Fair Work Commission (the FWC) determines that termination of employment was based on valid grounds;
- Providing that the FWC may only consider issues relating to the employment relationship when determining claims;
- Making higher fees payable on lodgement of an unfair dismissal application; and
- Giving the FWC discretion to make costs orders and issue penalties against applicant employees and/or their representatives where the claim is determined by the FWC to have been false or vexatious.

RECOMMENDATION 5: Access to general protections claims should be subject to reasonable limits that restore balance to the employer-employee relationship. This requires:

- Providing that prohibited adverse action will have only occurred where an employee's workplace right was the sole or dominant reason for the adverse action being taken;
- Providing that the subjective intention of the person who took allegedly adverse action should be the main consideration in determining the reason for that action;
- Removing the reverse onus of proof requiring employers to demonstrate that they did not take adverse action because of an employee's workplace right. If it is not removed, the applicant should have to establish that adverse action occurred before there is any presumption that the action was for a prohibited reason;
- Making higher fees payable on lodgement of a general protections application;
- Capping available compensation levels at 26 weeks' pay, the maximum remedy available for unfair dismissal claims; and
- Giving the FWC discretion to make costs orders and issue penalties against applicant employees and/or their representatives where the claim is determined by the FWC to have been false or vexatious.

6: Modern Awards

RECOMMENDATION 6: Further modernise and consolidate awards to ensure they contain fair and relevant minimum terms and conditions of employment that reflect the specific circumstances and operating environment within relevant industries. This involves:

- Increasing the scope in the current system to allow for greater flexibility with respect to the operation of penalty rates, particularly for those businesses that operate seven days per week or outside 'standard' trading hours. This could include normal rates being payable for an employee's first five shifts in any week, with the sixth and seventh shift (where applicable) worked in a week attracting penalty rates);
- Extending the maximum averaging period for weekly hours to 52 weeks for seasonally affected businesses and regions;
- Amending the Act to clarify that annual leave paid out to employees on termination of their employment does not attract leave loading unless otherwise agreed;
- Removing minimum engagement periods from modern awards or, at a minimum, reducing them to a period of ninety minutes; and
- Increasing the accessibility and reliability of the FWC and the Fair Work Ombudsman (FWO) for employers seeking information on modern awards, wage rates and transitional arrangements.

7: The National Employment Standards

RECOMMENDATION 7: Make changes giving the National Employment Standards (NES) greater flexibility in their application to ensure that they are consistent with the requirements of modern workplaces. This requires:

- Allowing employees to work in excess of 38 hours per week as standard working hours and increasing the maximum averaging period from 26 weeks to 52 weeks;
- Ensuring that the NES do not hinder the effective operation of IFAs; and
- Handing back to government the responsibility of paying Paid Parental Leave directly to employees on parental leave.

8: Enterprise Bargaining

RECOMMENDATION 8: Simplify the current process for negotiating, approving and implementing enterprise agreements (EAs). This involves:

- Expanding the list of unlawful bargaining terms to include a term that is not a 'permitted matter' under the FW Act. This will ensure that matters pertaining to the employment relationship are taken into consideration during negotiations;
- Ensuring that employers would not be required to bargain with respect to terms relating to matters outside the employer-employee relationship;
- Amending the good faith bargaining requirements to oblige parties to consider:
  - the economic circumstances of the business at the time of bargaining; and
  - whether negotiations have been exhausted.
- Requiring wage increases and improvements to conditions to be offset by productivity improvements;
- Requiring increases to the mandatory superannuation levy to be offset by proportionally smaller wage increases;
- Requiring a secret ballot to be the sole method used in obtaining majority support determinations (MSD);
- Implementing greater flexibility in relation to the BOOT and the use of IFAs;
- Allow employees to opt out of EAs; and
- Allow EAs to be lodged online to expedite the approval process by the FWC.

9:

Industrial Action and Union Involvement in the Workplace

RECOMMENDATION 9: Implement mechanisms to create a more cooperative and harmonious workplace relations system that better assists employers and employees to resolve disputes without resorting to industrial action. This involves:

- Providing that a protected action ballot may only be held after bargaining has been undertaken;
- Providing that protected industrial action may only be taken where the majority of employees in a workplace support the move;
- Providing that protected industrial action may only be taken with respect to matters pertaining to the employment relationship;
- Moving away from using industrial action as the key method for dispute resolution; and
- Putting in place increased sanctions and penalties to curb the increasing incidence of unprotected and unlawful industrial action.

10:

Improving workforce participation and gender equality outcomes

RECOMMENDATION 10: Government must take greater responsibility for encouraging and facilitating greater workforce participation and gender equality outcomes by:

- Removing prescriptive compliance measures on business that hinder, rather than promote, the employment of a more diverse range of people;
- Introducing proactive, non-regulatory initiatives that fall outside the scope of legislation to encourage businesses to employ a broader range of people;
- Ensuring that elements of our workplace relations system do not operate to exacerbate existing problems in areas with endemic unemployment, low workforce participation and skills shortages; and
- Working with industry to develop industry relevant training and skills programs that can be tailored to and delivered specific areas.

11:

Apprentices and Trainees

RECOMMENDATION 11: Eliminate the barriers to the commencement and completion of apprenticeships and traineeships. This requires:

- Maintaining wage levels to ensure employee costs do not further disincentivise the employment of apprenticeships and traineeships;
- Recognising that a one-size fits all approach to apprentice wages and conditions across every industry and occupation is not appropriate;
- Making necessary changes or improvements to the workplace relations framework designed at increasing workplace participation rates; and
- Recognising the importance of non-regulatory measures designed to encourage employers to take on apprentices and trainees, including funding incentives and extensive consultation with industry with respect to training and education programs.

12:

A Fair, Effective and Efficient Industrial Tribunal and Ombudsman

RECOMMENDATION 12: Increase the accessibility and reliability of the advice and assistance provided by the FWC and the FWO for employers. This requires:

- The provision of better quality and more accurate information by the FWC and the FWO in response to inquiries from employers about their obligations under the FW Act; and
- Addressing the perception that the FWC and the FWO are primarily designed to assist and support employees by ensuring that they have the necessary powers to sufficiently assist and support employers.

13:

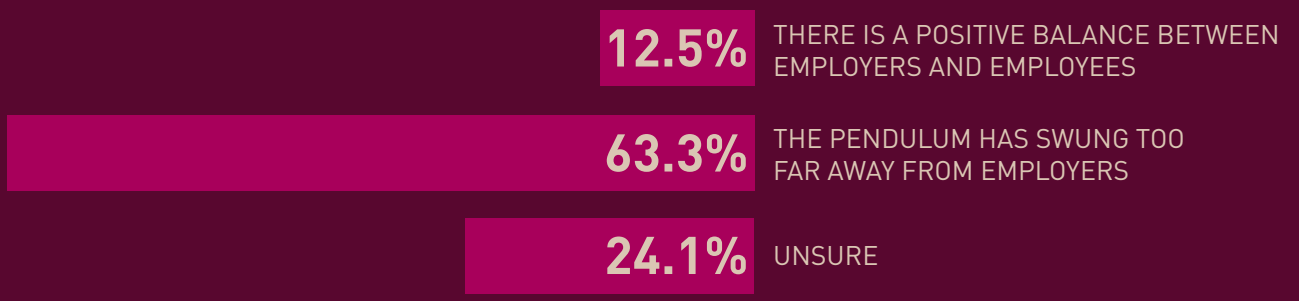
Other issues of importance to Queensland employers

RECOMMENDATION 13: Address other issues of importance to Queensland employers through the following measures:

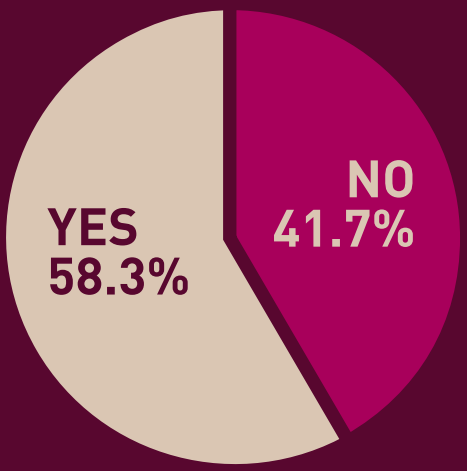
- The FWC should recognise the special circumstances of SMEs;
- Amend the definition of 'small business' to include businesses employing up to 49 employees;
- Put in place a 'one stop-shop' in Queensland for workplace bullying to ensure that inquiries and complaints are appropriately referred and data can be collected on the nature and incidence of workplace bullying;
- Review penalties and sanctions in the FW Act to ensure that they are appropriate, targeted and proportionate;
- Ensure that casual working arrangements are protected and maintained; and
- Simplify the provisions and processes relating to greenfields agreements and transfer of business.

OVERVIEW

HAS GOVERNMENT GOT THE BALANCE RIGHT WITH THE FAIR WORK ACT ? (%)



HAS THE FAIR WORK ACT INCREASED THE REGULATORY BURDEN ON YOUR BUSINESS?



PERCENTAGE OF BUSINESSES WHO EXPERIENCED A DECREASE IN PROFITABILITY

46%

66%

ARE MAJORLY OR CRITICALLY CONCERNED ABOUT THE OVERALL COMPLEXITY OF THE CURRENT SYSTEM

1.0 INTRODUCTION

1.1 Workplace relations impacts on every business, in **every industry and in every region**. Inaction and denial are not an option if a government's goal is to support employment and foster sustainable and productive businesses that can remain competitive in both domestic and international market places. Australia's economic prosperity is contingent on ensuring the **right workplace relations framework** is in place to meet the needs of contemporary Queensland workplaces.

1.2 Queensland employers frequently tell us that Australia's workplace relations laws have a significant capacity to impact on the productivity, sustainability and competitiveness of their businesses. Yet so often, these concerns are ignored or rejected outright by those with the power and responsibility for creating a regulatory environment that is conducive to prosperous workplaces. CCIQ believes this is wrong – for too long, governmental approaches to workplace relations have been **framed around ideology and politics**.

1.3 **Queensland businesses cannot afford this continued inaction**. While we are one of the nation's most prosperous states, with wealth stemming in particular from our resources, agriculture and tourism industries, we are not immune from the soft economic conditions that prevail throughout the Australian economy. Skills shortages, low workforce participation and unemployment have afflicted regional Queensland in particular. All over the state, employers tell us that they need to be able to use all possible levers available not only to remain profitable, but to stay afloat and keep employees in their jobs. This struggle is not being helped by rigid laws that allow little flexibility, and seek to apply a 'one-size fits all' model to the diverse range of businesses in this country.

1.4 Since the commencement of the **Fair Work Act 2009**, CCIQ has been proactively analysing the operation of the Fair Work system and working with our members to determine the key frameworks and outcomes they require. What we know as a result of that interaction is that **the system is not working**, and that change is required now. This Blueprint examines and provides an in-depth analysis of the current system and its impact on Queensland businesses, and provides a comprehensive set of recommendations that will underpin the way forward for putting in place a workplace relations system that **gets the balance right**, benefiting employers, employees and the economy.

1.5 **The time for change has well and truly arrived**. CCIQ is calling on all sides of politics, at all levels, to take strong and decisive action to undertake the reforms that are necessary to boost workplace productivity, sustainability and competiveness for Queensland and Australia.

"Anything that creates less ability to compete in the market place or makes our economy more costly than others around the world is only going to make business more difficult than it already is."

– South West Queensland Business Operator in the Wholesale Trade industry

2.0 QUEENSLAND BUSINESS VIEWS ON AUSTRALIA'S WORKPLACE RELATIONS SYSTEM

2.1 **The Fair Work Act 2009** (FW Act) and modern awards commenced in 2009 following a commitment in 2007 by the then Federal Opposition to abolish the WorkChoices legislation and create a workplace relations framework built on its **Forward with Fairness** policy. The new system dramatically altered workplace relations arrangements for thousands of employers and employees, including in Queensland, with legislation referring state powers for the private sector to the Commonwealth.[1]

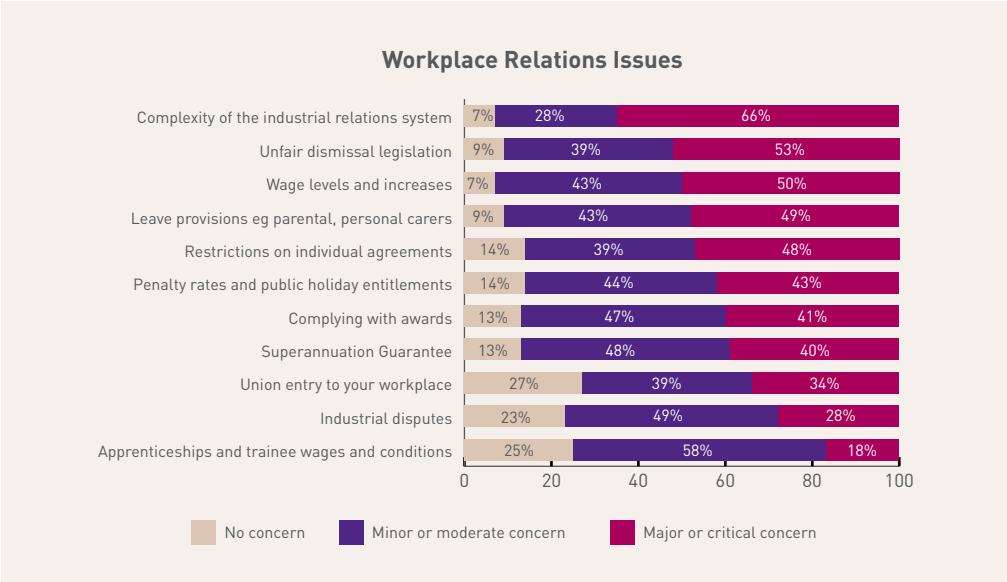
This section provides feedback from Queensland businesses gathered through various industry surveys on the impact of the current system.

2.2 **The importance of workplace relations policy to Queensland businesses**

Workplace relations is one of the most significant issues facing Queensland businesses because it shapes their employment and operational arrangements, and directly affects their cost bases. A recent CCIQ survey of over 1,000 Queensland businesses revealed that the majority (66 per cent) were majorly or critically concerned about the overall complexity of the current system and also had serious concerns regarding key workplace relations policy areas. [2]

"Management of a business is now even more difficult without the ability to make decisions that might be necessary due to economic circumstances."

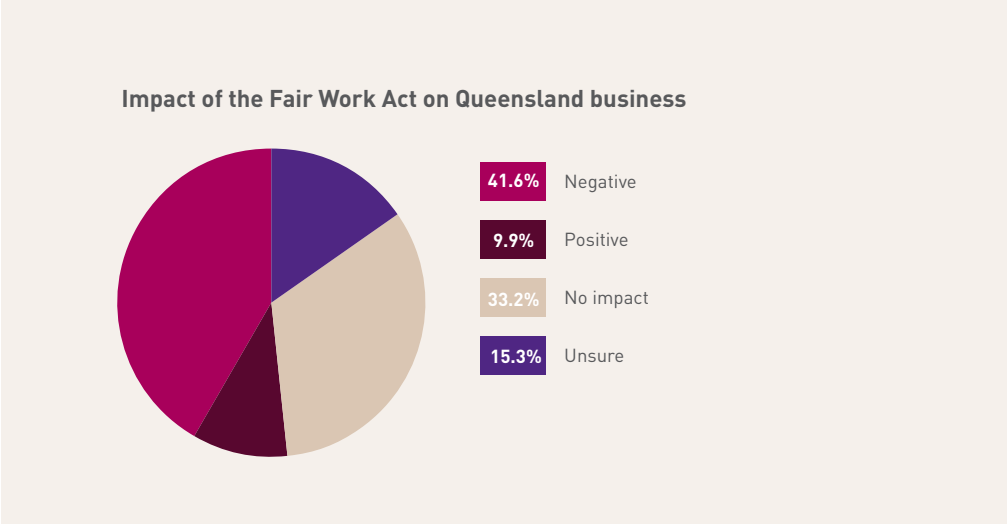
Brisbane Business Operator in the Retail Trade industry



Source: CCIQ's 2012 Big 3 for Business Election Survey – January 2012 [3]

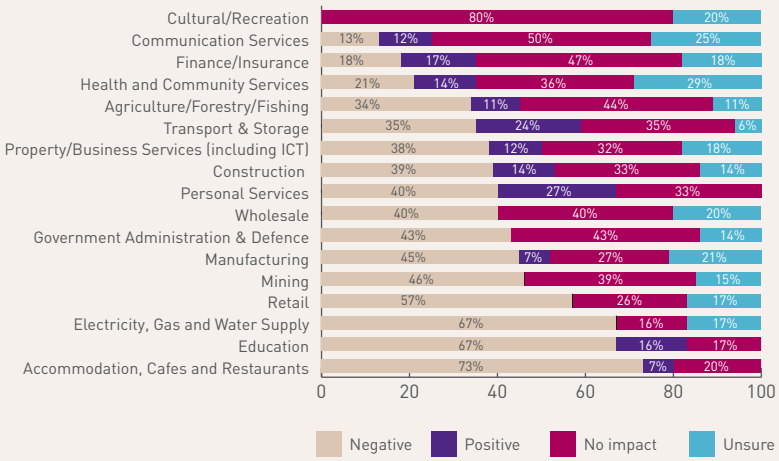
2.3 Overall impact of the FW Act

Since its introduction, Queensland employers have indicated that they consider the FW Act to be complex and prescriptive in nature and that in operation, it does not align with the realities faced by modern enterprises. Early research undertaken by CCIQ in 2010 found that businesses were overwhelmed by the increased red tape burden that the FW Act imposed, without providing any new benefits. [4] Updated research undertaken by CCIQ has found few improvements on the original diagnosis, with 42 per cent of businesses in November 2011 reporting that the FW Act had a negative impact. [5] Employers are not worried about nomenclature – it is unlikely that changing the name of Fair Work's main industrial body, Fair Work Australia, to the **Fair Work Commission**, will change their views on the operation of the Fair Work regime. [6]



Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system- November 2011 [7]

Impact of the Fair Work Act by industry



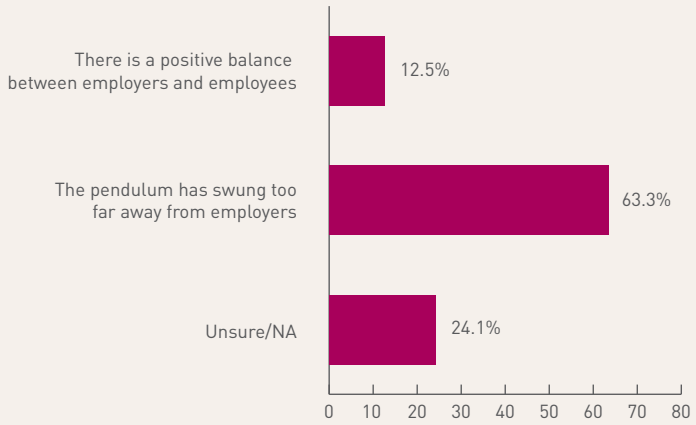
Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system- November 2011 [8]

2.4 The Fair Work system is perceived by employers as favouring employees, with the majority of Queensland businesses (63 per cent) believing the Federal Government has not got the balance right. Businesses believe much more needs to be done to provide an appropriate balance between the needs of employers and employees.

"The Act is very heavily weighted towards employees and does not consider that there are good employers who do not wish to exploit their workers."

Far North Queensland Business Operator in the Health Care and Social Assistance industry

Has Government got the balance right with the Fair Work Act? (%)

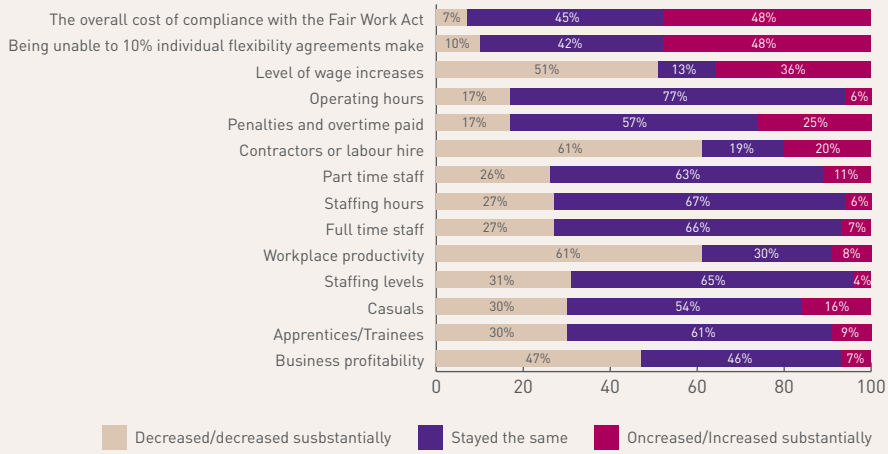


Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011 [9]

2.5 A good federal government must show that they understand the importance of lifting unnecessary burdens on employers that stifle business growth. Key findings from surveys of Queensland businesses on their experiences of the FW Act include: [10]

- A 48 per cent increase in the cost of compliance measures, payable by businesses;
- Workplace productivity has declined in 30 per cent of businesses;
- 46 per cent of businesses have experienced a decrease in business profitability;
- Around 30 per cent of businesses have decreased staff levels (including casuals, apprentices/trainees and full time staff) as a result of the FW Act;
- One in four have seen a reduction in staff hours and an increase in penalties and overtime paid; and
- 36 per cent of businesses have seen an increase in wage levels.

