

Queensland business community's feedback on Australia's industrial relations system

NOVEMBER 2011

The *Fair Work Act* and modern awards fully commenced on 1 January 2010 following a commitment by the then newly elected Labor Government to abolish the Work Choices legislation. The new system resulted in dramatically altered industrial relations arrangements including the phasing out of Australian Workplace Agreements (AWAs) and the reintroduction of unfair dismissal laws for all businesses.

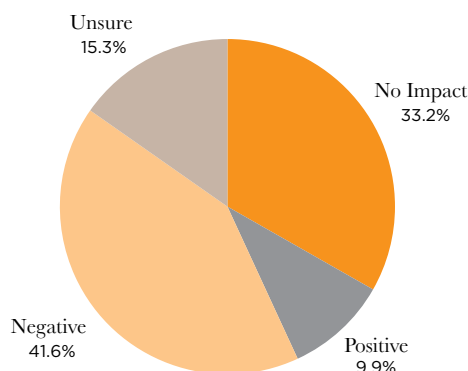
The *Fair Work Act* was also intended to establish a more national system for regulating industrial relations in Australia. The Queensland Parliament referred the State's industrial relations powers for the private sector to the Commonwealth Government in late 2009, effectively ensuring that all private sector employees in Queensland were covered under the *Fair Work Act*.

In the lead up to the two year review of the *Fair Work Act* and modern awards in 2012, CCIQ has surveyed over 400 Queensland businesses to determine the impact that the new system has had on their businesses and what improvements can be made to deliver better outcomes for both employers and employees that enhance workplace flexibility and in turn, productivity.

Impact on Queensland businesses

Feedback from Queensland employers reveals that the *Fair Work Act* and modern awards are unfortunately having an unintended and negative impact on 42% of businesses. One in three businesses indicates that the new system has had no material impact on their business and subsequently has not reduced the regulatory requirements placed on them as hoped. Only 10% of businesses have experienced a positive impact following the introduction of the Act.

IMPACT OF THE FAIR WORK ACT AND MODERN AWARDS ON BUSINESSES:

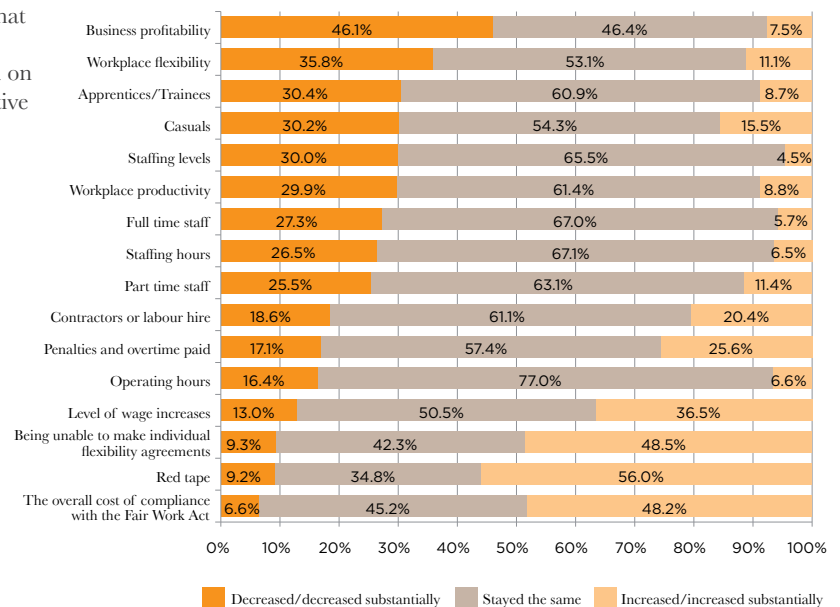


Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

Businesses were asked about the impact of the new system on various aspects of their business that were of relevance to them. Key findings included:

- 56% of businesses stated that red tape has actually increased since the introduction of the Act;
- The overall cost of compliance with the *Fair Work Act* has increased for 48% of businesses;
- 36% of businesses have experienced a decrease in workplace flexibility;
- Workplace productivity has decreased in 30% of businesses as a result of the *Fair Work Act*;
- 46% of businesses have had a decrease in business profitability;
- Around 30% of businesses have seen a decrease in staff levels (particularly casuals, apprentices/trainees and full time staff);
- One in four have seen a reduction in staff hours and an increase in penalties and overtime paid under the modern awards;
- 36% of businesses have seen an increase in wage levels as a result of moving to modern awards.

IMPACT OF THE FAIR WORK ACT AND MODERN AWARDS ON THE FOLLOWING:



Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

Overall, many businesses are concerned about increasing employment costs which are not being offset with increases in productivity. These concerns linked with increased red tape are restricting the number of people being employed. Furthermore, inflexible requirements are resulting in some businesses increasing casual employment and decreasing permanent employees.

Employers continue to remain concerned about the amount of power given to employees in the workplace and the costs associated with understanding obligations and ensuring compliance.

“We have had to obtain outside professional help to ensure we comply with many provisions of the fair work act at great cost to our company.”

“The Food Bev & Tobacco Award now rates anyone with a Cert 3 as Trade Qualified, meaning they jumped from a level 2 or 3 to a level 5, without the relevant trade experience. This is not justified, so we cannot afford to train most of our staff in this qualification because of the increase.”

“Far too difficult for small business with no access to HR departments to operate effectively.”

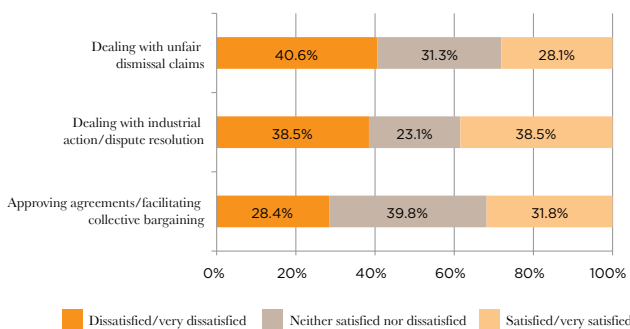
“The new act has created an environment suitable for increased industrial action. This increases the fear management have towards the viability of future revenue and therefore has a negative impact on the demand for our services.”

– Queensland Business Operators

Engagement with Fair Work Australia

Of those businesses who have been in contact with Fair Work Australia, around 40% are dissatisfied or very dissatisfied in the way in which Fair Work Australia dealt with their unfair dismissal claim and industrial action/dispute resolution. 28% of businesses were dissatisfied or very dissatisfied in the way Fair Work Australia dealt with approving agreements and facilitating collective bargaining.

BUSINESS SATISFACTION WITH FAIR WORK AUSTRALIA'S APPROACH TO THE FOLLOWING:



Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

Further to this, more than one in three businesses (37%) who had been in contact with the Fair Work Ombudsman on more than one occasion had received conflicting advice.

Many employers report significantly varying experiences with the Fair Work Ombudsman with half positive on the good advice and assistance provided while an equal amount concerned about inconsistent, ill-informed and inaccurate advice. Businesses commented that it can be difficult to receive the answer to their questions with some being told to read the Act/award/website or seek their own legal advice. Substantial delays have been experienced when calling the office. Businesses are also concerned that the Fair Work Ombudsman refuses to put any advice in writing.

“The information given changed depending on the operator spoken to. I find it difficult to get the information that you require to do the right thing by your employees.”

“I have had two claims both unfairly pointed at us and I feel Fair Work handled both situations with good sense on both sides.”

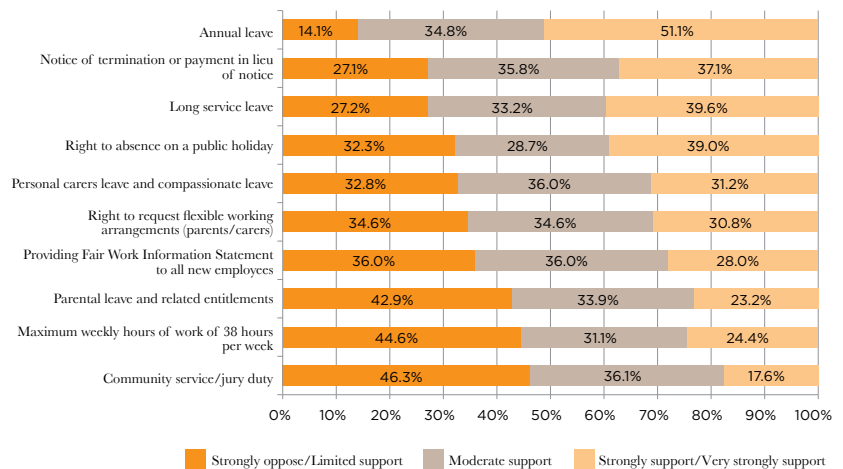
“Don't have time to sit on the phone waiting for Fair Work to answer my questions. Very inefficient service.”

– Queensland Business Operators

National Employment Standards

The majority of businesses (85%) have not had any significant compliance issues in relation to the new National Employment Standards (NES). In relation to particular employer obligations, businesses are not concerned with annual leave obligations, with 51% of businesses strongly or very strongly supportive of this NES entitlement. However, more than 40% of businesses have concerns regarding community service leave, jury duty, maximum weekly hours of work of 38 hours and parental leave and related entitlements (extension of up to 2 years unpaid leave).