Impact of the Fair Work Act and Modern Awards on the following:



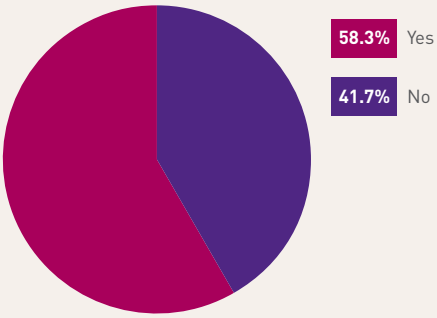
Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011 [11]

2.6 **Impact of the FW Act on productivity, flexibility and competitiveness**

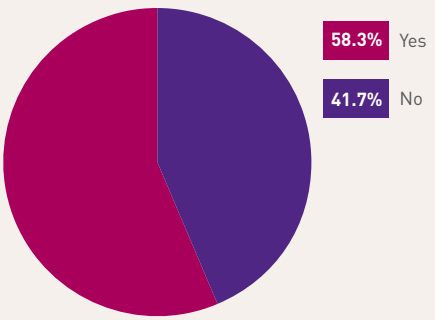
A survey undertaken by CCIQ in February 2012 found that the FW Act had increased the regulatory burden and compliance costs for the majority of Queensland businesses (58 per cent). Furthermore, 56 per cent of businesses stated that the FW Act had negatively impacted on flexibility within their business.

"We have lost our flexibility, and our staff have lost the benefits of that flexibility."
South West Queensland Business Operator in the Manufacturing industry

Has the Fair Work Act increased the regulatory burden on your business?



Has the Fair Work Act nagatively impacted on flexibility in your business?



Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011 [12]

2.7 Queensland employers are frustrated by the fact that the increasing costs of employment resulting from the FW Act are not being offset by productivity gains. This has implications for the ongoing viability of businesses if these costs continue to increase with no associated offsets or trade-off benefits for the business. These increasing costs are pricing some businesses out of the market, either encouraging them to move part or all of their operations overseas, close their doors or decrease their number of employees.

"To get real productivity gains we need flexible working hours without the constraint of a Monday to Friday mentality."

South West Queensland Business Operator in the Construction industry

2.8 Not only are the direct costs of employing workers rising under the FW Act, but the additional burdens that businesses are faced with include:

- Increased time and cost spent on compliance matters with no return on investment;
- Difficulties in remaining up-to-date with changes and interpreting how the FW Act applies to particular businesses;
- Difficulties in obtaining information or advice from Fair Work Australia (FWA), now known as the Fair Work Commission (the FWC);
- Unworkable clauses and obligations in modern awards and under the FW Act;
- Confusing transitional arrangements;
- Additional paperwork and record keeping requirements; and
- Increased need for legal and/or specialist advice to ensure compliance.

2.9 The lack of flexibility within the current system has also reduced businesses' capacity to embrace opportunities and adapt to changing circumstances. Queensland businesses have identified a number of ways in which the Fair Work system has reduced flexibility within their businesses including:

- An inability to operate profitably within key operating times in particular industries (for example Sundays, public holidays or week nights in the retail or tourism industries);
- Changes to employment types within business (for example, increasing casual or labour hire employment and decreasing permanent employees to counteract the inflexibility);
- Reduced flexibility in rostering and an inability to employ juniors for short time periods (for example, after school);
- Increased employee consultation requirements;
- Difficulties in dismissing employees who are not performing or following instructions;
- Limited capacity to allow employees to work the hours they want to work due to the cost implications (for example, through penalty rates);
- Ongoing fear of unfair dismissal or adverse action claims;
- Increased third party involvement in the workplace and management of staff; and
- Increased paperwork and reporting requirements to meet the flexibility requests of employees.

"The day is coming where we will have to let people go. The wage rates increase again in July. We are a seven day a week business - we will have to stop trading on Sunday and public holidays due to penalty rates."

Brisbane Business Operator in the Retail Trade industry

2.10 **What next?**

In identifying the general discontent of employers with the Fair Work system, CCIQ also offers what has been lacking in the workplace relations debate: specificity and a path forward. The following sections in this Blueprint detail the precise issues that employers have with the Fair Work system, and offer targeted recommendations that can demonstrably provide a better way forward.

3.0 URGENT NEED FOR REFORM TO AUSTRALIA'S WORKPLACE RELATIONS SYSTEM

3.1 **Workplace relations laws matter to business**

CCIQ understands how frustrating it is for someone running a business to be told that workplace relations laws do not substantially affect their productivity one way or the other. We know that small business owners are being genuine when they say that increases to the minimum wage or the mandatory superannuation guarantee are simply not sustainable. And we share the concerns of employers at calls for further limits on flexible and casual working arrangements, and increasing efforts by union to impinge on managerial prerogative, because we know that such moves make us less competitive at home and in the global marketplace.

"We want to look after and maintain a solid workforce but with the ability to quickly respond to necessary economic changes without being scared to do so."

Brisbane Business Operator in the Construction industry

3.2 **It's not about 'us against them'**

Employees are a critical component in the operation and success of all businesses, and also represent a significant input cost. Therefore, the way in which employees are engaged, their productivity and the flexibility of workplace practices necessarily impact businesses in a significant way. Unsustainable increases to the minimum wage and modern awards, as well as in superannuation costs, may seem attractive to employees in the short-term, but in fundamentally weakening the financial strength of employers, these changes will undermine job security in the medium and long term.

"Balance the fairness between employees and employers."

Sunshine Coast Business Operator in the Accommodation and Food Services industry

"Small business is the largest employer in Australia and needs to be protected and given more consideration for their contribution to the economy."

Brisbane Business Operator in the Accommodation, Cafes and Restaurants Industry

3.3 We need a workplace relations system that is simple and easy to use. Australia currently has a highly regulated and prescriptive system that regulates all aspects of the employment relationship and beyond. Indeed, the Fair Work system seems to focus on social outcomes at the expense of economic outcomes.[13] Not only has this approach undermined the capacity of employers to take on employees, but has created a system which legislates for the worst case scenario in which employees are victims that require protection, representing a huge detriment and cost to the majority of employers who do the right thing.

3.4 **Flexibility is essential to productive working environments**

Employers are increasingly constrained in their capacity to make the positive change that they believe would increase productivity in their particular businesses, with attempts at change and pushes for flexibility being met with hostility from trade unions and indifference from government. The majority of employers and employees have found it impossible to establish the flexible working arrangements they desire to deliver mutually beneficial outcomes that meet their needs and individual circumstances. The fact is that benefits under Fair Work really only flow in one direction: the system is delivering better wages and enhanced conditions to employees but fails to provide corresponding advantages to employers through efficiency or productivity improvements.

"Increase our ability to discuss more flexible arrangements that suit both the employer and employee."

Wide Bay Business Operator in the Accommodation, Cafes and Restaurants industry

3.5 **If it's bad for business, it's bad for employees and the economy**

It is clear that the Fair Work regime is not conducive to achieving improved economic and employment outcomes. **This affects all businesses, whether they are small, medium or large**. Failure to initiate change and improve the current situation puts investment and future projects in Australia at risk, with our international competitors likely to reap the benefits while their Australian counterparts are mired in red tape, industrial unrest and a general lack of flexibility. Those workplaces operating in a purely domestic environment are equally vulnerable as profit margins are whittled away by unsustainable wage increases, penalty rates, unfair dismissal laws and hikes to the mandatory superannuation guarantee. **Either way, reform is essential.**

"It has become too expensive to employ anyone."

Far North Queensland Business Operator in the Services industry

3.6 **Let's make a positive change for the future of our economy**

We know that many businesses are already being hurt by the effects of the high Australian dollar, uncertain global economic conditions, and a lack of consumer confidence. A workplace relations regime is not the only factor influencing productivity, sustainability and competitiveness in the workplace, but it is a major one that needs to be addressed urgently.

3.7 It is irresponsible not to recognise that the FW Act is highly influential in shaping the business operating environment and subsequently influences the sustainability, competitiveness and productivity of businesses. The federal government must listen to business owners when they point to changes that they believe would make a tangible change to their operations.

"With the economic climate as it is at present, it is very difficult to bring in enough money to allow us to meet the burdens imposed on small businesses and be able to move forward."

Gold Coast Business Operator in the Retail Trade industry

KEY COMPONENTS OF A WORKPLACE RELATIONS SYSTEM

45%

THE PERCENTAGE OF BUSINESSES THAT INDICATED THEY ARE MORE RELUCTANT TO HIRE PERMANENT STAFF AS A RESULT OF UNFAIR DISMISSAL LAWS

SUPERANNUATION CONTRIBUTION INCREASE SUPPORTED BY QUEENSLAND EMPLOYERS

VOLUNTARY INCREASE FUNDED BY EMPLOYEE

38.3%

MANDATORY INCREASE FUNDED BY EMPLOYEE

22.1%

INCREASE FUNDED BY EMPLOYER

17.8%

NO INCREASE

21.8%

QUEENSLAND EMPLOYERS CONTINUE TO RAISE CONCERNS ABOUT THE INCREASING NUMBER OF UNFAIR DISMISSAL CLAIMS

4.0 MINIMUM WAGE INCREASES

RECOMMENDATION 1: Implement changes to Australia's minimum wage setting process to ensure that it reflects the key considerations of productivity, economic growth and business conditions, particularly in award-reliant industries. This involves:

- A requirement that Annual Wage Reviews must take into account employers' capacity to pay any proposed wage increase; the economic and business conditions within those industries in which the minimum wage has the greatest impact; and the flow-on impacts of the decision;
- Implementing mechanisms to ensure phased annual instalment increases to the mandatory superannuation guarantee levy are offset in future increases to the National Minimum Wage (NMW);
- Implementing a six month transition period following the announcement of the wage increases to allow businesses to make arrangements in light of employee cost increases; and
- Consideration of initiatives to enhance productivity in award-reliant industries to correspond with wage increases.

4.1 Wages policy impacts on the competitiveness of all businesses, but particularly those in award-reliant industries. It is essential that a key consideration with respect to the minimum wage in Australia is that it allows businesses to remain competitive in the global marketplace. This does not involve a 'race to the bottom' – rather, we merely need a sensible acknowledgement that the minimum wage setting process must be appropriately geared to ensure that wages are set at a level that is affordable, does not erode profitability, and should not impact on the long-term sustainability of businesses.

4.2 **Current Australian Policy**

The FWC is responsible for setting the minimum wage in the national workplace relations system. [14] The FW Act determines that it will be reviewed annually by the FWC's Minimum Wage Panel (MWP) through the Annual Wage Review process (AWR), with stakeholders allowed reasonable opportunity to make and respond to written submissions. Once the determination is made, any changes to the minimum wage come into effect on the commencement of the next financial year (however, there are provisions for later commencement in exceptional circumstances).[15]

4.3 The FWC is required to establish and maintain a safety net of fair minimum wages, taking into account the following considerations:

- The performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth;
- The promotion of social inclusion through increased workforce participation;
- Relative living standards and the needs of the low paid;
- The principle of equal remuneration for work of equal or comparable value; and
- Providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.[16]

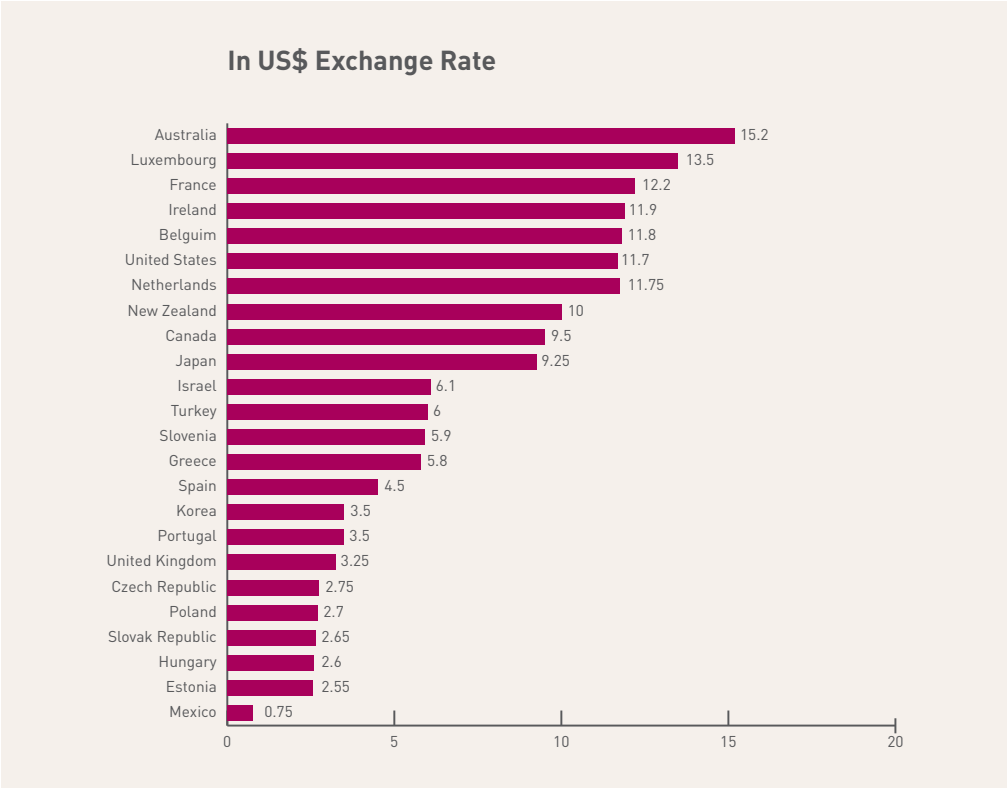
4.4 The FWC's decision is usually announced about a month prior to its commencement. Australia is also relatively unique in that the FWC sets an entire wage scale, not just the federal minimum wage, for each classification under modern awards.[17]

4.5 **Competitiveness of minimum wages in Australia**

Australia currently has the most regulated and highest minimum wages in the Organisation for Economic Cooperation and Development (OECD).[18] The graph overleaf shows that the minimum wage in Australia is well above our OECD competitors including Japan, the United Kingdom, the United States and New Zealand. The minimum wages also only represent the base wage cost of employees, with additional on-costs including penalty rates, allowances, loadings, workers' compensation premiums, payroll tax, superannuation and associated administration costs.

"Employee costs have escalated. We now contract most of our staff from the UK. It is now cheaper to outsource to the UK, where our employee costs have dropped at least 20 per cent."

South East Queensland Business Operator in the Administration and Support Services industry



Source: Organisation for Economic Co-operation and Development - 2012 [19]

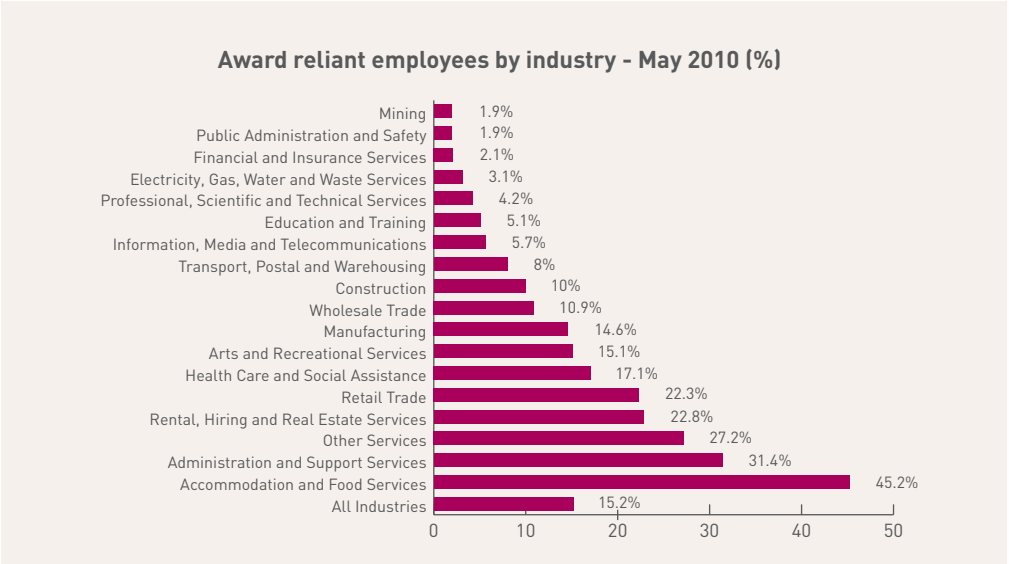
4.6 Minimum wages have been growing at a substantial pace in Australia. As at 1 July 2012, the NMW in Australia was $606.40 per week or $15.96 per hour. Over the past seven years, the NMW has increased by 25.1 per cent from $484.60 per week or $12.75 per hour.[20] Concerns have been raised that rising wages in Australia are outpacing inflation and productivity growth.[21] There are also concerns that wages are rising at a much faster pace than the price of goods and services, particularly in award reliant industries.

"We had to factor this (increases to the minimum wage) into my accommodation prices - guests do not understand this, and when inquiring about our prices, say that it is too expensive to stay."

Sunshine Coast Business Operator in the Accommodation, Cafes and Restaurants industry

Source: Fair Work Australia Annual Wage Reviews and Australian Fair Pay Commission wage-setting reviews – 2005-2012 [22]

4.7 The latest data available from the Australian Bureau of Statistics (ABS) indicates that there are around 1.4 million or 15.2 per cent of employees that have their wages set by industrial awards and minimum wages.[23] Some industries are particularly more award-reliant than others, including the accommodation and food services industry (45.2 per cent), administration and support services industry (31.4 per cent), other services industry (27.2 per cent), the rental, hiring and real estate services industry (22.8 per cent) and the retail trade industry (22.8 per cent). [24]



Source: ABS Catalogue 6306.0 Employee Earnings and Hours – May 2010 [25]

4.8 Minimum wages act as a floor for wage increases for the majority of workers. Therefore, increases in minimum wages have a considerable flow on effect throughout the economy and can negatively impact on employers' ability to offer competitive wages.

4.9 **Queensland business feedback on the AWR**

Businesses have raised a number of concerns regarding the AWR process including:

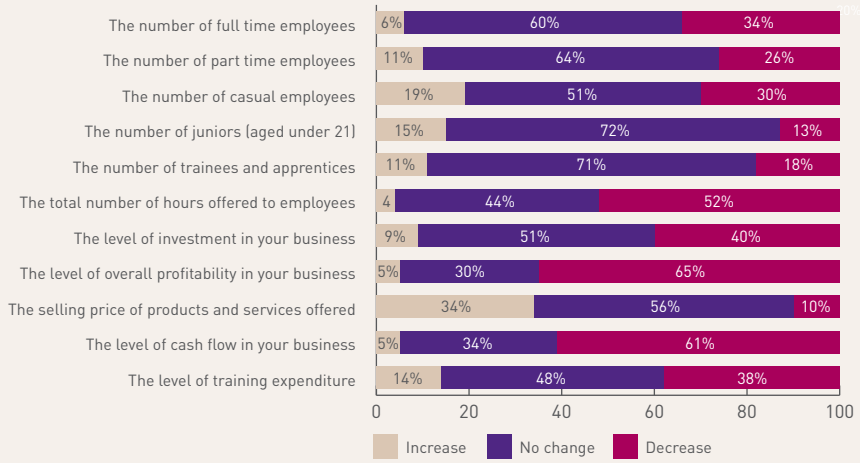
- Decisions to increase minimum wages appear to have little regard for the economic conditions of those industries in which they will have the largest impact. Only broad economic conditions appear to be taken into consideration, which can be misleading in light of the impact of the mining boom in boosting key economic indicators;
- Key considerations do not appear to be taken into account during minimum wage setting deliberations, including the capacity of employers to pay the proposed wage increase;
- Minimum wages increases are not tied to increases in productivity;
- Minimum wages increases often force a reduction of staffing numbers and hours in the lowest paid sectors;
- Skilled workers within a business are negatively impacted as employers have less resources to further compensate these workers; and
- There is only a very short transition period between the announcement of the minimum wage decision and the date on which employers are required to implement the decision.

"We no longer have employees, too expensive and too complicated to comply with the legislation."
South West Queensland Business Operator in the Services industry

4.10 Feedback provided by CCIQ on behalf of member employers during the most recent AWR appeared to receive minimal consideration during the MWP's deliberations. [26] CCIQ undertook a detailed consultation process with Queensland businesses to determine the impact of the FWC's decision on their businesses to feed into the review process. [27] This consultation process found that the FWC's 2011 decision to grant a 3.4 per cent per week increase to all adult wages in modern awards had a significant impact on many Queensland businesses. Of Queensland businesses surveyed by CCIQ following the decision: [28]

- 65 per cent experienced a decreased level in overall profitability in their business;
- 61 per cent reported a decrease in the level of cash flow;
- 52 per cent had to reduce staff hours;
- The level of business investment and training expenditure was reduced in 40 per cent and 38 per cent of businesses respectively;
- 34 per cent reduced the number of full time employees. A further 30 per cent and 26 per cent said they had reduced the number of casual and part time employees respectively; and
- The selling price of products and services offered increased for 34 per cent of businesses.

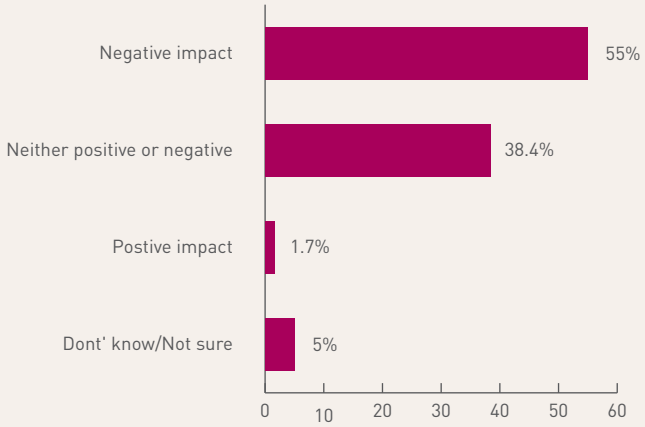
What impact did the 2011 Annual Wage Review decision have on:



Source: CCIQ Annual Wage Survey - 2012 [29]

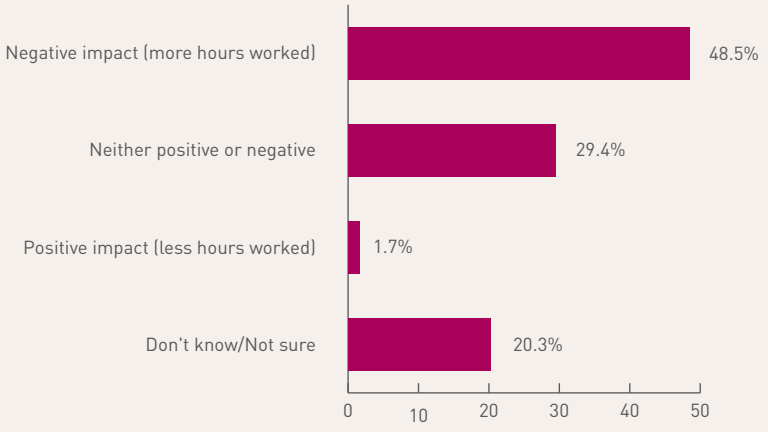
4.11 More than half of Queensland businesses (55 per cent) stated that the 2011 increase to the minimum wage had a direct negative impact on their intentions to put on new staff. Furthermore, 48.5 per cent of business owners said the decision resulted in them working more hours in their business.

Did the 2011 wage increase have a direct impact on your intentions to put on new staff? (%)



Source: CCIQ Annual Wage Survey - 2012 [30]

If you are the owner of your business, did the 2011 wage increase have a direct impact on the overall hours that you worked in your busiess? (%)



Source: CCIQ Annual Wage Survey - 2012 [31]

4.12 The FWC failed to acknowledge these survey results and other feedback provided by CCIQ throughout the review process and still implemented a 2.9 per cent increase to minimum weekly wages from the first full pay period on or after the 1 July 2012.[32]

"Business cannot just keep increasing wages and absorbing costs. There is currently no incentive to own a business as the rewards (profits) are far behind the risks associated with owning a business. The current model of "just increasing wages" is crippling small to medium business.

– Brisbane Business Operator in the Construction industry

4.13 **Actions supported moving forward**

The federal government needs to closely examine Australia's wage setting mechanisms to ensure they appropriately reflect productivity, economic growth and business conditions including the capacity of employers in award-reliant industries to pay increased wages and remain viable in the longer term.

4.14 Changes to the process: CCIQ favours changes being made in relation to how minimum wages are set and implemented every year. The FWC's decision-making process must place greater weight on the potential strain on businesses, particularly in certain sectors, that a wage rise can have. This may necessitate an amendment to the FW Act that directs the MWP to take employers' capacity to pay into account as a key determinant of the size of any increase.

4.15 A genuine consultation process: CCIQ supports minimum wage increases that have positive impacts on employment and profitability within enterprises. Therefore, it is important that increased attention is placed on the feedback and information provided by businesses and employer representatives during the decision making process, and on the specific economic conditions within those industries that will experience the most impact from increases in the minimum wage. Businesses should also be provided with a transition period of six months for implementing changes.

4.16 Trade-offs: The additional on-costs faced by businesses must also be taken into consideration during proposals to increase minimum wages. In particular, the phased annual instalment increases to the mandatory superannuation guarantee levy should be offset in future wage increases (see further discussion of superannuation policy in section 6.0). Furthermore, consideration is required during each annual review on providing employers with a means to fund wage increases such as through implementing initiatives to enhance productivity within award-reliant industries.

"If wages increase we will have to employ fewer workers as the selling price of our products did not increase but decrease during the last financial year and season. Also, all input costs like transport, packaging, fuel, chemicals and fertiliser increased. Profit margins are decreasing and economic development is less every year. Wages are our biggest expenditure."

– Far North Queensland Business Operator in the Agriculture, Forestry and Fishing industry

5.0 THE IMPORTANCE OF FLEXIBILITY

RECOMMENDATION 2: Provide for the reintroduction of individual statutory agreements that allow trade-offs between financial and non-financial benefits, subject to the 'Better Off Overall Test' (BOOT).

If no provision is made for the reintroduction of statutory contracts, the alternative step should be to:

Amend the FW Act to better provide for the negotiation and implementation of individual flexibility arrangements (IFAs) that give genuine flexibility to employers and employees. This requires:

- Limiting union involvement in the negotiation of flexibility terms in enterprise agreements and prohibiting union interference in the negotiation of IFAs between an employee and an employer;
- Allowing IFAs to contain trade-offs between financial and non-financial benefits;
- Increasing the scope of flexibility terms to include a greater number of matters to which an IFA may relate;
- Allowing IFAs to be offered as a condition of employment; and
- Creating a defence to an alleged contravention of the IFA provisions with respect whereby en employer will not be guilty of a contravention where they reasonably believed that in creating an IFA, they had met their statutory obligations (for example, to leave the relevant employee better off overall).

5.1 A modern workplace relations system must allow employers and employees to negotiate individual arrangements that meet both parties' needs and allow for the adaption of workplace arrangements to the circumstances of a particular business. While flexibility is important in all workplaces, it is key in small and medium enterprises (SMEs) in Queensland, which often have 'niche' requirements that derive from financial or operational considerations. The mechanism for providing flexibility is already in the FW Act in the form of IFAs, which allow an employer and employee to make an agreement with respect to an employee's hours, pay rates and allowances. However, they are also subject to restrictive conditions - in particular, IFAs cannot be offered as a condition of employment.

5.2 Individual statutory agreements were part of Australia's workplace relations landscape long before they became well known under the WorkChoices regime. While that regime relaxed the conditions on which individual agreements could be formed (removing the requirement that it meet a 'no disadvantage test' and allowing leave and other entitlements to be traded off for financial benefits) CCIQ believes that the underpinning principle of individual agreements – that is, allowing an employer and an employee to negotiate mutually suitable working arrangements – is an important one. Employers and employees should be entrusted to work together in a collaborative fashion to develop flexible arrangements that suit both parties, and which provide certainty for both parties.

5.3 With a number of common-sense modifications, IFAs also have the potential to be mutually beneficial, and are as much a tool to provide employees flexibility with respect to family commitments, as they are to allow employers to more effectively tailor staffing arrangements to the needs of their business. Union claims that individual agreements of any kind are used by employers to get employees to 'work whenever, wherever and however the employer desires at a flat hourly rate' merely demonstrate a lack of understanding of the needs of contemporary workplaces and the people that work in them.[33]

5.4 **Current Australian policy**
In light of the abolition of individual statutory agreements, the FW Act introduced IFAs as a means of retaining some element of the flexibility that had been afforded by Australian Workplace Agreements, the name given to the form of individual contracts available under WorkChoices. IFAs allow for variations to modern awards or enterprise agreements in order to meet the needs of employers and individual employees while ensuring minimum entitlements and protections are not undermined.[34]

5.5 All modern awards and enterprise agreements must include a flexibility term specifying those matters that may be the subject of an IFA. If this is not done, the model flexibility term (as set out in the FW regulations) is taken to be a term of the agreement. [35] The model clause provides an employer and an employee to enter an IFA varying an enterprise agreement with respect to:

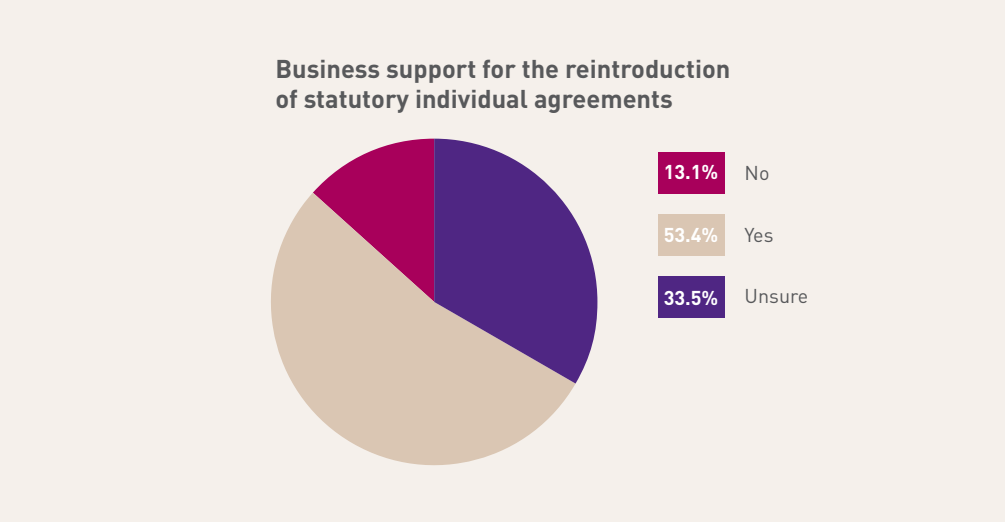
- Arrangements about when work is performed;
- Overtime rates;
- Penalty rates;
- Allowances; and
- Leave loading.

5.6 Both an employer and an employee can initiate a request for an IFA; however, the employer is responsible for ensuring that the employee is better off overall than if there was no IFA in place (that is, the IFA must meet the BOOT).[36]

5.7 **Queensland business views on flexible working arrangements**
Data and various reports indicate that the uptake of IFAs has been minimal, and that they have had negligible impact on increasing flexibility.[37] This low uptake can be attributed to the fact that IFAs, in practice, do not provide genuine flexibility for employers: they can only deal with a limited number of matters, can be terminated unilaterally by employees on short notice, and cannot be offered as a condition of employment. Employers are unlikely to go to the time and expense of putting in place an agreement (that they are certain meets the BOOT) if it can be ended without consultation.

"There does not seem to be any flexibility to work out informal mutually beneficial arrangements with staff. eg a staff member would prefer to work weekends due to family or other commitments. We would be required to pay penalty rates instead of treating the arrangement as normal working hours."

South West Queensland Business Operator in the Health Care and Social Assistance industry



Source: Commonwealth Bank CCIQ Pulse Survey of Business Conditions: Hot Topic question - September Quarter 2011 [38]

5.8 Queensland employers have experienced significant difficulties in inserting a meaningful flexibility clause in workplace agreements. When negotiating enterprise agreements (EAs), unions rarely agree to the implementation of flexibility clauses that go beyond the limited model flexibility clause. Further, employers have reported that during the negotiation of workplace agreements, unions seek to insert clauses into EAs that require the agreement of the majority of the workforce and/or the union to any changes to the application of certain conditions. [39]

5.9 Employers also have concerns surrounding how to apply the BOOT, with minimal guidance provided on how it should be applied or whether it has been applied appropriately. For example, it has long been unclear whether the 'trading off' of financial benefits for non-financial benefits (that meet the needs of both parties) satisfies the BOOT requirements. This uncertainty has discouraged the use of IFAs as employers fear leaving themselves open to adverse action claims or penalties.

5.10 It has been suggested that this uncertainty could be remedied by requiring employers to lodge IFAs with the FWC when an IFA has been made - this would constitute a defence to an alleged contravention of the provisions where an employer believed that they had met their statutory obligations.[40] CCIQ does not support any amendment requiring employers to notify the FWC when an IFA is created, as this would merely create unnecessary and additional red tape, undermining the purpose of an IFA.

"There needs to be opportunities for individual mutually beneficial work arrangements within the basic Fair Work framework of the employee being better off overall."

South West Queensland Business Operator in the Health Care and Social Assistance industry

5.11 **The importance of flexibility for SMEs in Queensland**

The resources industry in Queensland has brought immense wealth to our state and CCIQ recognises and values this. However, its sheer size, extensive personnel requirements and the high levels of remuneration that resources businesses can offer prospective employees have created significant difficulties for Queensland SMEs. Businesses in regional areas that host, or are adjacent to resources projects, are at a particular disadvantage as they are directly competing for staff, but are unable to compete with respect to pay and conditions. However, if SMEs were able to offer potential employees flexible working conditions – that is, to trade off financial and non-financial benefits – SMEs would have a greater capacity to fulfil their staffing requirements and provide competitive employment arrangements that are financially viable for their business.

5.12 **Actions supported moving forward**

The concept of individual statutory agreements has become controversial. However, with appropriate safeguards in place, that is, a requirement to adhere to the employee safety net, individual agreements are arguably the simplest way in which individual employers and employees can make employment arrangements that suit both parties' needs. CCIQ believes that there should be a sensible policy debate on how individual agreements could be reintroduced into Australian workplace relations policy.

5.13 As it stands, IFAs are **the** key mechanism in the FW Act to deliver flexibility in employment arrangements, and have significant potential to deliver this flexibility to both employers and employees. This potential is being stifled by union intransigence, strict limitations on their use, and a narrow scope. It is essential that the mechanisms put in place to improve productivity and deliver flexibility achieve the desired results to ensure businesses and their employees can adapt to new and changing circumstances.

5.14 A broader scope: Individual agreements would allow trade-offs for financial and non-financial benefits, and allow employees to 'cash in' leave entitlements. In the absence of individual agreements, amending the FW Act to confirm that IFAs may contain such trade-offs would be a common sense move that would remove significant uncertainty for employers. Increasing the scope of flexibility terms so that they may include a greater number of matters that can form the content of IFAs and allowing IFAs to be offered as a condition of employment would enhance the ability of employers to plan their operational and employment arrangements in accordance with their financial capacity.

5.15 A reasonable defence: The requirement for the registration and approval of individual employment instruments can be onerous and time-consuming. As would be the case if individual agreements were reintroduced, changes are required to put in place a defence to an alleged contravention of the IFA provisions whereby an employer that reasonably believed that they had met their statutory obligations (for example, that the IFA had left the relevant employee better off overall) will not be guilty of a breach of the FW Act. This means that non-complying employers will still be subject to penalties where they put in place employment arrangements that do no leave employees 'better off overall'.

5.16 Individual focus: Curtail the involvement of unions in the negotiation of flexibility terms in enterprise agreements, and prohibiting union interference in the negotiation of IFAs. If a flexibility term is in an enterprise agreement, there is no reason why there should be third party involvement in the negotiation of an IFA. They are not intended to be collectivist in nature, and unions should be restrained from attempting to ensure that IFAs are uniform across a workforce.

6.0 SUPERANNUATION POLICY

RECOMMENDATION 3: Introduce measures to grow Australia's superannuation pool to ensure the challenges faced by Australia's ageing population are met and that employees have a greater understanding about the importance of retirement income. This requires:

- The introduction of employee contributions through soft compulsion;
- More initiatives to encourage voluntary employee contributions, and savings measures that enhance the responsibility of employees to fund their own retirement – this may including tax incentives, government co-contributions and educational campaigns about the function and importance of superannuation;
- Mandatory wage trade-offs for the increases to the mandatory superannuation guarantee; and
- Initiatives to boost workforce participation.

6.1 Ensuring Australia has the right superannuation policy is one of the most important economic issues facing Australia's ageing population. The number of people aged 65 years and over will almost double over the coming decades, rising from thirteen per cent in 2006 to between 23 per cent and 25 per cent in 2056.[41] Funding the cost of retirement for these Australians will be further compounded by the fact that by 2050, there will be only 2.7 working age Australians for every one aged 65 or over, as compared to five working age Australians for each citizen over 65 today.[42] This demographic shift will place immense strain on the nation's tax, welfare and health systems, highlighting the need for superannuation policy to be fiscally sustainable over the longer term.

6.2 **Current Australian policy**
Australia currently has a three-pillar approach to providing retirement incomes: a taxpayer funded age pension, compulsory employer superannuation contributions and voluntary private superannuation and other savings. [43]

6.3 **Age Pension**
The age pension is a safety net for those unable to fully support themselves during their retirement, which is particularly relevant for those Australians who were working prior to the introduction of mandatory employer contributions. Eligibility for the pension is dependent on a person's age (currently 64.5 for women and 65 for men) and a range of eligibility criteria including income, assets and other circumstances.[44] From 1 July 2017, the qualifying age for the age pension will increase by six months every two years from 65 years until it reaches 67 years by 1 July 2023.[45]

6.4 Around 80 per cent of Australians over the age of 65 years currently receive taxpayer funded income support.[46] Over the coming decades (even with the maturing of the superannuation system) it is believed that the proportion of retired Australians who receive the age pension will only decline slightly (although many more will receive a part pension in addition to private income).[47] Currently, the average period of time a pensioner receives support for is around thirteen years.[48] Age pension expenses are projected to increase from $20.8 billion or 2.9 per cent of Gross Domestic Product (GDP) in 2001-02 to around $80 billion or 4.6 per cent of GDP in 2041-42.[49]

6.5 **Employer contributions**
Currently, an employer must contribute a minimum of nine per cent of employees' ordinary time earnings as superannuation if they are between 18 and 69 years old, are paid $450 or more (before tax) in a month and work either full time, part time or casually.[50] For those under eighteen years, superannuation contributions are payable if the employee is paid at least $450 in a month and works for more than 30 hours in a week.[51]

6.6 The newly legislated increase to the mandatory superannuation guarantee will see the mandatory superannuation guarantee rate grow with initial increments of 0.25 per cent on 1 July in 2013 and 2014, with further increments of 0.5 per cent applying annually up to 2019/20 when the rate reaches 12 per cent.[52] The maximum age limit for the superannuation guarantee will also be abolished, to increase incentives for workers aged 70 and over to remain in the workforce and further boost retirement savings.[53] The minimum age for withdrawing superannuation guarantee benefits is currently 55 and depends on a person's preservation age.[54]

6.7 In the June Quarter of 2012, Australia's superannuation pool increased to $1.40 trillion,[55] with holdings to increase to $6.1 trillion by 2034.[56] The latest estimates show that 98 per cent of employees with leave entitlements and 72 per cent of casual employees are covered by superannuation.

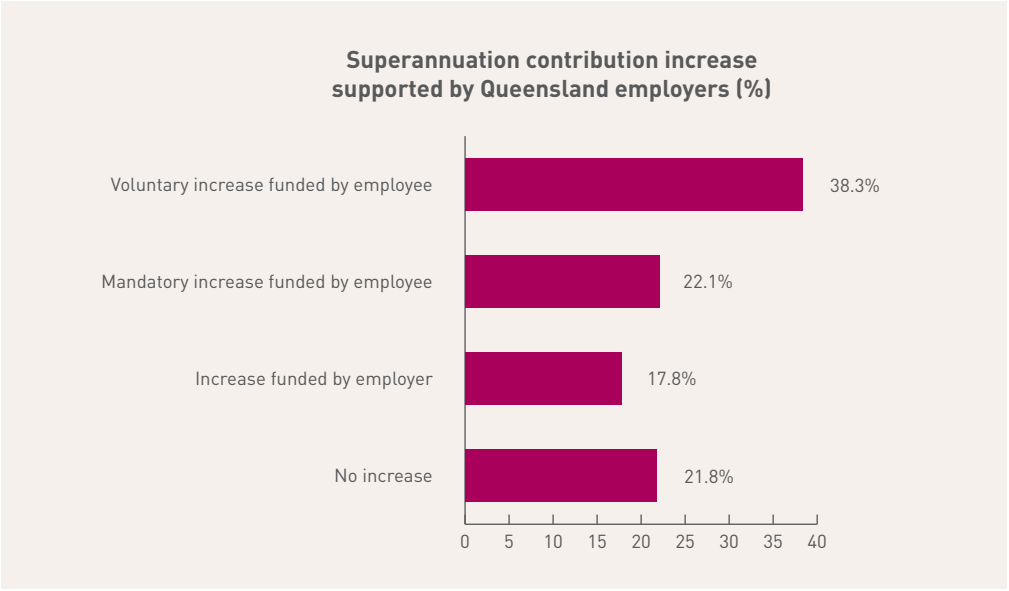
6.8 **Employee contributions**
Voluntary superannuation contributions are primarily encouraged through taxation incentives for superannuation.[57] Current methods of contributions include salary sacrificing, concessional (before-tax) contributions, non-concessional (after-tax) contributions, personal contributions and co-contributions (for low or middle income earners).The Federal Government has also announced that from 1 July 2012, low-income earners (receiving incomes up to $37,000) will be provided with up to $500 annually from the government into their superannuation account.[58] Additional savings vehicles may be adopted by individuals outside of superannuation, such as property investment, shares and financial securities.[59]

6.9 **Queensland business feedback on superannuation policy**
Queensland businesses generally support Australia's superannuation policy, which aims to share responsibility for superannuation between individuals, employers and government. However, they do not support the increase in the mandatory superannuation guarantee that is not tied to productivity increases or corresponding wage trade-offs, as this demonstrates an increasing reliance on employers to be the sole funders of their employee's retirement.

6.10 Queensland businesses strongly believe that employees should be more responsible for their superannuation. A CCIQ survey of over 400 businesses found that the majority (60.4 per cent) supported an increase to superannuation contributions funded by employees. 38.3 per cent supported a voluntary employee increase and 22.1 per cent supported a mandatory employee funded increase.[60] Only 17.8 per cent of businesses support an increase funded by employers on the basis of it being offset by future wage negotiations.

"At some point in time employees should be held responsible in part for their own future prosperity. Why is it always the employer who should carry the can?"

South West Queensland Business Operator in the Wholesale industry



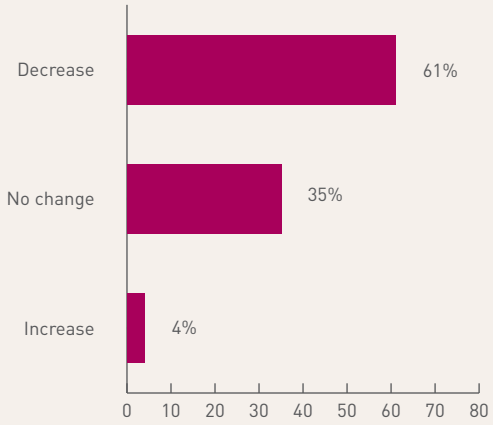
Source: Commonwealth Bank CCIQ Pulse Survey of Business Conditions – September Quarter 2011 [61]

6.11 Businesses have raised concerns about the Federal Government's 'outsourcing' of its social welfare functions. The last two decades have seen employers forced to shoulder the burden of our ageing population, with this responsibility further increasing over the coming years with mandatory employer contributions increasing to twelve per cent. Employers are already compelled to provide the mandatory superannuation guarantee contribution, while also paying around 40 per cent of general tax revenue that in turn is used to fund the age pension. Businesses also fund much of the employee safety net via the payment of a generous minimum wage, sick leave, carer's leave, annual leave, personal leave, workers' compensation contributions, termination and redundancy payments.

6.12 **Impact of increasing the mandatory superannuation guarantee levy**
Increasing the superannuation guarantee by three per cent without **a corresponding offset to fund this increase** will have significant economic impacts for Queensland businesses including impacts on business profitability with negative flow-on implications for employment. CCIQ estimates this move will amount to an extra four billion dollars per year in superannuation payments for Queensland employers alone.

6.13 A snap poll held of 400 businesses on the CCIQ website found that 61 per cent of employers will decrease employment levels in their business if superannuation contributions increase by three per cent. Only four per cent of businesses indicated they would increase employment levels. Increasing the rate is also likely to mostly impact lower income earners through a reduction in the possible growth in their real take-home pay.

What effect will a 3% increase in superannuation contributions have on your business's employment levels? (%)



Source: CCIQ Snap Poll - November 2011

6.14 Every decision to add another cost impost on businesses negatively impacts on their bottom line, jobs and investment. It is clear that employers are concerned about the impact on employment of an increase in the existing compulsory employer superannuation guarantee levy. Employers are also frustrated about the considerable lack of consultation and consideration of business concerns prior to the legislation being passed.

SMALL BUSINESS CASE STUDY: COST IMPLICATIONS OF A THREE PER CENT INCREASE IN SUPERANNUATION GUARANTEE

A small IT business currently employing 20 staff members on $60,000 a year has an annual superannuation liability for those employees of $108,000 on top of wages. An increase to the superannuation guarantee levy to twelve per cent would increase this business's superannuation liability to $156,000 a year, an increase of $48,000 or 44.4 per cent with no associated productivity improvements. This cost increase does not coincide with an increase in productivity however will also be payable in addition to increases in other business, employment and input costs.

6.15 **Actions supported moving forward**
The federal government needs to implement a major policy shift to bring about fundamental change in Australia's superannuation system. Although CCIQ supports a superannuation system that includes government-funded pensions, compulsory superannuation and voluntary savings, a significant rebalancing of responsibility for retirement incomes provision needs to occur. The idea that employers should bear the burden of funding their employee's retirement income in full is unbalanced and unfair by both international standards and domestic considerations.

"The most equitable way [to increase superannuation] would be for a joint increase of $ for $ by the employer and the employee. This way the impact on the business would not be so great and the employee may begin to appreciate the value of these contributions."

Brisbane Business Operator in the Manufacturing industry

6.16 Additional incentives and initiatives are required to encourage individuals to embrace the responsibility for building appropriate retirement savings and enabling retiring workers to enjoy a higher standard of living in retirement. The federal government should consider the following policies to encourage private retirement savings, enhance Australia's superannuation pool and provide assistance to employers to fund the mandatory superannuation guarantee:

- **Mandatory employee contributions:** There need to be additional initiatives requiring employees to provide mandatory contributions to their superannuation savings. This will ensure that employees are more aware of their superannuation savings, encouraging them to take greater responsibility for their retirement income. As employees are the major beneficiaries of higher retirement incomes, it is entirely appropriate that they should bear at least some of the costs and responsibility associated with providing that additional support.
- **Mechanism for employers to fund increases in superannuation obligations:** The Federal Government's initiative to raise the superannuation guarantee must be accompanied by a means to fund the mandatory increase. This could be achieved by directing the FWC (through amendments to the FW Act) that increases to the mandatory superannuation guarantee be offset in future increases to the NMW.
- **Soft compulsion** - A compromise to mandatory employee contributions is soft compulsion, whereby retirement savings are increased by automatically increasing the individual emplyees superannuation contributions, but allowing the individual to opt out of this arrangement.
- **Government co-contributions:** There should be an extension of government initiatives to help eligible individuals to boost their super savings by providing a super co-contribution payment to match an individual's personal contributions.[62]
- **Tax Incentives:** The 'traditional' way of encouraging voluntary savings for retirement has been through tax incentives. A standard policy that aims to encourage private, voluntary retirement savings is to give preferential tax treatment to pension plans. That is, tax incentives aim to increase the return on pension savings subsequently providing a higher net rate of return on savings which will encourage people to save more.
- **Financial education:** Private saving activity by Australian households has been steadily deteriorating since the introduction of compulsory retirement income savings. A clear message must be sent to employees that they still need to save for their retirement.
- **Encouraging longer participation in the workforce:** The recent move to remove the maximum age limit for the superannuation guarantee to encourage workers aged 70 and over to remain in the workforce longer is welcomed by employers, as is the continued implementation of initiatives to enhance the participation of mature aged workers in the workforce (see section 12.0 for further discussion of employment participation initiatives).

7.0 PROTECTION OF EMPLOYEE RIGHTS AND RESPONSIBILITIES: UNFAIR DISMISSAL AND GENERAL PROTECTIONS CLAIMS

RECOMMENDATION 4: Access to unfair dismissal claims should be subject to reasonable limits that restore balance to the employer-employee relationship. This requires the following:

- An unfair dismissal exemption for small businesses;
- Dismissal of claims where the Fair Work Commission (the FWC) determines that termination of employment was based on valid grounds;
- Providing that the FWC may only consider issues relating to the employment relationship when determining claims;
- Making higher fees payable on lodgement of an unfair dismissal application; and
- Giving the FWC discretion to make costs orders and issue penalties against applicant employees and/or their representatives where the claim is determined by the FWC to have been false or vexatious.

RECOMMENDATION 5: Access to general protections claims should be subject to reasonable limits that restore balance to the employer-employee relationship. This requires:

- Providing that prohibited adverse action will have only occurred where an employee's workplace right was the sole or dominant reason for the adverse action being taken;
- Providing that the subjective intention of the person who took allegedly adverse action should be the main consideration in determining the reason for that action;
- Removing the reverse onus of proof requiring employers to demonstrate that they did not take adverse action because of an employee's workplace right. If it is not removed, the applicant should have to establish that adverse action occurred before there is any presumption that the action was for a prohibited reason;
- Making higher fees payable on lodgement of a general protections application;
- Capping available compensation levels at 26 weeks' pay, the maximum remedy available for unfair dismissal claims; and
- Giving the FWC discretion to make costs orders and issue penalties against applicant employees and/or their representatives where the claim is determined by the FWC to have been false or vexatious.

7.1 It is important that every workplace relations system protects the rights and responsibilities of its employees. CCIQ recognises that while most employers do the right thing, there are a small minority that do not. However, it is essential that our system does not penalise the vast majority of law-abiding employers.

7.2 **Current Australian Policy**
The FW Act contains a number of provisions designed to protect the rights of employees, and provides recourse where they feel that they have been dismissed unfairly or unlawfully. These include:

- **Unfair Dismissal:** Employees are currently able to pursue claims for unfair dismissal. A person has been unfairly dismissed if the FWC is satisfied that:[63]
  - The person has been dismissed;
  - The dismissal was harsh, unjust or unreasonable;
  - The dismissal was not consistent with the Small Business Fair Dismissal Code;
  - The dismissal was not a case of genuine redundancy; and
  - The compensation payable in the instance of a successful unfair dismissal claim is 26 weeks' pay.

- **General protections:** Under the FW Act, an employer cannot take any adverse action against an employee because the other person has a workplace right, has exercised that right, or proposes to exercise such a right.[64] The term 'workplace right' has broad meaning under the legislation, with a person having a workplace right if they:[65]
  - Have an entitlement under a workplace law or a workplace instrument such as an award or enterprise agreement;
  - Are able to initiate a proceeding under a workplace law or workplace instrument; or
  - Are able to make a complaint or inquiry in relation to their employment.

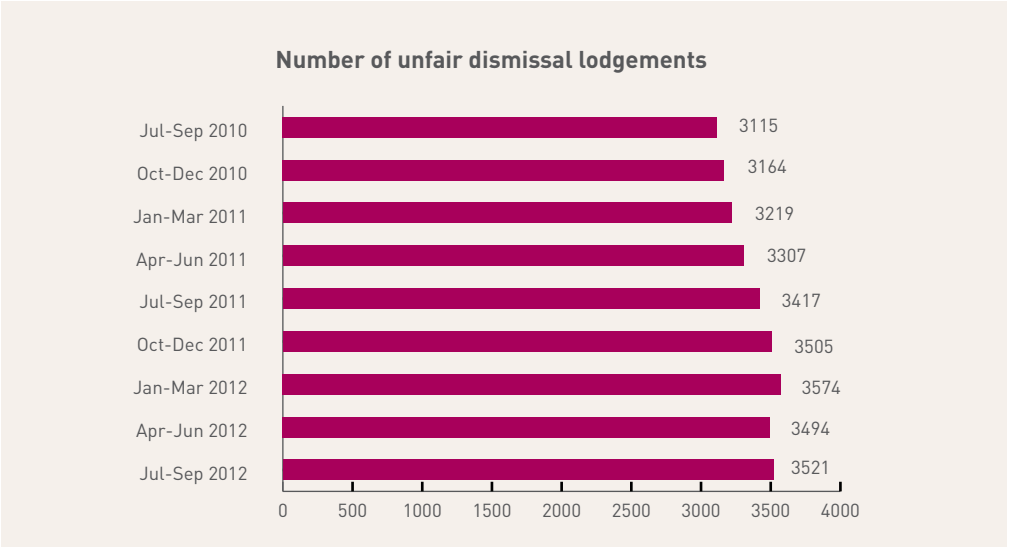
  Adverse action includes dismissing an employee or refusing to employ someone, discriminating against employees, or otherwise negatively affecting them in their employment (for example, by demoting them).[66] The compensation available in the instance of a successful claim is uncapped.

- **Industrial Action:** Employees are permitted under the FW Act to take industrial action in certain circumstances in the aim to advancing claims in relation to an agreement.[67] (This will be discussed in further detail in section 12.0).

7.3 **Queensland business feedback on unfair dismissal claims**
Queensland employers continue to raise concerns about the increasing number of unfair dismissal claims and the associated implications for their capacity to make key employment decisions without significant risk, time and expense. Statistics provided by the FWC show that there has been an increasing number of unfair dismissal lodgments over the past two years. In the September Quarter of 2012, there were 3,521 applications made, an increase of 11.0 per cent from the September Quarter of 2011.[68] The majority of matters were settled through conciliation, with a settlement rate of applications at conciliation of 82 per cent. [69]

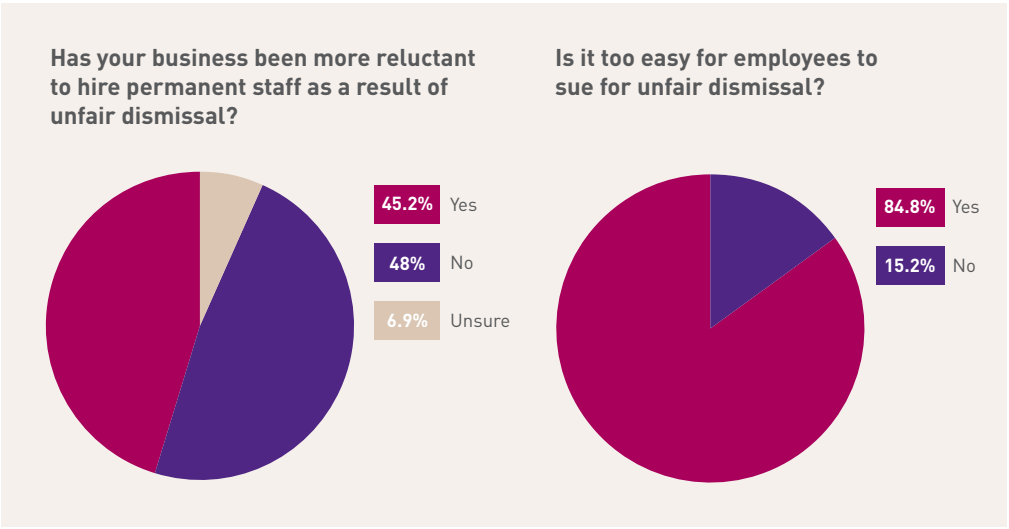
"Remove unfair dismissal laws for small to medium enterprises, thus giving us the ability to grow our business and the economy by employing more staff."

Brisbane Business Operator in the Retail industry



Source: Fair Work Australia Quarterly Reports – September Quarter 2012 [70]

7.4 Of particular concern to CCIQ is the significant number of businesses (45 per cent) that have indicated that they are more reluctant to hire permanent staff as a result of unfair dismissal laws. This is unsurprising considering that 85 per cent of businesses believe it is too easy for employees to sue them for unfair dismissal. [71]



Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011 [72]

7.5 The matters considered by the FWC when determining whether a dismissal was harsh, unjust or unreasonable are broad ranging and can extend beyond the employment arrangement to consider an employee's personal circumstances.[73] For example, the FWC:

- Found that an employee had been unfairly dismissed because it would be hard for him to find alternative work and he had a family to support (despite being dismissed because of significant breaches to safety regulations and being given numerous warnings by his employer);[74] and
- Ordered the reinstatement of a security guard who swore directly at his supervisor and hit a nearby wall with some force, all while wearing a loaded gun, partly on the basis that the employee was experiencing personal difficulties.[75]

7.6 Employer feedback indicates that it has become increasingly difficult for employers to defend unfair dismissal claims. There seems to be an unofficial prima facie assumption that any termination of an employee is 'unfair', and there is no genuine onus on employees to demonstrate that they have reasonable grounds for making the claim. This, in addition to the substantial time and expense involved in responding to claims (particularly for small businesses), is forcing employers to settle claims, despite its merits (or lack thereof). Alarmingly, 'go away' money is making a comeback, with the most common range of settlement moneys paid being between $2,000 and $4,000, while 10 per cent are settled for between $6,000 and $8,000, 5 per cent between $8,000 and $10,000, 7 per cent between $10,000 and $15,000 and 5 per cent above $15,000 [76]. This is despite assurances to businesses that the new Fair Work laws would 'remove go away money' from the unfair dismissal system.[77]

"Last year our business was taken to court for unfair dismissal (after long and costly court hearing it was found termination of employment was justified). The fact that employees can unreasonably bring this action against employers that have done no wrong, with minimal cost to the individual, but great cost to the business to fight these unsubstantiated claims is troubling."

Brisbane Business Operator in the Rental, Hiring and Real Estate Services industry

7.7 Other concerns raised by businesses in relation to unfair dismissal claims include:

- There are low application fees for lodging claims and no penalties associated with making false or exaggerated claims. However, any claim made comes at significant time and expense to employers, even if it is ultimately dismissed;
- Increased paperwork and procedures surrounding underperforming employees to ensure everything is documented in case of any unfair dismissal cases;
- Employers are unsure of the procedural requirements around terminating employees, which is compounded by a lack of direction and assistance provided by the FWC;
- Only a small window of time is allowed to employers to respond to a claim prior to conciliation; and
- 'No win no fee" advertising is increasing claim numbers.

7.8 Action needs to be taken to reduce the increasing propensity of 'go away' payments, and deliver a system where employers are able to make the management decisions necessary for meeting other responsibilities, enhancing productivity and the competitiveness of their businesses, while also respecting the rights of their employees.

7.9 **Queensland business feedback on general protections claims**
Queensland businesses are also increasingly concerned about the rising number of general protections claims. FWC statistics show that these claims are becoming more common. In the September Quarter of 2012, there were over 670 general protections claims, an increase of 23.7 per cent from the September Quarter 2010.[78] About 80 per cent of claims relate to dismissal. [79]

Source: Fair Work Australia Quarterly Reports – September Quarter 2012 [80]

7.10 The general protections provisions have significantly extended the capacity for employees and unions to litigate in the federal courts. Anecdotally, there are also suggestions that the uncapped monetary remedies available under this part of the Act, as opposed to unfair dismissal claims, have led to applicants 'shopping' the FW Act for remedies.

7.11 The broad scope of issues that can be canvassed under a general protections claim is of significant concern to employers. The general protections provisions of the FW Act provide that an employer must not take any 'adverse action' against an employee or a potential employee because the employee or potential employee has exercised or proposes to exercise a 'workplace right'. A 'workplace right' includes a broad range of matters, including:[81]

- Union involvement;
- The right to request flexible work arrangements;
- The right to make complaints about their employment;
- The right to make enquiries about pay; and
- The right to request information about further disciplinary action.

7.12 Adverse action can include dismissing, suspending or demoting employees (with or without pay), as well as not hiring a potential employee.[82] Because of the broad scope of these issues and definitions, the laws remain highly controversial.

"Employees have no burden of proof and employers have to prove that the employee is making a false allegation. There is also no consequence for employees making false allegations."

Far North Queensland Business Operator in the Services industry

7.13 Adverse action claims are impinging on the capacity of employers to make the management decisions necessary to run successful and sustainable businesses. Employers must now be overtly cautious about taking any action against an employee (such as performance management action). Employers are struggling to defend general protections claims as a result of the reverse onus of proof on employers and the low threshold for determining whether adverse action was taken because of a workplace right. The FW Act specifies that **any adverse action taken by an employer against an employee will be deemed to have been for an illegitimate reason unless the employer can prove the contrary**.[83]

7.14 Further, it is unclear whether employers' subjective, or personal intentions in taking action with respect to the workplace rights of employees will be given adequate weight. The FW Act gives rise to the notion that adverse action taken by an employer may, from an objective or outsiders viewpoint, be connected to a workplace right. While a recent High Court decision of **The Board of Bendigo Regional Institute of Technical and Further Education v Barclay** (2012) found that an employer's actual intention in taking adverse action was a sufficient legal defence to a general protections claim, this came at the end of a lengthy and expensive fight through the court system that has not resulted in an amendment to the FW Act to confirm the High Court's ruling.[84] A brief case study highlighting the implications of this decision is set out below:

BARCLAY v THE BOARD OF BENDIGO REGIONAL INSTITUTE OF TECHNICAL AND FURTHER EDUCATION (2011) FCAFC 14

FACTS

Mr Barclay was employed by the Bendigo Regional Institute of TAFE. Using his work email account, Mr Barclay sent an email to other union members or staff in his capacity as the President of his union sub-branch indicating that he had been advised of serious misconduct in the workplace by unnamed persons. On failing to report the misconduct to his employer, or give them the names of those who made the complaint, the CEO of the TAFE made the decision to stand Mr Barclay down on full pay, suspend his internet access, and asked him to show cause as to why he should not be subject to disciplinary action for his conduct. Mr Barclay made an application to the Federal Court under the general protections provisions of the FW Act, claiming that the action taken by the TAFE was on the basis of his role as a union member. The Federal Court, comprised of a single judge, found at first instance in favour of the TAFE, preferring the evidence given by its CEO as to her reasons for standing Mr Barclay down.

HELD (ON APPEAL TO THE FULL FEDERAL COURT)

The Full Bench of the Federal Court, reversed the earlier decision and held that the actions of Mr Barclay's employer were adverse actions taken in response to Mr Barclay's role as a union official and engagement in industrial activity. While Mr Barclay's employer had, in seeking to meet the reverse onus on it to demonstrate that the adverse action taken was for another reasons, argued that the action taken was with respect to Mr Barclay's role as an employee, the Federal Court found that there was a breach of the Act as from an objective viewpoint the employer's adverse action could be seen as being connected to Mr Barclay's union membership and industrial activity. Therefore, the employer's subjective belief was held not to be determinative.

HELD (ON APPEAL TO THE HIGH COURT)

The High Court overturned the Federal Court ruling, finding that Mr Barclay's employer had not taken adverse action against him for a prohibited reason on the basis that credible countering evidence from an employer about the actual purpose of their conduct was a sufficient legal defence – that is, the Court confirmed that what is important in determining whether the general protections in the FW Act have been breached is the reason why the person decided to take disciplinary action and not their subconscious state of mind.

7.15 While the final outcome of the Barclay case represents a positive outcome, it reinforces the need for legislative change to the Fair Work system: most employers do not have the financial resources to contest claims through the court system, and it is unreasonable that the legislation places such a significant burden on employers to disprove allegations. Even in light of the Barclay decision, employers will need to keep extensive records regarding actions and decisions taken in relation to employees in order to demonstrate that 'adverse action' was not taken for a prohibited reason. This includes providing written warnings for employee infractions: employers have told us that they do not want to do this, as it damages employee morale, but feel that they have no other option. As with unfair dismissal claims, employers are also more commonly offering employees a settlement in order to reduce the potential time and cost associated with defending the claim, irrespective of the its merit.

"We spend hours making sure we follow the rules! Small businesses can't function with underperforming staff and yet it is a nightmare to move someone on. We are always worried that a claim will be made against us."

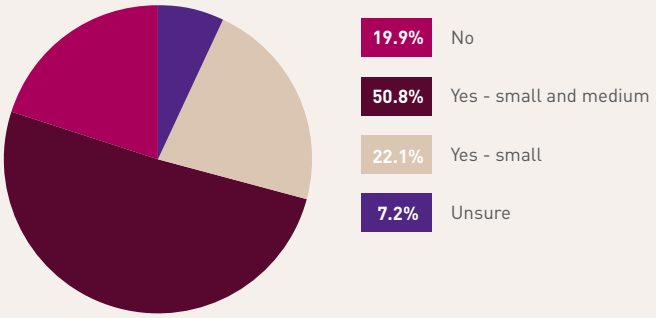
Central Coast Business Operator in the Retail Trade industry

7.16 Overall, general protections claims are providing a much easier way for employees to make a claim against their employers, with more time to lodge a claim compared to unfair dismissal provisions. They constitute a more attractive option due to the availability of uncapped compensation payouts and there are also reports of these claims being misused to circumvent unfair dismissal laws or for malicious reasons. However, this is difficult to verify given the lack of powers held by the FWC to deal with frivolous and malicious claims.

7.17 **Actions supported moving forward**
Employment protection laws that overtly favour employees do not go hand in hand with strong employment growth or employer confidence. It is time to reconsider the current employee protection principles to create a more even playing field between employers and employees, empowering employers to take the necessary action to run successful and profitable businesses, without fear of retribution.

7.18 **Unfair dismissal**
There is strong support for granting an exemption for small businesses in relation to unfair dismissal claims: 73 per cent of Queensland businesses support this. [85] This measure is not designed to encourage 'hiring and firing' at will, but to enable small businesses to employ more staff in the knowledge that they are able to dismiss employees where they have a valid reason for doing so. An exemption is also consistent with the fact that small businesses struggle more with compliance given that they generally lack the resources available to larger enterprises, including human resources and workplace relations advisers.

Should there be an unfair dismissal law exemption for small and medium business?



Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011 [86]

7.19 If an exemption is not implemented, it is essential that at a minimum, a heavier onus be placed on employees to demonstrate that their dismissal was harsh, unjust or unreasonable. Unfair dismissal laws should not penalise an employer where an employee has been terminated for a valid reason. The FWC should dismiss claims where this is the case, and should not take into account factors outside the employment relationship. As a further deterrent, application fees for lodging unfair dismissal claims need to be increased.

7.20 Amendments should be made to the FW Act to ensure that unfair dismissal claims are not unnecessarily prolonged. To this end, the FWC should be able to dismiss applications where an applicant fails to comply with the FWC's directions or orders. Where unfair dismissal claims are dismissed, all costs should be payable by the employee and/or their representative (unless there are exceptional circumstances) and penalties must be applicable where the FWC determines a claim to be false, vexatious or significantly exaggerated.

"I am stuck with unproductive employees who do not want to work and knows full well how difficult it is to dismiss them. On the other hand I am reluctant to hire new staff because if business declines or they do not work out after six months it is too costly to dismiss them."

Far North Queensland Business Operator in the Retail industry

7.21 **General protections**
Currently, the majority of claims made under the general protections provisions relate to dismissal cases. Considering there are already unfair dismissal provisions included in the FW Act, there is a strong case for removing the general protections provisions to alleviate the current concerns that are being raised.

7.22 If the provisions are not repealed, at the very least the reverse onus of proof should be removed or weakened, requiring the claimant to prove their case. Further, an employee's workplace right must be the 'sole or dominant' reason for adverse action being taken, with the central consideration in determining the reason for the adverse action being the subjective intent of the person who took the alleged adverse action. If the person who took the adverse action did not intend to do so because of an employee's workplace right, it is bordering on the absurd that the FWC or a court could be allowed to infer some level of 'subconscious' objective intention to the contrary.

7.23 Costs implications and financial penalties should also be introduced where a claim is determined to be false or vexatious. These measures allow employers to make necessary and good faith employment action and decisions, including performance management, demotions and suspension and termination of employment. Finally, the maximum remedy available for a successful claim should be consistent with the amount available in an unfair dismissal claim, and capped at 26 weeks' pay.

8.0 MODERN AWARDS

RECOMMENDATION 6: Further modernise and consolidate awards to ensure they contain fair and relevant minimum terms and conditions of employment that reflect the specific circumstances and operating environment within relevant industries. This involves:

- Increasing the scope in the current system to allow for greater flexibility with respect to the operation of penalty rates, particularly for those businesses that operate seven days per week or outside 'standard' trading hours. This could include normal rates being payable for an employee's first five shifts in any week, with the sixth and seventh shift (where applicable) worked in a week attracting penalty rates);
- Extending the maximum averaging period for weekly hours to 52 weeks for seasonally affected businesses and regions;
- Amending the Act to clarify that annual leave paid out to employees on termination of their employment does not attract leave loading unless otherwise agreed;
- Removing minimum engagement periods from modern awards or, at a minimum, reducing them to a period of ninety minutes; and
- Increasing the accessibility and reliability of the FWC and the Fair Work Ombudsman (FWO) for employers seeking information on modern awards, wage rates and transitional arrangements.

8.1 Australia's biannual modern awards system provides a safety net for employees within particular industries and/or occupations. It is essential that these awards contain fair and relevant minimum terms and conditions of employment that appropriately relate to the specific circumstances and operating environments of particular industries. Queensland employers view the modern awards review process as an opportunity to address key concerns that they hold about the awards system.

8.2 **Current Australian Policy**
The FWC has developed 122 modern awards to make up a safety net for employees under the Fair Work system.[87] They are industry or occupation-based and apply in addition to the National Employment Standards (NES).[88] Modern awards were created to establish a minimum set of conditions for employers and employers and can contain terms relating to:[89]

- Base rates of pay, including piecework rates;
- Types of employment (for example, full-time, part-time or casual);
- Overtime and penalty rates;
- Work arrangements (for example, rosters and variations to working hours);
- Annualised wage or salary arrangements;
- Allowances;
- Leave, leave loading and taking leave;
- Superannuation;
- Procedures for consultation, representation and dispute settlement;
- Outworkers;
- An industry-specific redundancy scheme; and
- Flexibility arrangements in which employers and employees are able to negotiate changes to meet their individual needs relating to issues specified in the flexibility term.

8.3 The modern awards were implemented on 1 January 2010, with wages, penalty rates and loadings in the new awards to be phased in over 5 stages until 1 July 2014.[90] These transitional arrangements apply if pay rates are higher under the modern awards compared to pre-modern award pay rates, with the increases phased in with 20 per cent installments and any adjustments made by the FWC during annual wage reviews to be factored in by employers.[91]

8.4 **Impact of moving to modern awards**

Queensland businesses have generally welcomed the award modernisation process. It resulted in the creation of 122 modern awards, replacing hundreds of state and federal industrial awards to create a streamlined, simpler award system. However, the award modernisation process was not intended to increase costs for employers.[92] This has not been the case, with employers confirming that costs have not only increased under the new modern awards, but that this has been exacerbated by a number of other issues, including:

- Difficulties in applying and interpreting the modern awards and identifying which are applicable in a given workplace;
- Confusion about how to interpret and apply the transitional arrangements, which is compounded by a lack of assistance provided by the FWO in relation to how to interpret awards;
- Substantial cost increases deriving largely from new or additional compliance costs;
- Substantial paperwork and record keeping requirements that operate to increase the regulatory burden on business; and
- Wage increases not being offset by productivity gains.

"When the modern awards were introduced, we were told it would not have a negative impact nor an increase in wages. This is not true for many business owners."

Gold Coast Business Operator in the Accommodation and Food Services industry

8.5 Since the modern awards were implemented, there have been hundreds of applications for variations, [93] and around 70 per cent of modern awards have been challenged during recent review processes.[94] It is also concerning that the current modern award review process, to be held every two years and the first of which is currently underway, is receiving applications to vary awards that would make them significantly more expensive for employers.

8.6 **Penalty rates and allowances**

Many employers have raised concerns regarding the impact of penalty rates and increased employer obligations surrounding allowances on the competitiveness and profitability of their business. These concerns emanate from businesses that operate seven days a week or outside of the traditional concept of 'normal trading hours' (9am to 5pm Monday to Friday), including the retail, tourism, accommodation, hospitality and agricultural industries. Increased wage costs have resulted in businesses closing for longer periods or reducing staff numbers, which have negative flow on effects for employees, communities and the economy.

'Weekend penalties are unfair to an industry trading seven days per week and an impediment to full time employment. They resulted in no productivity gain and are generally bad for the economy."

Central Coast Business Operator in the Accommodation, Cafes and Restaurants industry

8.7 Unions frequently claim that shifts attracting penalty rates are 'unsocial shifts' that should be compensated accordingly. This claim is not only false, but makes broad assumptions about the nature of individual lifestyles and choices, whereby particular employees prefer to work during the evening or on weekends. Employees want flexibility too.[95]

8.8 The policy behind penalty rates represents a failure to recognise the requirements of central industries for workable terms and conditions of employment. The current penalty rate regime inhibits economic growth by disincentivising employers from having longer trading hours or offering staff additional hours.

8.9 This is of serious concern to businesses facing increased global competition including from online businesses that are accessible by consumers 24 hours a day, seven days a week. The current regime is also impacting on some businesses' ability to trade profitably at times when many consumers now prefer to shop, for example, later in the evenings or on Sundays. While there have been legislative proposals to relax penalty rate requirements for industries for which extended hours are considered typical, such as tourism, retail and hospitality, this approach does not account for the clear trend towards a general expansion in hours of operation and trading across a variety of industries.

"If a business is trading seven days a week there should be no penalty for weekends as they are part of the 'normal' weekly trade hours."

Wide Bay Business Operator in the Retail Trade industry

8.10 CCIQ has called for changes to alter the operation of penalty rates so as to allow for greater flexibility in businesses that operate for seven days a week or outside 'standard' trading hours. There is support for standard wages to be applicable for the first five shifts in any week, with penalty rates to be applicable for any additional shifts performed in a seven-day period.[96] Such an arrangement constitutes an appropriate compromise between the needs and interests of employers and employees, and is not limited only to certain industries but rather is dependent on business requirements.

8.11 **Minimum engagement periods**
A number of awards currently provide for a minimum daily engagement period of at least three consecutive hours on any shift for part time and casual workers.[97] This has resulted in reduced flexibility in rostering, and the restriction of the employment of juniors after school, as well as employees during times when penalty rates apply.

"Because of the requirement of a minimum three hour shift, I can't properly utilise junior staff in my business."

Brisbane Business Operator in the Arts and Recreational Services industry

8.12 The Australian Newsagents' Federation provided a case study on the practical operation of minimum engagement periods to the Productivity Commission during its inquiry into the retail industry:[98]

CASE STUDY

For three years [Nick] has worked three nights a week, after school, for between an hour and a half and two hours. He was happy with the work and the award wage he was paid. Now, under the new provisions, he will have to be let go since he cannot be given the minimum hours as the business closes at 6pm and he cannot get there before 4.15pm.

8.13 A number of applications have been made to the FWC to vary this provision. A decision by the FWC to vary the Modern Retail Award following an application by the National Retail Association came into operation on 1 October 2011 and allowed for the engagement of secondary school students between the hours of 3.00pm and 6.30pm on a school night for a minimum engagement period of 90 minutes. [99]

8.14 The Shop, Distributive and Allied Employees Association (SDA) appealed the decision to the Federal Court; however, the decision was upheld by the Federal Court in May 2012.[100] Despite this, it seems that removing minimum engagement periods from modern awards will be a battle of attrition: in August 2012, the Full Bench of the FWC dismissed an application to vary the Clerks – Private Sector Award 2012 to allow employees genuinely wishing to work fewer than three hours to request shifts of less than three hours.[101]

8.15 CCIQ supports the reduction of minimum engagement periods in modern awards to 90 minutes. We want to enhance the capacity of employers and employees to engage in the shift lengths of their choosing. It is important to recognise that it is not always possible for employers to provide a minimum of three hours of work and that in many cases, employees may want to work for less than three hours, particularly high school aged young adults. It is far more advantageous to employees that they have the option of working additional hours where they would otherwise not be available.

8.16 **Payment of annual leave on termination**
Discrepancies exist between the NES and some modern award provisions regarding the payment of annual leave loading for employees who are paid out for annual leave on termination of their employment. The FW Act provides that on termination of employment, an employer must, where an employee has a period of untaken paid annual leave owing to them, pay the employee the amount that would have been payable had the leave been taken.

8.17 The FWO has also taken the view that annual leave loading is payable on termination, which is inconsistent with long standing industrial practices in many industries where annual leave loading has not typically been paid. The lack of clarity that exists in this respect leaves employers with a potentially significant financial liability, in addition to the many other financial obligations that employers have under the NES.

8.18 CCIQ strongly supports an amendment to the FW Act that would clearly specify that unless otherwise agreed in the relevant employment agreement, annual leave paid out on termination of employment should not attract leave loading.

8.19 **Additional considerations in relation to modern awards**
Additional issues raised by Queensland businesses in relation to modern awards include:

- Maximum averaging period: Employees should be able to work more than 38 hours per week if both the employer and employee agree. Businesses also support increasing the maximum averaging period from 26 weeks to 52 weeks to take into consideration high and low periods, particularly within small and medium enterprises;

- Annual wage increase considerations: The FWC should be directed to consider cost increases imposed on businesses during annual wage decisions. This needs to include increases in allowances and penalty rates and the cost increases associated with transitional arrangements;
- Restricted scope of individual flexibility arrangements: Flexibility terms within modern awards will only allow IFAs to vary arrangements for when work is performed (such as working hours), overtime rates, penalty rates, allowances and leave loading.[102] Greater scope is required to allow employers and employees to implement the flexibility arrangements that meet their needs (see section 5.0 for further discussion of the importance of flexibility); and
- Increased labour costs: In addition to penalty rates, increased casual loadings and allowances, and increased basic wage rates for particular classifications have increased employment costs with no correlating productivity improvements.

"The current labour laws disadvantage us to the point where there is hardly any point trying to continue. As a builder of patios - small custom designed projects in client homes - sales are by contract where labour costs have to be estimated months before work commences. Overtime, wages and allowances can't be accurately estimated at the time of sale. Site work needs to be carried out in small teams. Contractors can't work continuously for us. The system is an impossible mess."

Brisbane Business Operator in the Construction industry

8.20 **Actions supported moving forward**
CCIQ supports maintaining a guaranteed safety net of fair and relevant minimum terms and conditions of employment. However, whilst maintaining this guarantee, there is ample room for the Federal Government to address the many concerns of Queensland businesses and other stakeholders regarding the inflexibility of modern awards.

8.21 Making these sensible changes would constitute an acknowledgement of the exigencies faced by different industries: these changes necessarily include reducing or removing minimum engagement rates in all awards, increasing the maximum averaging rate in seasonally affected industries such as tourism and agriculture, and allowing greater flexibility around the application of penalty rates outside 'standard' trading hours.

8.22 We continue to support maintaining a limited number of awards that meet the needs of employers and employees and that are simple to understand and easy to apply. There is also a need to substantially increase the accessibility and reliability of the FWC and the FWO by employers and employees who are seeking information on modern awards, wage rates and transitional arrangements. It is essential that information sought by and provided to employers seeking to comply with modern awards is accurate and can be relied upon.

"To get real productivity gains we need flexible working hours without the constraint of Monday to Friday mentality."

South West Queensland Business Operator in the Construction industry

9.0 NATIONAL EMPLOYMENT STANDARDS

RECOMMENDATION 7: Make changes giving the National Employment Standards (NES) greater flexibility in their application to ensure that they are consistent with the requirements of modern workplaces. This requires:

- Allowing employees to work in excess of 38 hours per week as standard working hours, and increasing the maximum averaging period from 26 weeks to 52 weeks;
- Ensuring that the NES do not hinder the effective operation of IFAs; and
- Handing back to governmentthe responsibility of paying Paid Parental Leave directly to employees on parental leave.

9.1 CCIQ supports a safety net comprised of minimum employment terms and conditions that apply to all employees, ensuring that they have the benefit of the same safety net which underpins modern awards and enterprise agreements and allows employers to manage employee expectations. However, it is these terms and conditions that must be set at an appropriate level that allows for enough flexibility to cater for the needs of contemporary workplaces.

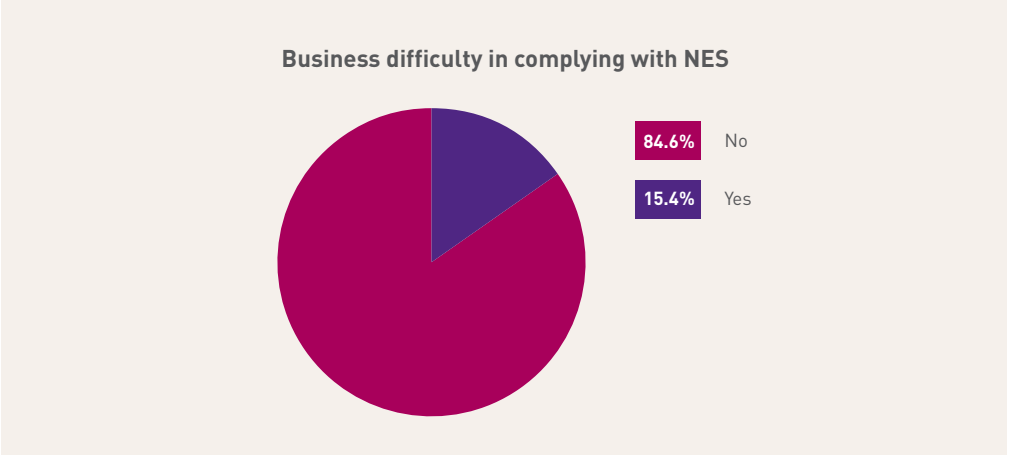
9.2 **Current Australian Policy**
The FW Act sets out the NES, which create a safety net that cannot be altered to the disadvantage of employees.[103] The 10 NES are:[104]

- Maximum weekly hours;
- Requests for flexible working arrangements;
- Parental leave and related entitlements;
- Annual leave;
- Personal/carer's leave and compassionate leave;
- Community service leave;
- Long service leave;
- Public holidays;
- Notice of termination and redundancy pay; and
- Fair Work Information Statement.

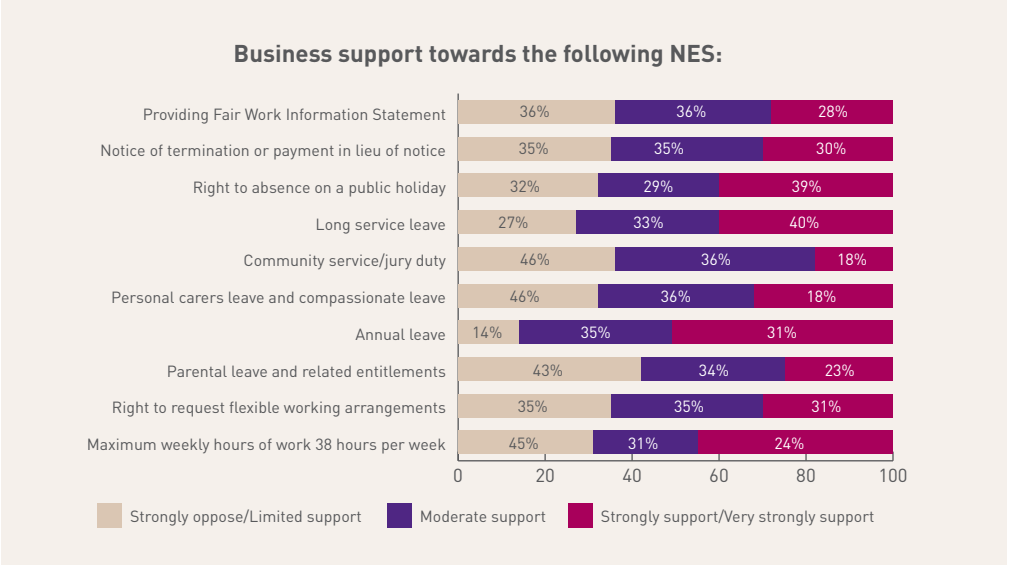
9.3 The NES apply in addition to the terms and conditions of employment set by modern awards, workplace agreements, pre-modern awards and state or federal laws.[105]

9.4 **Queensland business views on the NES**
CCIQ asked businesses if they had experienced any difficulties in complying with the NES. 85 per cent indicated that they had not had any significant compliance issues. However, a number of specific concerns relating to the practical operation of the NES were expressed, and are explored in greater detail below.

"Unless there are offsetting productivity gains, the savings must come from reduced employment."
Wide Bay Business Operator in the Retail Trade industry



Source: Commonwealth Bank CCIQ Pulse Survey of Business Conditions: Hot Topic question - September Quarter 2011 [106]



Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011 [107]

9.5 **Maximum weekly hours**
The NES establish the maximum weekly hours for employees, as well as the circumstances in which an employee may refuse a request to work additional hours.[108] The FW Act provides that an employer must not request an employee to work more than 38 hours a week if they are full time, or the lesser of 38 hours or the employee's ordinary hours of work in a week if employed other than on a full time basis. A number of factors may be considered when determining whether the hours requested are unreasonable, including:

- The employee's personal circumstances;
- the needs of the workplace; and
- the notice given by the employer.

An award, enterprise agreement or an agreement between award or agreement-free employees and their employers can also include provisions for the averaging of hours over a specified period (as noted above, the maximum averaging period is 26 weeks). [109]

9.6 45 per cent of Queensland businesses are strongly opposed or give only limited support for the maximum weekly hours of work of 38 hours per week. This is perceived by employers as an arbitrary ceiling particularly where additional weekly hours are available to an employee. There is therefore a need for greater flexibility for employees to work in excess of 38 hours in a week for normal pay if both the employer and employee agree. This change should occur in conjunction with an extension of the maximum weekly averaging period. Combined, this would allow both employers and employees working in industries characterised by peak periods (such as retail and agriculture) to take advantage of these opportunities.

9.7 **Flexible working arrangements**
The NES include a right for certain employees (including parents and carers) to request flexible working arrangements from their employer. An employer can only refuse such a request on reasonable business grounds.[110] While some working environments are simply not conducive to allowing flexible working arrangements, most employers have indicated that they work hard to accommodate flexibility requests from these employees as well as other members of staff. It is on this basis that CCIQ does not support any amendments to the FW Act that would allow for appeal rights where a request is not granted, or that extend the right to request flexible working arrangements to other classes of employees.

9.8 On the other hand, businesses have highlighted the impact of modern award clauses on employers' ability to offer flexible working arrangements (for example, if an employee would rather work on Sunday rather than a Friday on normal pay rates). Currently, under the NES, an employer would be required to pay their employee Sunday penalty rates. Clearly, more flexibility is needed in the current system to allow employers to reasonably meet the flexibility needs of their employees.

9.9 **Parental leave and related entitlements**
Parental leave provisions include birth-related leave and adoption-related leave. Generally, all employees are eligible for up to twelve months unpaid parental leave with the ability to extend this leave for a further twelve months (up to 24 months in total). Employees are also entitled to unpaid special maternity leave, a right to transfer to a safe job (or take paid 'no safe job leave'), consultation requirements, a return to work guarantee and unpaid pre-adoption leave.[111] Employees may also be eligible for the Federal Government's paid parental leave (PPL) scheme, which is paid to employees through their employer's payroll system.

9.10 CCIQ supports a PPL scheme that does not require employers to administer payments on behalf of government. These arrangements are clearly within the capacity of the federal government and merely add to the red tape and administrative requirements placed on employers.

9.11 CCIQ rejects the union recommendation that women going on parental leave should receive a 'Return to Work Guarantee' that ensures that they will return to the exact role they left. Businesses are required to hold a position for employees for up to 24 months – it is entirely unreasonable to expect that in a contemporary workplace, an employee would necessarily return to the same position following such a lengthy period.

9.12 **Queensland business feedback in relation to other National Employment Standards**
Queensland businesses have provided the following feedback in relation to other NES:

- Public Holidays: Additional public holidays awarded by state governments where a holiday falls on a weekend has a significant cost impact on businesses, particularly those that operate seven days a week, as they are required to pay penalty rates for both the actual and substitute public holidays .[112] CCIQ considers that every business/employee in Queensland should be entitled to the same number of public holiday entitlements to ensure a consistent approach across the state and an even playing field for all businesses. Additionally, state governments should work collaboratively to achieve national consistency in relation to public holidays in order to minimise potential disruptions.

- Notice of termination and redundancy pay: The NES establish the minimum period of notice, or payment in lieu of notice, that an employer must give an employee to terminate their employment. The standards also set out the redundancy pay owing to an employee on the termination of their employment.[113] Employers are concerned by recent calls by unions to extend the right to redundancy pay to casual employees,[114] particularly given that casual workers are paid a 25 per cent loading to compensate them for the entitlements that they do not receive.
- Annual Leave: Discrepancies currently exist between the NES and some modern award provisions regarding the payment of annual leave loading for employees who are paid out for annual leave on termination of their employment.

9.13 **Actions supported moving forward**
Queensland businesses recognise and support the need for an employee safety net in the form of the NES. What they are seeking is flexibility in its application to ensure that employers can afford to accommodate their workers' flexibility requests, offer employees more hours, and plan ahead with respect to staffing needs. However, employers needs certainty: they do not want to see certain NES extended further (for example, making redundancy pay available to casual workers), nor are they receptive to additional standards being added to an already robust set of NES.

9.14 As discussed above, extending the maximum weekly working hours, and the maximum averaging period are common sense recommendations that allow both employers and employees to obtain maximum benefit from peak trading periods. Injecting flexibility with respect to working hours and penalty rates into the NES is also key to the effective and meaningful use of IFAs.

9.15 Finally, employers should not be required to administer payments of the government's PPL, as it often complicates existing payroll processes. It is appropriate that the Department of Human Services hold this responsibility.

10.0 ENTERPRISE BARGAINING AND WORKPLACE AGREEMENTS

RECOMMENDATION 8: Simplify the current process for negotiating, approving and implementing enterprise agreements (EAs). This involves:

- Expanding the list of unlawful bargaining terms to include a term that is not a 'permitted matter' under the FW Act. This will ensure that matters pertaining to the employment relationship are taken into consideration during negotiations.
- Ensuring that employers would not be required to bargain with respect to terms relating to matters outside the employer-employee relationship;
- Amending the good faith bargaining requirements to oblige parties to consider:
  - the economic circumstances of the business at the time of bargaining; and
  - whether negotiations have been exhausted.
- Requiring wage increases and improvements to conditions to be offset by productivity improvements;
- Requiring increases to the mandatory superannuation levy to be offset by proportionally smaller wage increases;
- Requiring a secret ballot to be the sole method used in obtaining majority support determinations (MSD);
- Implementing greater flexibility in relation to the BOOT and the use of IFAs;
- Allow employees to opt out of EAs; and
- Allow EAs to be lodged online to expedite the approval process by the FWC.

10.1 Enterprise bargaining has become an essential component of the Australian workplace relations system. It is important that this process allows employers and employees to bargain freely in order to negotiate and implement agreements that meet the needs of all parties to ensure profitable, productive and competitive workplaces. For this to occur, the involvement of third parties must be appropriate and proportionate, and should not hinder or increase the expense of this process.

10.2 **Current Australian Policy**
EAs can be made at an enterprise level between employers and employees about terms and conditions of employment and can be tailored to meet the needs of particular workplaces (as opposed to modern awards that cover a whole industry or occupation).[115] Under the FW Act, EAs must pass the BOOT; that is, the FWC must be satisfied that each award covered employee, and each prospective award covered employee, would be 'better off overall' under the agreement than the relevant modern award. [116]

10.3 Terms that can be included in an enterprise agreement include:[117]

- Rates of pay;
- Penalty rates and overtime;
- Allowances;
- Standard hours;
- Personal and annual leave;
- Deductions from wages for any purpose that is authorised by the employee;
- Any matters pertaining to the relationship between the employer and the employees;
- Matters pertaining to the relationship between the employer and employee organisations covered by the agreement; and
- How the agreement will operate.

10.4 Agreements can run for a period of up to four years and must not include any non-permitted matters, or contravene the NES.[118] An IFA can be made under an enterprise agreement, however it may only vary those terms of the enterprise agreement that are set out in the flexibility terms contained in the enterprise agreement.[119]

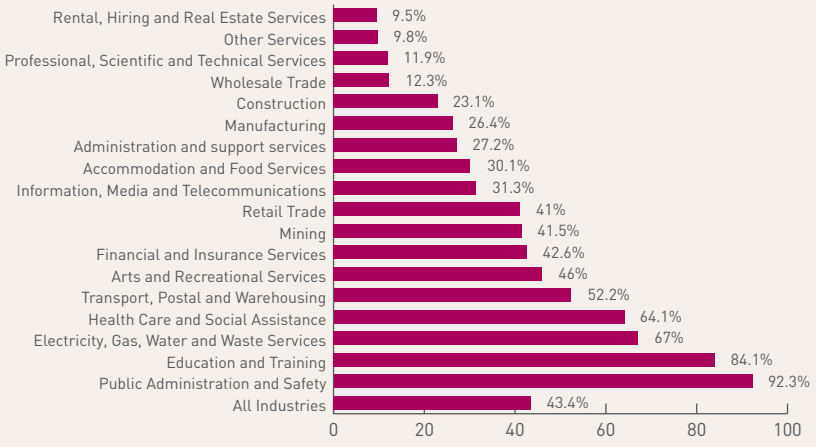
10.5 The FW Act introduced good faith bargaining principles, which were intended to provide a framework for bargaining behaviour in order to promote effective agreement making. The FW Act sets out six good faith bargaining requirements that a bargaining representative for a proposed EA must meet. These include:[120]

- Attending, and participating in, meetings at reasonable times;
- Disclosing relevant information in a timely manner;
- Responding to proposals made by other bargaining representatives for the agreement, and giving reasons for the bargaining representative's response to those proposals;
- Refraining from capricious or unfair conduct that undermines freedom of association or collective bargaining; and
- Recognising and bargaining with other bargaining representatives for the agreement.

10.6 Under the good faith bargaining provisions in the FW Act, bargaining representatives can seek a majority support determination (MSD) to require an employer to comply with good faith bargaining requirements, such as attending meetings and giving genuine consideration to employee proposals. The FWC can determine whether a majority of employees wish to bargain by whatever method it considers appropriate in the circumstances. These methods can be as simple as determining whether a majority of employees represented by a bargaining representative hold union membership.

10.7 Since the introduction of the FW Act, there have been more than 16,200 enterprise agreements made, covering 2.2 million employees.[121] The industries with the highest proportion of employees covered by collective agreements include Public Administration and Safety (92.3 per cent), Education and Training (84.1 per cent), Electricity, Gas, Water and Waste Services (67.0 per cent), and Health Care and Social Assistance (64.1 per cent).

Percentage of employees covered by Collective Agreements by industry



Source: ABS Catalogue 6306.0 Employee Earnings and Hours – 2010 [122]

10.8 **Queensland business feedback in relation to enterprise bargaining and EAs**

Complexity and cost: Queensland businesses are reporting increasing difficulties in negotiating and implementing EAs, which are, in turn, impeding businesses' ability to achieve productivity improvements. There are concerns surrounding the cost and time associated with drawing up agreements: the complexity of workplace agreements has resulted in many small and medium businesses spending thousands of dollars on legal fees and advice. The cost, resources and time involved in negotiating and implementing EAs appears to be continually increasing, particularly where unions are involved in the bargaining process. Furthermore, the majority of employers have claimed that they have been unable to achieve productivity improvements in exchange for wage increases in EAs. Indeed, despite flagging productivity, wage rises in private sector EAs approved in the September Quarter of 2012 reached 3.9 per cent. [123]

10.9 **Unsustainable wage increases:** Employers are reporting that union representatives are seeking unreasonably high wage increases during the bargaining process, but are unwilling to consider corollary productivity increases. While the Federal Government has suggested that increases to the mandatory superannuation guarantee will be offset by smaller wage increases negotiated when EAs are renewed, unions have no obligation to agree to any such offset and have shown no inclination to do so. CCIQ considers that the FWC's approval of an EA must be conditional upon any wage increases and improvements to conditions being offset by productivity increases, and wage increases being reduced by a percentage equivalent to the annual instalment increase to the mandatory superannuation guarantee.

"Renewal of employee collective agreement was slow, required additional legal input, union engagement in negotiations was more disruptive, and the review process by Fair Work was slow."

Brisbane Business Operator in the Manufacturing industry

10.10 **Good faith bargaining and MSDs:** While employers generally support the good faith bargaining requirements, they consider that the process would be improved by supplementing the framework to remove obligations on bargaining representatives to respond to proposals not pertaining to the employment relationship. They have also called for the inclusion of requirements that: productivity enhancing measures be included in bargaining claims; and that parties consider whether the negotiation process has been exhausted. This would ensure that the bargaining process remains relevant, efficient and is not unnecessarily protracted. With respect to MSDs, the mere fact of union membership is clearly not an adequate or rigorous means of determining employee support for bargaining. A secret ballot would be a far more appropriate method, particularly where majority employee support is disputed.

10.11 **Matters outside of the employment relationship:** Employers are alarmed by frequent attempts by unions to include clauses in EAs relating to issues that are not 'permitted matters' in the FW Act and are outside of the employment relationship, such as limitations or prohibitions on the engagement of contractors and labour hire employees. Under the FW Act, blanket prohibitions on the engagement of contractors or labour hire staff are not permitted, however, terms requiring contractors or labour hire not to be paid less than employees are.

10.12 **BOOT not working as intended:** There are also fears that the BOOT does not allow employers and employees the flexibility they are seeking, for example, by allowing trade-offs between financial and non-financial benefits. The BOOT can mean that an agreement will not proceed if a single employee can demonstrate that they would not be better off under EA. The complexities of negotiating to this standard is creating additional burdens and cost for businesses, and are making productivity improvements and flexibility more difficult to achieve.

10.13 **Complex and time consuming approval process:** Complicated approval processes associated with EAs are substantially increasing the time and cost of agreement making. Statistics provided by the FWC showed that it took up to 80 days (or 2.5 months) to finalise 85 per cent of the enterprise agreements lodged in 2010-11, with fifteen per cent taking longer than 80 days.[124] There are also reports of inconsistent decisions in relation to approving agreements, as well as agreements being rejected by the FWC despite the majority of employees supporting the agreed arrangements.

10.14 Other issues relating to EAs raised by Queensland businesses include:

- Increased union involvement in negotiations is further delaying and complicating the process. Unions are able to initiate industrial action or are opposing agreements without the majority support of employees. Further, unions are pressuring employers to include restrictive and unproductive provisions in agreements that fall outside the employment relationship, such as increased access rights for unions; and
- The FWC should provide for EAs be completed and lodged online.

10.15 **Actions supported moving forward**

Enterprise bargaining between employers and employees should be genuinely voluntary and allow for the circumstances of both the enterprise and individuals to be taken into consideration during negotiations. This must include an obligation on bargaining representatives to include productivity

enhancing measures in their claim so that wage rises are sustainable and appropriately tied to productivity increases. The FW Act also requires amendments to ensure that bargaining is not unnecessarily protracted, which can be addressed by amendments to the good faith bargaining provisions, including that:

- Parties are obliged to consider whether the negotiation process has been exhausted; and
- The economic circumstances of the relevant business are a relevant consideration.

10.16 An amendment is urgently required to the list of unlawful terms on which bargaining cannot occur to include terms that are not 'permitted matters' under the FW Act. This will ensure that matters outside of the employer-employee relationship cannot form part of bargaining claims, and that employers will not be required to bargain in respect to such terms where they are proposed. Where MSDs are taken to compel an employer to bargain (with respect to a lawful term), the MSD must be a credible indication of employees' wish to bargain. The soundest method for determining this is through a secret ballot.

10.17 The current bargaining process also needs to allow for greater flexibility, particularly in relation to the BOOT, and allow for the implementation of IFAs beyond the model flexibility term. While EAs are a collectivist instrument, it is in the interest of the employees covered by the EA that it is not an overly prescriptive document that severely undermines the capacity of an employer to tailor operational and employment arrangements to the specific needs of their business.

11.0 INDUSTRIAL ACTION AND UNION INVOLVEMENT IN THE WORKPLACE

RECOMMENDATION 9: Implement mechanisms to create a more cooperative and harmonious workplace relations system that better assists employers and employees to resolve disputes without resorting to industrial action. This involves:

- Providing that a protected action ballot may only be held after bargaining has been undertaken;
- Providing that protected industrial action may only be taken where the majority of employees in a workplace support the move;
- Providing that protected industrial action may only be taken with respect to matters pertaining to the employment relationship;
- Moving away from using industrial action as the key method for dispute resolution; and
- Putting in place increased sanctions and penalties to curb the increasing incidence of unprotected and unlawful industrial action.

11.1 The extent to which unions are involved in the operation of workplaces in Queensland and around the country, whether through union entry on to premises, during the bargaining process, or in the organisation of industrial action, has long been a contentious issue. While CCIQ recognises and respects the right of employees to join unions and engage in associated activity, it is essential that union access and representation is reasonable, proportionate and does not negatively impact on business operations. We share the concern held by Queensland employers about the extent to which the FW Act condones and provides for increased union involvement in workplaces, and the corollary impact on employment and productivity outcomes.

11.2 **Current Australian Policy**
There are three types of industrial action that can be initiated by employees and/or their representatives:

- **Protected Industrial Action:** Action that is taken following the approval of a protected action ballot order by the FWC in relation to the negotiation of a proposed enterprise agreement. Protected industrial action gives immunity from civil liability under State or Territory law (unless that action involved personal injury or damage, destruction or taking of property); [125]
- **Unprotected Industrial Action:** This involves the organising of or engaging in any action that does not meet the definition of protected industrial action. Not all unprotected industrial action is unlawful; however, it can result in significant consequences for employers, employees and industrial associations, including being sued by other parties for damages associated with any loss that the action; [126] and
- **Unlawful Industrial Action:** This involves action that is organised or engaged in before an agreement's nominal expiry date has passed. The FWC must suspend or stop the action, with parties impacted by the action able to seek court orders to compensate for any loss suffered or impose a financial penalty on those parties involved in the action. [127]

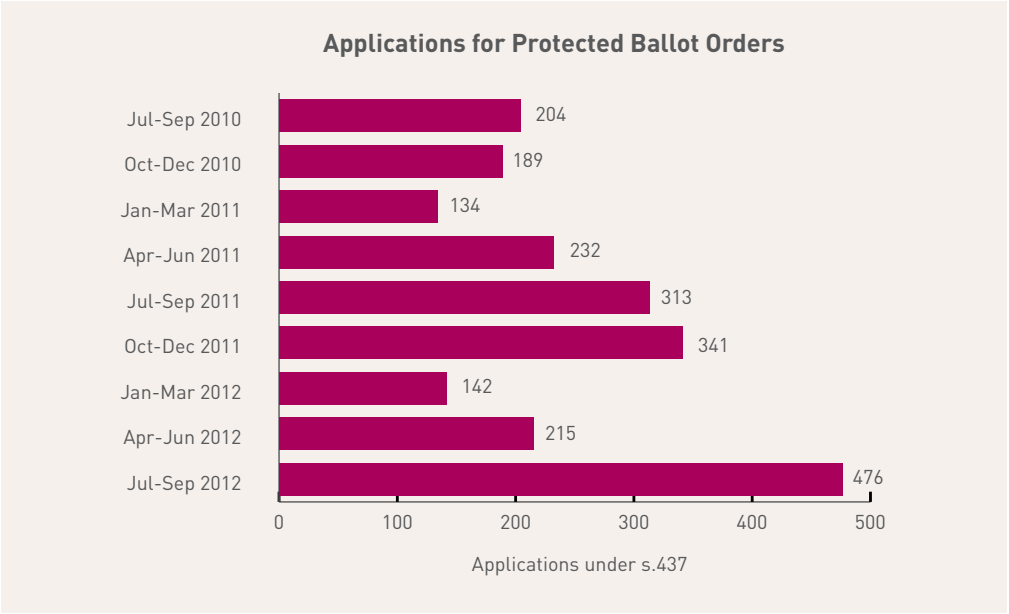
11.3 The involvement of unions in the workplace primarily stems from their role as bargaining representatives during the negotiation of an enterprise agreement.[128] Union officials are also able to enter a workplace if they hold a valid and current right-of-entry permit to:[129]

- Look into a suspected breach of an award or agreement;
- Look into a suspected breach of federal workplace relations laws;
- Look into a suspected breach of state or territory occupational health and safety laws; or
- Hold discussions with employees who are entitled to be represented by the union.

11.4 Unions also play a central role in the initiation of industrial action where negotiations in respect of an enterprise agreement have stalled and a secret ballot of their members is held by the FWC in order to determine employee support for industrial action. It is not necessary that a majority of employees in a given workplace vote in favour of taking industrial action in a protected ballot, but rather, the majority of employees represented by a given bargaining representative or union.

11.5 Employers must not take adverse action against an employee for joining or not joining a union, acting as a union representative, or for their involvement in union activities. [130]

11.6 **Queensland business feedback on industrial action**
The general view among the Queensland business community is that increased union involvement in the workplace is resulting in protracted bargaining disputes and industrial action. The FWC's statistics show there was a substantial increase in applications for Protected Ballot Orders throughout 2012, with an increase from 204 applications in the September Quarter of 2012 to 476 applications in the September Quarter 2012 (an increase of 133 per cent).[131]



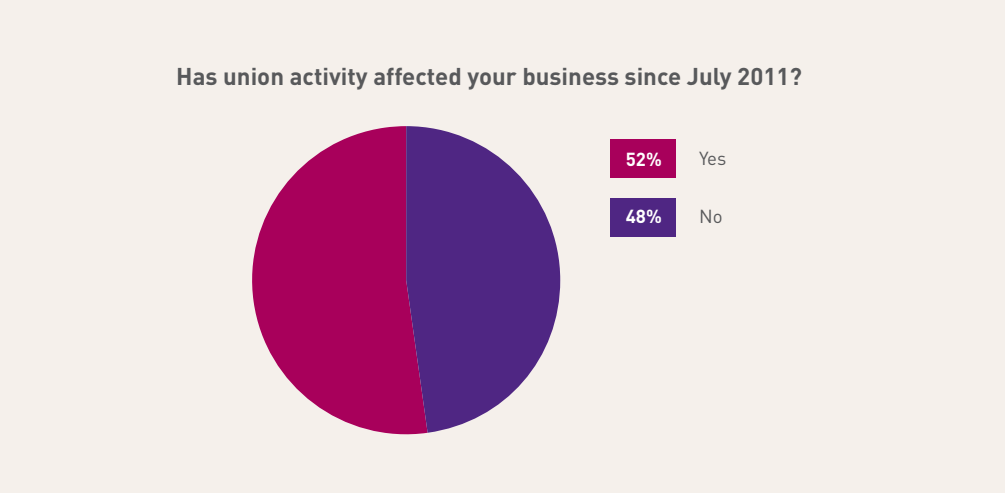
Source: Fair Work Australia Quarterly Reports – September Quarter 2012 [131]

11.7 ABS statistics show that in the year ending June 2012, there were 208 industrial disputes across the country, involving nearly 200,000 employees and resulting in the loss of 293,000 working days. [133]

11.8 A snap poll on the CCIQ website during the week of 11 October 2011 found that 52 per cent of businesses that responded had been affected by union activity since July 2011. There are ongoing media reports regarding strikes or threats of strikes in Queensland and throughout Australia suggesting that these figures and impacts are only going to escalate further under the current workplace relations framework.

"Enterprise bargaining is too complex, making it too easy to get into protected action. There is little the employer can do to prevent this from occurring."

Brisbane Business Operator in the Manufacturing industry



CCIQ Snap Poll - October 2011 [134]

11.9 Businesses believe that access to industrial action has become too easy and is often taken as the first step in negotiations, rather than the last. This has been confirmed by a recent Federal Court decision, which provided that industrial action was available before bargaining had commenced, and without a MSD in place.[135] Around the country, there are increasing reports of unlawful or unprotected industrial action occurring, serving only to fuel conflict rather than cooperation and mutually beneficial outcomes.

11.10 There is also a low threshold for employee support for taking protected industrial action. Unions are able to organise protected industrial action by the employees it represents in circumstances where bargaining has not occurred, no series of claims have been made known to the employer or where a union only represents a minority of the employees in a given workplace.[136] Further issues in relation to industrial action include:

- The lack of time provided for employers to respond to employee claim action;
- The negative impact on business when industrial action is called, but then withdrawn at the last minute;
- The significant time and expense associated with seeking the termination of industrial action; and
- Significant cost if industrial action borne by industry, customers and the community.

11.11 While unions are quick to encourage industrial action, it is extremely difficult for employers to suspend or terminate once it has commenced despite evidence that it will harm business, employees and third parties.[137] This is because it is necessary to demonstrate that the industrial action in question is 'endangering the life, personal safety or health and welfare, of the population or part of it, or to cause significant damage to the Australian economy or an important part of it'.[138] Clearly, this is a very difficult test to satisfy and, in the absence of a ministerial declaration, requires an application to the FWC, which has only granted such applications on rare occasions. The key point is that the fact that a **campaign of protected industrial action is causing a business to suffer financially will not be enough to satisfy the FWC that the action should be suspended or terminated**.

11.12 Industrial action may now be taken with respect to matters that extend beyond the employment relationship to matters including the use of labour hire workers and casual workers, as well as the structure of a business (most notably through attempts to insert 'job security' clauses in EAs). Not only is this making it more difficult to negotiate agreements, but it is substantially increasing the number of disputes that arise during negotiations and the associated costs to employers. The principle of managerial prerogative gives employers the right to structure their business as they wish, subject to legal constraints, and this is not a matter on which unions should be able to bargain or which should form a basis for industrial action.

11.13 Queensland businesses remain concerned about the impact of industrial disputes on the Queensland economy and their businesses. Industrial disputes also have the potential to have long lasting impacts on a businesses and its commercial reputation.[139] A clear example of this is the effect that rolling industrial action had on Qantas; organised by three unions representing hundreds of employees, the industrial action caused estimated losses of $250 million to the tourism industry and significantly damaging the Qantas brand. [140]

11.14 **Queensland business feedback on third party involvement in the workplace**
Queensland employers are frustrated by the level of union interference in their workplaces. It is difficult to understand why, despite falling levels of union membership, with only thirteen per cent of private sector employees holding union membership, the FW Act provides for an automatic right of union intervention and entry rights in the workplace. While the FWC can deal with disputes about the frequency of union entry into a workplace through arbitration, this process can be time consuming and expensive. Where union visits become excessive, businesses should be able to make application to the FWC for an order placing stricter conditions on union entry.

11.15 Expanded right of entry provisions are resulting in increasing disruptions and costs within businesses due to an increasing number of visits, diverting management time away from their everyday activities and reducing the productivity of staff. There are increasing instances of unions entering workplaces without providing details on the reason for doing so, or in the absence of a complaint from a member employee. This is an inefficient practice that undermines the capacity of employers to identify and address issues in their workplace.

11.16 **Actions supported moving forward**
CCIQ wants changes to the FW Act that reduce the negative impacts of industrial action and union involvement on businesses. The changes that are necessary to achieve this outcome are consistent with the nature and relevance of the role of unions in modern workplaces - the powers currently held by unions are disproportionate and unnecessary.

11.17 Industrial action must be reframed as a last resort measure, with laws in place that adjust the expectations of what the bargaining process should reasonably yield. This necessarily requires extending the list of 'unlawful terms' on which bargaining cannot occur to include terms that are not listed as 'permitted matters'. More stringent provisions on when lawful industrial action may be taken are necessary: bargaining must have commenced (that is, an employer must have agreed to bargain), there must be a MSD in place, and a majority of the workplace must have voted in support of it. There must also be a rationalisation of the test for the suspension or termination of industrial action: it is unacceptable that industrial action is being used to become a tool of attrition whereby businesses suffer the economic harm that industrial action causes. Furthermore, industrial action should be limited to those matters pertaining to the employment relationship.

11.18 Unions should only have right of entry to a workplace where the union represents employees covered by an agreement related to that business, and one of those member employees has requested the visit. Unions should be required to explicitly outline their reasons for entering a workplace to employers prior to entry, and receive acknowledgement from the employer prior to entry. The FWC should be able to, on application from an employer and without arbitration, restrict unions from making excessive visits to a workplace.

12.0 IMPROVING WORKFORCE PARTICIPATION AND GENDER EQUALITY OUTCOMES

RECOMMENDATION 10: Government must take greater responsibility for encouraging and facilitating greater workforce participation and gender equality outcomes by:

- Removing prescriptive compliance measures on business that hinder, rather than promote, the employment of a more diverse range of people;
- Introducing proactive, non-regulatory initiatives that fall outside the scope of legislation to encourage businesses to employ a broader range of people;
- Ensuring that elements of our workplace relations system do not operate to exacerbate existing problems in areas with endemic unemployment, low workforce participation and skills shortages; and
- Working with industry to develop industry relevant training and skills programs that can be tailored to and delivered specific areas.

12.1 Workplace relations laws are a key means of influencing and increasing workforce participation in Australia. The way in which government uses its available levers to promote greater workforce participation and diversity in employment will impact on the ability of employers now and in the future to fill their skilled labour needs. In Queensland, skills shortages and labour mobility issues are endemic to certain regions, causing or exacerbating high levels of unemployment and low workforce participation. Boosting workforce participation and ensuring that we are able to better utilise Australia's future workforce will allow employers to take on more staff, train more apprentices, and make a positive contribution to the economy. However, as this Blueprint has shown, various elements of the Fair Work system have reduced the financial and operational flexibility of employers to take these positive steps. The recommendations that CCIQ has set out in this document should be implemented in conjunction with complementary initiatives that encourage and reward, rather than prescribe and penalise.

12.2 **Increasing the participation of women in the workforce**
In recent decades, there has been a significant increase in female workforce participation rates, to the great benefit of Australia's productivity levels. [141] Between February 1978 and October 2012, the labour force participation of women increased from 41.6 per cent to 58.8 per cent. The disparity between workforce participation rates for men and women has also decreased substantially from 37.5 per cent in 1978 to 12.9 per cent in 2012.

12.3 Since 1999, there have been substantial increases in the participation rates of females in every state throughout Australia. Queensland currently has the second highest participation rate amongst both females and males in Australia. In Australia, male workforce participation rates have remained fairly stable at around 72 per cent while female participation rates have increased by 5.2 per cent. [142]

Participation Rates of Females and Males throughout Australia (trend)						
	Females			Males		
	Feb 1999 (per cent)	Oct 2012 (per cent)	per cent change	Feb 1999 (per cent)	Oct 2012 (per cent)	per cent change
QLD	55.8	59.7	3.9	74.1	72.9	-1.2
NSW	52.2	57.0	4.8	71.4	70.3	-1.1
VIC	53.0	59.1	6.1	72.6	71.5	-1.1
SA	51.1	57.0	5.9	70.0	68.3	-1.7
WA	56.5	61.6	5.1	75.6	76.5	0.9
TAS	49.4	54.9	5.5	67.9	66.6	-1.3
AUS	53.6	58.8	5.2	72.6	71.9	-0.7

Source: ABS Catalogue 6202.0 – Labour Force, Australia - October 2012 [143]

12.4 CCIQ strongly supports measures to continue this trend and facilitate greater female participation in the workforce. However, we are firmly in favour of non-regulatory mechanisms that allow employers the flexibility to implement initiatives that best suit the needs of their organisations and workforce.

12.5 To this end, CCIQ supports focusing attention on:

- **Removing disincentives:** This involves allowing businesses to implement flexible workplace arrangements through amending the FW Act, including with respect to IFAs and penalty rates.
- **Less regulation:** We should be reducing as a matter of priority the current regulatory requirements associated with employing women that are unnecessarily prescriptive and that add to the already substantial compliance burden on businesses.
- **Better access to childcare:** Improving the affordability of child care facilities is key. Recent reforms by the current Federal Government are expected to cost parents an extra $1,220 in 2012, which will have significant implications for family budgets and the ability of both parents to return to the workforce.[144]
- **Information and education:** State and federal governments should increase information and awareness raising activities, as well as acknowledging the initiatives already undertaken by businesses to attract more women to the workforce.
- **Working with industry:** Funding for programs that support industry driven initiatives would be welcomed by business. For example, the Queensland Government has recently introduced Supporting Women Scholarships, which provide scholarships of up to $20,000 to women who study subjects in male dominated industries, including agricultural science, architecture, building services and engineering, and go on to work in those fields.
- **More leadership:** Mentoring and women in leadership programs to increase the participation of women in leadership roles, including at senior management and Board Director levels.

12.6 **Increasing the workforce participation of mature-aged people**
As noted in section 6.0, the number of people aged 65 years and over will almost double over the coming decades, representing a considerable shift in the demographics of working Australians. Australia will need to grow its workforce in order to fill the void left by retiring Australians and ensure that we have the skills and capacity to support both an older population and a growing economy.

12.7 In order to increase the workforce participation of mature-aged people, there must be a focus on removing the barriers that currently exist for those wishing to remain in the workforce, and for encouraging the return of those who may have already retired but still maintain a capacity to actively participate in employment. These barriers include cultural (including employer) attitudes, workplace flexibility, educational attainment, features of the tax system and the availability of retraining and support services (such as health and rehabilitation services, career advice and employment services).[145] The continuing cuts that have been made to apprenticeship incentives, including the removal of the Mature-Aged Employer Incentive in the 2012/13 Mid-Year Economic and Fiscal Review, will diminish the already weakened capacity of employers to take on staff from diverse backgrounds, or to 'take a chance' on an applicant. CCIQ believes that given soft labour market conditions and the disadvantage that some candidates are at the incentives should be reinstated.

12.8 CCIQ does not support increasing the current regulatory requirements surrounding the recruitment or employment of mature aged workers. We consider that a positive step would be eliminating the minimum engagement provisions within modern awards to reduce the barriers that this currently provides for employing mature aged workers who wish to work reduced hours.

12.9 Action is required to overcome many of the existing barriers affecting the retention and recruitment of mature aged workers. CCIQ advocates the following measures in pursuit of this goal:

- **Removing disincentives:** Businesses must be allowed to implement flexible workplace arrangements through amending the FW Act, including with respect to IFAs and penalty rates.
- **Addressing skill gaps:** There should be more government funding of opportunities for reskilling and training of mature aged persons. Increased attention may be required on address any skill gaps, in relation to technology advancements or updated regulatory requirements.
- **Reviewing the age pension:** The age pension and associated concessions should not constitute a disincentive to mature aged people to return to the workforce. Research has found that one in five pensioners who wanted to work declined part-time employment opportunities because it would result in a reduction in pension entitlements.[146]
- **Access to superannuation:** Further initiatives aimed at increasing the retirement incomes of mature aged workers are needed, including lifting the superannuation guarantee age limit, and tax concessions for employee contributions.

12.10 **Increasing the workforce participation of other diverse groups**
CCIQ encourages the development and implementation of further initiatives aimed at increasing the workforce participation of other minority groups including the unemployed and under employed, young people, people with a disability, and Indigenous Australians. Increasing the participation of these groups may involve increased investment in Vocational Education and Training (VET), education to motivate cultural change, labour market initiatives (such as the Indigenous Employment Program), promotion of best practice case studies, welfare reforms, improvements to Australia's health care systems and increasing the flexibility of the labour market.

12.11 **Actions supported moving forward**
Queensland and Australian workplaces will benefit significantly by implementing initiatives aimed at increasing workforce participation outcomes, which is critical to Australia's productivity performance and in light of ongoing skill and labour shortages moving forward. This will ensure that Queensland businesses have the capacity to meet workforce challenges in an increasingly competitive global market and underpin Australia's continued economic stability.

12.12 While the nature and extent of workforce participation is largely a matter of individual choice, such choices may be distorted by disincentives or obstacles to participation that impose unnecessary costs on individuals and society.[147] Queensland businesses favour proactive strategies aimed at increasing the workforce participation of women, mature aged people and minority groups. Initiatives outside the scope of legislation ensure new barriers to workforce participation are not created. CCIQ strongly believes that decreasing the current regulatory requirements placed on businesses in relation to employing workers will significantly contribute to improved workforce participation levels.

13.0 APPRENTICES AND TRAINEES

RECOMMENDATION 11: Eliminate the barriers to the commencement and completion of apprenticeships and traineeships. This requires:

- Maintaining wage levels to ensure employee costs do not further disincentivise the employment of apprenticeships and traineeships;
- Recognising that a one-size fits all approach to apprentice wages and conditions across every industry and occupation is not appropriate;
- Making necessary changes or improvements to the workplace relations framework designed at increasing workplace participation rates; and
- Recognising the importance of non-regulatory measures designed to encourage employers to take on apprentices and trainees, including funding incentives and extensive consultation with industry with respect to training and education programs.

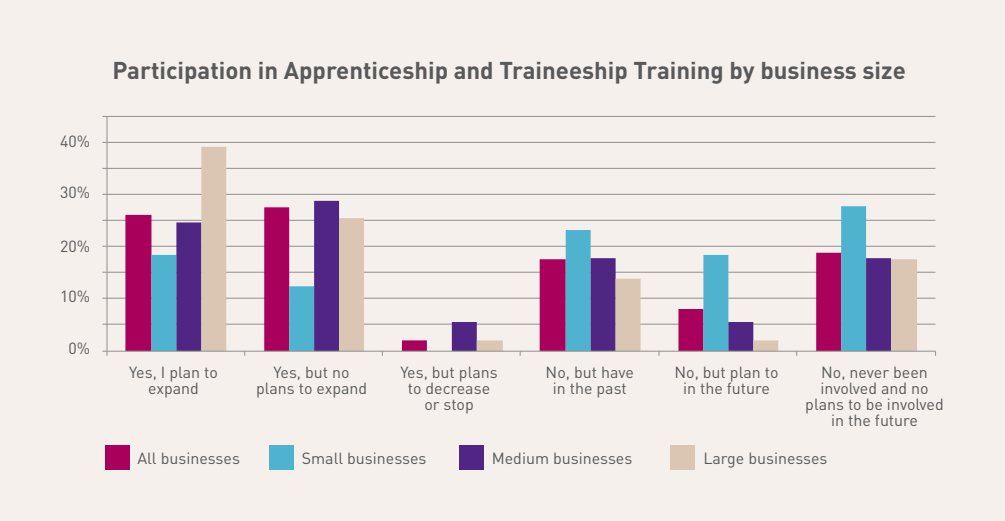
13.1 Apprentices and trainees form an important part of Australia's workforce and will be key to filling ongoing skill shortages that continue to affect Queensland. It is therefore concerning that there has been a downward trend in the number of commencements in apprenticeships and traineeships in recent years, particularly in trade occupations. Notably, the number of commencements is down, rather than completions, indicating that employers are reticent about taking on an apprentice or trainee. Action must be taken to identify and address barriers to apprenticeship and trainee career pathways, and to incentivise employers to take on apprentices and trainees. It is therefore necessary to consider whether the Fair Work system affects commencement rates, and whether there are aspects that could be amended or improved to ensure that more Queenslanders can obtain crucial on the job experience.

13.2 **Apprentice and trainee commencement and completion rates**
Statistics published by the National Centre for Vocational Education Research (NCVER) for the September Quarter of 2012 show that: [148]

- trade commencements for that quarter decreased to 22,600 from 26,000 in the June Quarter of 2012;and
- non-trade commencements over the same period decreased from 77,900 in the June Quarter of 2012 to 52,700.

By contrast the number of completions has increased steadily since the December Quarter of 2004.

13.3 The CCIQ Education and Training Survey identified that employer participation in apprenticeship and traineeship training was strongest across medium and large sized businesses.[149] While 18.5 per cent of small businesses indicated that they may consider employing an apprentice or trainee over the next three years, it is concerning that the majority (27.7 per cent) indicated that they had no intention of doing so in the future. Equally concerning is the fact that 17.8 per cent of medium sized businesses and 17.6 per cent of large businesses indicated that they also have no intention of employing apprentices or trainee. It is clear that action is required to improve these numbers.



Source: CCIQ Education and Training Survey – November 2011 [150]

13.4 **Apprenticeship wages**
CCIQ and Queensland businesses are concerned about a recent push by unions seeking to urgently lift apprentice and trainee wages on the basis that low apprentice wages are creating a disincentive for the commencement and completion of apprenticeships, exacerbating significant skills shortages.[151]

13.5 Businesses warn that substantially increasing apprenticeship wage rates will only further discourage employers from taking on new apprentices. They have reported that the cost associated with the first two years of an apprenticeship usually exceeds the productive benefit of the employee. For example, an industry survey found that businesses made a significant investment in apprentices and trainees by providing paid time off for study, course fee subsidisation and through staff supervision costs.[152] As mentioned continuing cuts to incentives paid to employers for taking on apprentices and trainees is disappointing and likely to contribute to a further decrease in commencements, particularly for non-trade apprenticeships.

13.6 Research has shown that apprenticeship wage rates are not a major disincentive for people to commence apprenticeships, with indications that increasing training wages would have little effect on completion rates.[153] For most apprentices, it is the premium associated with becoming a tradesperson that is decisive, with long term career and earnings outcomes equivalent to completing a university degree.[154] Further research has indicated that completion rates are greatly affected by the 'culture' of the apprentice's home suburb and the intensity of trades workers therein, as well as the size and type of their employer.[155]

13.7 **Issues associated with employing apprentices and trainees**
Queensland businesses have raised a number of concerns surrounding barriers to employing apprentices and trainees, which also contribute to issues around completion rates and skill shortages within the state. It is important that the following issues are addressed as a matter of urgency:

- **Regulatory burden constraints:** Queensland businesses report that current regulation and the structure of the apprenticeship and training system is overly burdensome, confusing and costly, particularly for those businesses that operate across multiple jurisdictions.[156] Redress in the form of nationally consistent requirements that reduce the compliance costs for businesses and enhance the flexibility provided to both employers and apprentices is necessary.

- **Competency based wage progression:** Competency based progression must be tied to industry relevant courses and skills. There is a need for employers to be closely involved in assessing whether an employee is deemed to be competent in the workplace to ensure quality skills development and application. All competency based progression approaches must be endorsed by industry and aligned with the needs of businesses.
- **Disparity in the quality and availability of training in metropolitan versus regional areas:** A significant proportion of the state's population currently resides outside of South-East Queensland. The geographical spread of regions in Queensland mean that employers in rural and regional areas absorb a greater percentage of the cost of training. While acknowledging that services provided in these areas typically operate at higher cost and are less economical, employers in these areas have expressed concern about the quality and accessibility of training and support services. Queensland businesses need a flexible, demand driven system capable of responding to the needs of the economy and regional variances in skills in demand. In developing reforms for the apprenticeships system, consideration must be given to the implications on the accessibility, cost and quality of regional and remote service delivery.[157]
- **Literacy, numeracy and communication skill barriers:** 46.8 per cent of employers have reported having literacy, numeracy and communication skill problems with their current apprentices and trainees in the workplace.[158] NAPLAN results also revealed that there is significant room for improvements in Queensland.[159] CCIQ believes it is important not to transfer the burden of poor educational outcomes onto employers who are currently bearing the cost of low productivity, skills shortages and required training costs resulting from the failure of our education system.

13.8 CCIQ published a Blueprint for Queensland's Education and Training System in November 2011 which includes more detailed recommendations and analysis regarding current areas for improvement to deliver a framework for achieving an efficient education and training system which produces a more productive workforce and supports a more competitive and sustainable economy.[160]

13.9 **Actions supported moving forward**
Queensland businesses support a nationally consistent approach to workplace relations issues specific to apprentices, while addressing the current barriers to the commencement and completion of apprenticeships and traineeships. This is essential to encourage the uptake of apprentices by Queensland business operators (particularly in trade industries) which is essential to securing a productive economy in the future and ensure that Australia is not disadvantaged by ongoing skills shortages.

13.10 CCIQ supports the findings of the Apprenticeships for the 21st Century Expert Panel, which found that the workplace relations system needs to complement and support the VET system, be responsive to the needs of industry and encourage the take-up and completion of apprenticeships and traineeships.[161] It is critically important that the system is more industry and demand driven in order to meet the needs of employers and individuals. This involves recognition that a "one-size fits all" approach to apprentice and trainee wages and conditions in every industry and occupation is inappropriate and impractical.

14.0 EFFICIENT AND EFFECTIVE INDUSTRIAL TRIBUNAL AND OMBUDSMAN

RECOMMENDATION 12: Increase the accessibility and reliability of the advice and assistance provided by the FWC and the FWO for employers. This requires:

- The provision of better quality and more accurate information by the FWC and the FWO in response to inquiries from employers about their obligations under the FW Act; and
- Addressing the perception that the FWC and the FWO are primarily designed to assist and support employees by ensuring that they have the necessary powers to sufficiently assist and support employers.

14.1 The FWC and the FWO both play a key role in the regulation and enforcement of the Fair Work legislation. Historically, a strong industrial tribunal has been essential to the smooth functioning of the system it presided over, while Australian employers value and respect the role of an independent and well-informed FWO to assist with and monitor compliance in the workplace. Given the scope of the Fair Work system, and that it applies to the majority of Australian businesses, it is perhaps even more important that both these structures are seen to be efficient, effective and fair, while providing correct and timely assistance and direction required by both employers and employees.

14.2 **Current Australian system**
The FWC has been established as Australia's independent national workplace relations tribunal with the power to carry out functions relating to:[162]

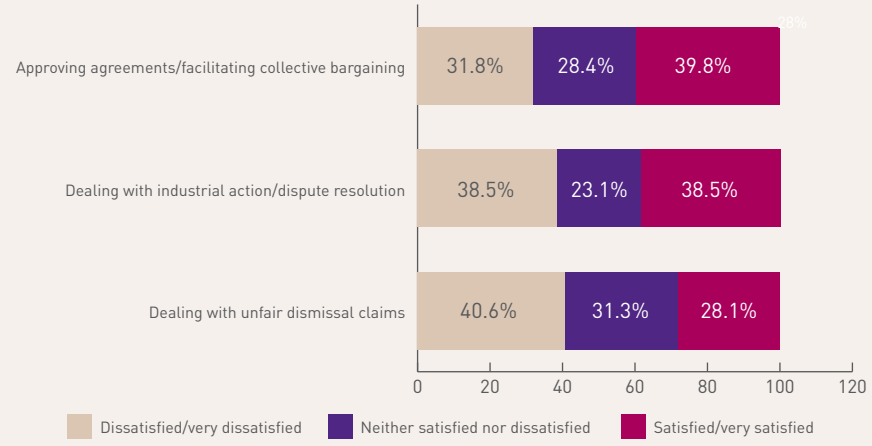
- the safety net of minimum wages and employment conditions;
- enterprise bargaining;
- industrial action;
- dispute resolution;
- termination of employment; and
- other workplace matters.

14.3 The FWO is the independent umpire responsible for promoting harmonious, productive and cooperate workplace relations and ensuring compliance with Commonwealth workplace laws.[163] The FWO works closely with the FWC to:

- Offer people a single point of contact for them to get accurate and timely information about Australia's workplace relations system;
- Educate people working in Australia about fair work practices, rights and obligations;
- Investigate complaints or suspected contraventions of workplace laws, awards and agreements;
- Litigate to enforce workplace laws and deter people from doing wrong in the community; and
- Build strong and effective relationships with industry, unions and other stakeholders.[164]

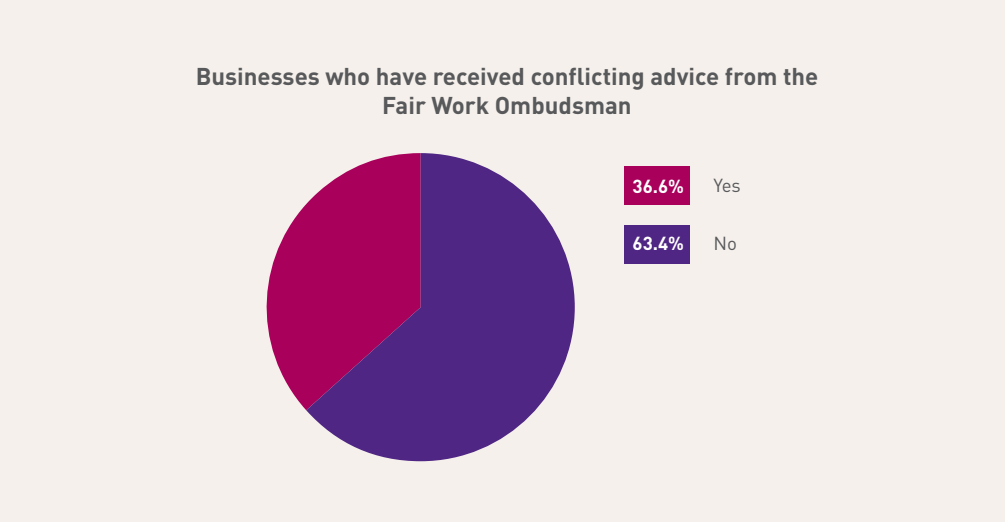
14.4 **Queensland business feedback in relation to the FWC and the FWO**
The relationship and interaction between business, the FWC and the FWO significantly affects employers' perception of the Fair Work system and their capacity to comply with it. Of those businesses who had been in contact with the FWC, around 40 per cent were dissatisfied or very dissatisfied with the way in which the FWC dealt with unfair dismissal claims, dispute resolution and industrial action, while 28 per cent of businesses were dissatisfied or very dissatisfied with the way in the FWC dealt with approving agreements and facilitating collective bargaining.

Business satisfaction with Fair Work's approach to the following:



Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011 [165]

14.5 More than a third of businesses (37 per cent) who have been in contact with the FWC on more than one occasion had received conflicting advice.



Source: Commonwealth Bank CCIQ Pulse Survey of Business Conditions: Hot Topic question - September Quarter 2011 [166]

14.6 Many employers report significantly varying experiences with the FWO, with some receiving timely, accurate advice and assistance whilst others expressed concerns about inconsistent, ill-informed and inaccurate advice. Businesses commented that it can be difficult to receive the answer to their questions with some being referred to the FW Act, the relevant award, the FWC/FWO website, or told simply to seek their own legal advice. Further, they hold concerns about the FWO's refusal to put advice in writing. Many employers are reluctant to seek advice and assistance from the FWO as they perceive their role as designed to primarily aid employees: indeed, we have received a number of reports from business owners operating in good faith who, on seeking clarification about their obligations to employees from the FWO, have subsequently been subject to investigations, penalties and compensation orders.

14.7 Queensland businesses have reported that the usability of the FWC and FWO websites is poor. Information can be difficult to interpret and understand, with many also reporting difficulties in finding the information they are looking for. CCIQ strongly advocates that the FWC and the FWO engage with industry to determine the content and format of information documents to assist businesses in meeting their compliance obligations.

14.8 **Concerns about proposed changes to the FWC**
CCIQ is concerned by calls to expand the role and powers of the FWC to enable it to intervene, on its own motion, in bargaining disputes or to impose arbitrated outcomes on parties.[167] We consider that it is inappropriate for the FWC, as a quasi-judicial tribunal. There are already adequate powers for the FWC to halt protected industrial action where it is causing damage to property, health or the economy.

14.9 **Actions supported moving forward**
More support is required to ensure timely, accurate and consistent advice can be provided when required to ensure better understanding of the Fair Work system by employers. CCIQ supports improving the accessibility and useability of the FWC and the FWO by employers who engage with the service. Employers should not be forced to obtain expensive legal and other professional advice in order to ensure they are complying with the current regulation.

14.10 It is important that an improved customer engagement process is implemented as a matter of urgency to meet these needs. Businesses also believe that improvements are required within the FWC to significantly reduce the current approval times for workplace agreements and allow for electronic platforms for negotiating and approving agreements, further decreasing the cost and impacts on businesses, their employees and the economy.

15.0 ADDITIONAL ISSUES OF IMPORTANCE TO AUSTRALIA'S WORKPLACE RELATIONS SYSTEM

RECOMMENDATION 13: Address other issues of importance to Queensland employers through the following measures. The FWC should recognise the special circumstances of SMEs:

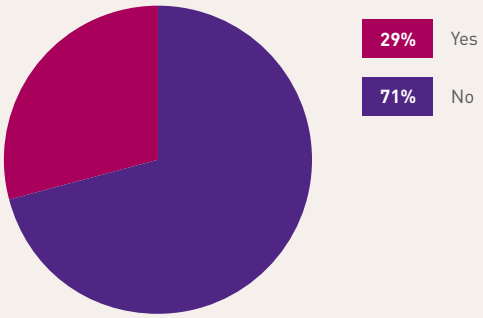
- Amend the definition of 'small business' to include businesses employing up to 49 employees;
- Put in place a 'one stop-shop' in Queensland for workplace bullying to ensure that inquiries and complaints are appropriately referred and data can be collected on the nature and incidence of workplace bullying;
- Review penalties and sanctions in the FW Act to ensure that they are appropriate, targeted and proportionate;
- Ensure that casual working arrangements are protected and maintained; and
- Simplify the provisions and processes relating to greenfields agreements and transfer of business.

15.1 The preceding sections of this Blueprint have set out those crucial issues that CCIQ considers to be at the core of Australia's workplace relations system. However, while we strongly believe that there are fundamental elements that form part of an effective workplace relations system, it is not a static area. Certain issues, such as workplace bullying, have recently become prominent on the workplace relations agenda, while matters that have long been contentious, such as equal remuneration and greenfields agreements, have been revived under the Fair Work system and the new provisions contained in the FW Act.

15.2 This highlights the need for a workplace relations framework that is sufficiently flexible to respond to new issues and challenges. Rigid and prescriptive legislation can lead to perverse outcomes that benefit no one.

15.3 **Recognising the needs of SMEs**
One of the objects of the FW Act is to "provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by acknowledging the special circumstances of small and medium sized businesses." [168] Currently, 71 per cent of Queensland businesses believe that the workplace relations system does not take into consideration the special circumstances of SMEs.

Does the Fair Work Act take into consideration the special circumstances of small and medium sized busnesses?



Source: CCIQ Survey of Queensland business community's feedback on Australia'smarketplace relation system – November 2011 [169]

15.4 SMEs have told us that a good workplace relations system should be built on a recognition of the following:

- The significant time constraints faced by small and medium businesses;
- The lack of resources they have available to them – for example, many do not have their own human resources or workplace relations consultants or advisers;
- The difficulties involved in comprehending and complying with complex regulations;
- The difficulties involved dismissing underperforming employees in a workplace where one employee's productivity can make a significant difference to the viability of the business;
- The impact of significant minimum wage increases and penalty rates on already slim profit margins and the subsequent impact that these cost imposts have; and
- The cash flow constraints and inconsistent income that characterise the operation of small businesses.

15.5 While this Blueprint has already called for a number of specific measures to be introduced into the Fair Work system that would be of tangible benefit to SMEs, CCIQ again reiterates the need for the FW Act to be underpinned by a genuine acknowledgement of the special circumstances faced by these businesses. The concessions that are currently allowed to SMEs, and small businesses in particular, in the FW Act are inadequate and lack meaning, while the threshold for what constitutes a small business under the FW Act is set extremely low, at 15 employees. Therefore, in addition to implementing the changes recommended in the Blueprint that would provide some relief to small businesses, CCIQ advocates an amendment to the definition of 'small business' in the Act to a business that employs up to 49 employees.

15.6 **Workplace bullying**
CCIQ recognises that workplace bullying is an important social issue that can have lasting impacts on the Australian community. We are in favour of better prevention and education measures to eradicate bullying from all workplaces – after all, it is bad for employees, bad for employers and ultimately, it is bad for business. However, there is no evidence about the prevalence of workplace bullying within Queensland or Australian workplaces, or that the implementation of further regulation or mandatory compliance measures in this area would address such a problem.

15.7 There is already sufficient existing legislation through which workplace bullying can be addressed. These avenues include:

- Unfair dismissal/general protection claims under the Fair Work Act 2009;
- Workplace health and safety legislation (the Work Health and Safety Act 2011 requires employers to use a formal issue resolution process in consultation with their workers to resolve health and safety issues, including workplace bullying);
- Criminal law (Queensland Criminal Code 1899);
- Anti-discrimination law (including the Queensland Anti-Discrimination Act 1991, as well as federal instruments including the Age Discrimination Act 2004, Disability Discrimination Act 1992, Racial Discrimination Act 1975, and the Sex Discrimination Act 1984);
- Breach of contract actions against employers (for example, under modern awards or enterprise bargaining agreements); and
- Workers' compensation (Workers' Compensation and Rehabilitation Act 2003).

15.8 Following the passage of national uniform work health and safety legislation, Safe Work Australia will shortly release a finalised National Code of Practice on Preventing and Responding to Workplace Bullying. The Code will define workplace bullying and provide a practical guide for employers and employees on how they can meet their obligations and duties under the Work Health and Safety Act 2011.

15.9 Individual businesses must be able to take responsibility for the safety and wellbeing of employees, and implement proactive initiatives to reduce the potential for workplace bullying issues within their business. Key to this approach is a focus on education and early intervention: employers should be encouraged to focus on maintaining a workplace culture that embraces an atmosphere of trust and respect in which bullying is not tolerated and where disputes are resolved quickly and decisively. However, it must also be recognised that many incidents can originate from social issues outside the workplace and are therefore outside of the control of the employer.

15.10 CCIQ opposes any additional regulation with respect to workplace bullying on the basis that it would be duplicative and confusing in light of the considerable regulatory framework that is already in place and which could and has been invoked to address instances of bullying. We strongly support increasing the awareness and accessibility of current government and industry initiatives that aim to prevent workplace bullying. Work is also required to reduce the confusion that currently exists within the community about which government agencies are responsible for dealing with workplace bullying. There is a need for better coordination between agencies to ensure that both employees and employers can seek appropriate guidance on how to address a workplace bullying issue, as well as to obtain evidence as to the prevalence of workplace bullying. A single point of entry, that is, a 'one-stop shop' for workplace bullying inquiries, should be developed to streamline the referral process and allow for the collection and dispersal of accurate and meaningful data in the area of workplace bullying.

15.11 **Casual working arrangements**
Casual employment is at the centre of many industries, including retail, hospitality and agriculture, that trade outside of 'normal hours' and are characterised by seasonal and 'peak' periods which often make the use of permanent employees impractical or impossible. Recently, however, casual working arrangements have been increasingly under attack from unions, who have labelled it as 'insecure work'.[170] What these attacks do not account for or comprehend is that casual working arrangements benefit both employers, who have greater flexibility to schedule shifts in accordance with their business needs, and employees, who can choose the number of shifts they work and benefit from casual loading, which increases their direct 'take-home' pay.

15.12 Casual employees are paid according to the number of hours they work, which are not required to be guaranteed. They receive a casual loading on top of their hourly wage in lieu of benefits that typically accrue to full-time and part-time employees, such as paid annual leave and sick leave, and redundancy pay. Most modern awards covering casual employees contain minimum engagement clauses that provide shifts must be no less than three hours in duration.

15.13 Only some of the NES apply to casual employees. Under the NES, casual employees are entitled to: [171]

- Two days unpaid carer's leave and two days unpaid compassionate leave per occasion;
- Maximum weekly hours;
- Community service leave;
- A day off on public holidays, unless the employer reasonably asks the employee to work; and
- The Fair Work Information Statement.

15.14 Further, casual employees who have been employed regularly for at least twelve months and expect to keep working for the same employer are also entitled to:[172]

- Make requests for flexible working arrangement; and
- Parental leave.

15.15 **Union attacks on casual working arrangements**
The ACTU 'Secure Jobs, Better Future' campaign focused on the ultimate outcome of eliminating casual working arrangements. [173] This campaign involved an inquiry, led by the ACTU, which produced a number of recommendations with respect to 'employment security' that included:

- Expanded definitions of 'employer' and 'employee';
- Extending the National Employment Standards to all employees;
- Further regulation of labour hire and contracting arrangements, including bringing these workers under the definition of 'employee'; and
- Limiting the use of overseas workers.

15.16 CCIQ steadfastly rejects these attacks on casual working arrangements and will continue to oppose attempts by unions to characterise casual work as detrimental to employees. Whether a position is full-time, part-time or casual does not determine the value of an employee or the opportunities that their workplace might offer them. Throughout this Blueprint, we have not only highlighted the essential nature of flexibility to successful and productive workplaces, but the consequences that employers face financially when that flexibility is severely curtailed, including letting go of staff or reducing their hours. These are the necessary outcomes of union proposal to end casual working arrangements.

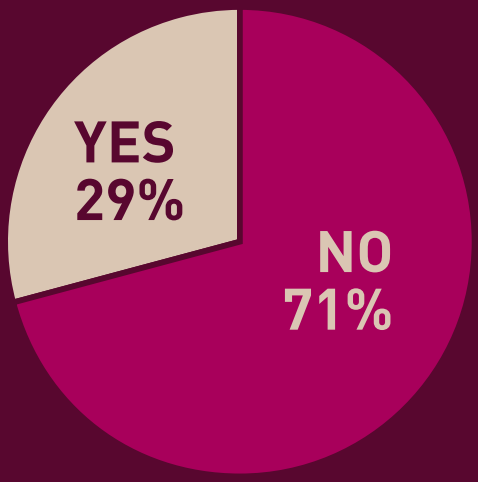
15.17 Strong businesses benefit the employees who work in them. At CCIQ, we oppose these retrograde steps proposed by the union not because of indifference to the needs of employees, but because of our understanding of them. While we strongly maintain that it is the prerogative of an employer to decide the basis on which they hire employees, we also know that employers, when they are able, value good employees when they are able to and reward them accordingly.

15.18 **Additional considerations**
CCIQ has also identified the following issues as important considerations for Australia's workplace relations system:

- **Penalties:** Ensuring that any penalties relating to breaches of the FW Act and its regulations are appropriate and proportionate to the nature and of the breach and the capacity of the business or employer in question to comply. CCIQs consider that some exemptions or smaller penalties should be applicable to small businesses, given their lesser capacity to meet compliance measures.
- **Greenfields agreements:** The process for negotiation of 'greenfields' agreements must be simplified and fast-tracked, to ensure that unions are not able to substantially delay the commencement of projects through bargaining. This includes allowing employer greenfields agreements to be permitted, so long as they meet necessary statutory requirements, including the NES and the BOOT.
- **Transfer of business provisions:** Transfer of business provisions should not disincentivise new employers from keeping on existing employees when a business changes hands. Currently, where a business is transferred and there is continuity in the kind of work performed by, the FWC has the power to tailor the employment instruments that transfer with the employees or to prevent the transfer of instruments if required. This test should be narrower and only engaged if the business, in the hands of its new owner, retains the same character as under its previous ownership.

A WORKPLACE RELATIONS SYSTEM FOR MODERN WORKPLACES: OUR VISION

DOES THE FAIR WORK ACT TAKE INTO CONSIDERATION THE SPECIAL CIRCUMSTANCES OF SMALL AND MEDIUM SIZED BUSINESSES?



50.8%

OF BUSINESSES THINK THERE SHOULD BE AN UNFAIR DISMISSAL LAW EXEMPTION FOR SMALL AND MEDIUM BUSINESSES

PER CENT BUSINESS SUPPORT FOR THE REINTRODUCTION OF STATUTORY INDIVIDUAL AGREEMENTS

THE POLICY BEHIND PENALTY RATES REPRESENTS A FAILURE TO RECOGNISE THE REQUIREMENTS OF CENTRAL INDUSTRIES.

16.0 CONCLUSION: OUR VISION FOR AUSTRALIA'S WORKPLACE RELATIONS SYSTEM

16.1 **A foundation for positive change**

Queensland businesses have resoundingly told us that they want a workplace relations framework that meets the needs of contemporary workplaces and positively impacts on their productivity, sustainability and competitiveness. This is why CCIQ has taken charge of the workplace relations agenda in Queensland to ensure that businesses have all possible tools at their disposal to create prosperity that ultimately benefits everyone. In this Blueprint, we have identified the essential elements that must comprise a successful framework: these are not based on ideology, and their implementation should not be dependent on the outcome of an election campaign. Rather, these measures are those that Queensland businesses have those that are the building blocks of an effective workplace relations policy – for now and in the future.

16.2 Implementing CCIQ's Workplace Relations Blueprint requires common sense reforms premised on the reality that every business is different. A federal government that recognises this will move away from the notion that they can create a 'one-size fits all' model for workplace relations. The way in which employees are engaged, their productivity and the flexibility of workplace practices are critical to this objective. Queensland businesses' vision is for an workplace relations framework that:

- Reduces red tape and compliance costs: Queensland businesses want a simple, effective and relevant workplace relations system that does not exceed what is necessary to achieve the desired results, both for employers and employees. Reducing the prescriptive nature of the current legislation to allow for the adoption of best practice methods will go a long way towards allaying the current compliance costs and enhancing the capacity of employers to focus on running their businesses and putting in place the positive measures that better serve them, their employees, and their workplace as a whole. For example, employers don't want the safety net removed, just more flexible so that it can apply to a broader range of circumstances and doesn't operate to prevent them from hiring. We need a workplace relations system that places confidence in employers to do the right thing.
- Embraces workplace flexibility: The workplace relations system needs to embrace flexibility as the key factor for delivering mutually beneficial outcomes. While 'flexibility' is often used with respect to workplace relations without any accompanying explanation of what it entails in this context, we have clearly explained in this Blueprint how to attain flexibility in workplaces, and why it must underpin changes to our workplace laws. We need a workplace relations system that can be tailored to the needs of extremely diverse and dynamic workplaces that are responding to constantly fluctuating economic conditions. This includes recognising that businesses must be allowed to directly negotiate with employees, the importance of casual working arrangements to huge sectors of the economy, and the need for a simplified awards system. We need a workplace relations system that allows employers and employees to work together.
- Delivers the appropriate balance between employers and employees: It is essential to provide a system where the rights of employees (and their union representatives) are balanced against the rights of employers, with adequate protections put in place to ensure the sustainability and fairness of the system. This is vital to ensuring fair and equitable practices in every workplace, where employers have clear duties to treat employees in a fair and decent manner, but need not fear an unfair dismissal or general protections claim when they need to let an employee go on valid grounds, or industrial action when they are unwilling to bargain with union representatives on unreasonable claims that go outside the scope of the employer-employee relationship. Managerial prerogative must return as one of the central principles underpinning our workplace relations system: employers need the ability to make the management decisions necessary to enhance the productivity and competitiveness of their businesses, without fear of retribution.
- Delivers productivity improvements: Enhanced wages and conditions need to be offset by delivering equal benefits to employers through higher efficiency or productivity improvements. Interference of third parties in the management of businesses would be minimal. Under the Fair Work system, the notion that wage and superannuation increases, and improvements to conditions of employment should not be tied to corollary increases in productivity has flourished. CCIQ knows that employers cannot afford this approach without sacking employees, cutting staff hours and downsizing their operations. These increases in the costs of employment must either be offset by productivity improvements, or be far more modest in size. This includes the jump in the mandatory superannuation guarantee. We need a workplace relations system that requires employees to take greater responsibility for their retirement.
- Encourages increased workforce participation: We need to embrace a system that encourages strong employment growth and increased workforce participation outcomes. This must by necessity involve the removal of current barriers and regulatory requirements that stop employers hiring, in addition to the implementation of proactive initiatives around training and education that strengthen the capacity of the economy to handle the challenges that arise from endemic skills shortages. A highly skilled, broad-based workforce will place Queensland and Australian businesses in a position of strength when it comes to confronting current and future challenges. We need a workplace relations system that encourages employers to take on apprentices and trainees, and to hire employees from diverse backgrounds.

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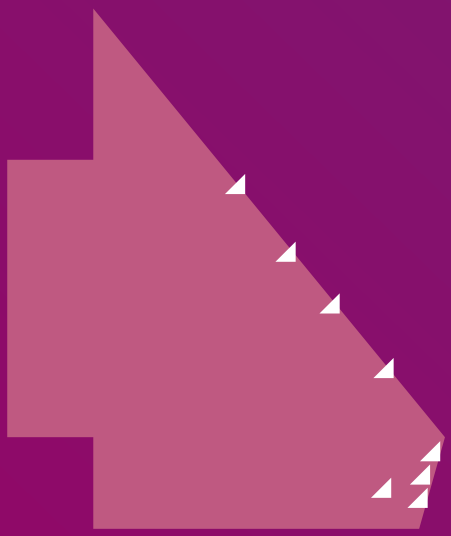

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