BUSINESS SUPPORT TOWARDS THE FOLLOWING NES:

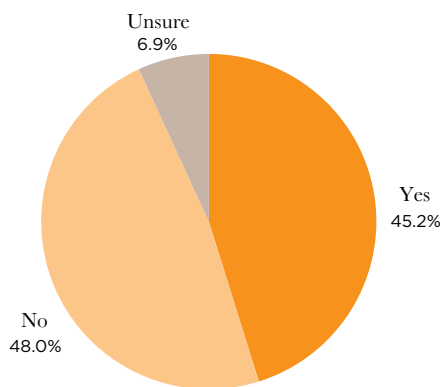


Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

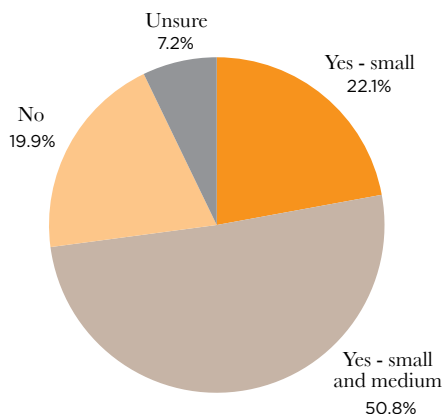
Unfair dismissal laws

Of concern, a significant number of businesses (45%) have indicated that they are more reluctant to hire permanent staff as a result of unfair dismissal laws. This is unsurprising considering that 85% of businesses believe it is too easy for employees to sue them for unfair dismissal. Subsequently, 73% of businesses believe there should be an unfair dismissal law exemption put in place; 22% supported such an exemption for small businesses and 51% supported an exemption for small and medium businesses.

HAS YOUR BUSINESS BEEN MORE RELUCTANT TO HIRE PERMANENT STAFF AS A RESULT OF UNFAIR DISMISSAL LAWS?



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

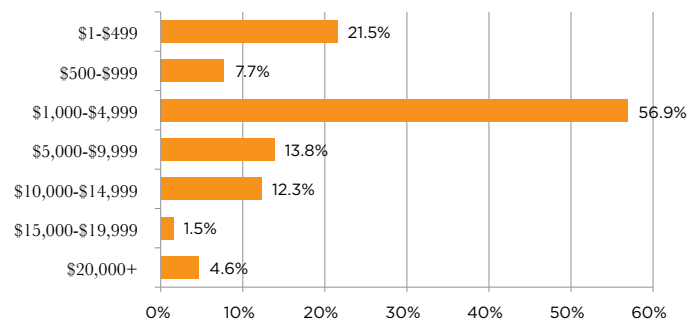


Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

For those businesses that have been involved in an unfair dismissal claim, the majority (66%) were settled through the payment of monetary sums both prior to arbitration and at the conciliation stage. The remaining claims were settled without compensation through methods including the employee withdrawing the claim or the employee being reinstated.

The majority of businesses (75%) who settled the unfair dismissal matter with a monetary payment had done so to avoid further time and expense in defending the matter. This is understandable when the majority of businesses (57%) spent between \$1,000 and \$4,999 on seeking advice or being represented in unfair dismissal proceedings. One third of businesses (32%) spent more than \$5,000. On top of this, one in four businesses paid compensation higher than \$10,000.

COST OF LEGAL ADVICE OR REPRESENTATION IN UNFAIR DISMISSAL CLAIMS



Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

"Unfair dismissal laws have to be changed to give more protection to the employer against the current state of affairs, in that regardless of the circumstances of a dismissal, a worker can make a claim and reasonably expect that the employer will pay some money just to have the matter 'go away'."

"There needs to be a balance of employer and employee interests in unfair dismissal claims."

"I have assisted a client through an unfair dismissal. In a nutshell, the employee resigned during the floods in QLD. Then a couple of weeks later lodged an unfair dismissal. The arbitrator was on the employer's side. The case was an embarrassment. But in order to reduce costs, legal, time, and energy, my client offered a small payment to close the file. It should not come to this."

"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 without the worry of being sued."

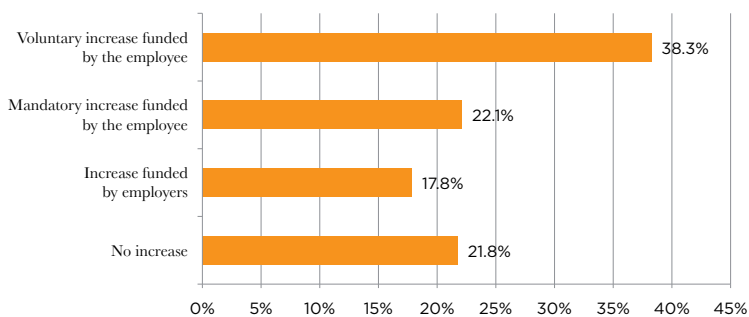
"Too many employees are being granted unfair dismissals and employers are not gaining any ground, cases need to be investigated further before a decision is made."

- Queensland Business Operators

Superannuation

The majority of Queensland employers (78%) are supportive of increasing the superannuation guarantee levy. However, support is only provided for this increase to be funded by employees themselves, with 38.3% supporting a voluntary employee increase and 22.1% supporting a mandatory employee funded increase. Only 17.8% of businesses support an increase funded by employers on the basis of it being offset by future wage negotiations.

SUPERANNUATION CONTRIBUTION INCREASE SUPPORTED BY QUEENSLAND EMPLOYERS



Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

“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.”

“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?”

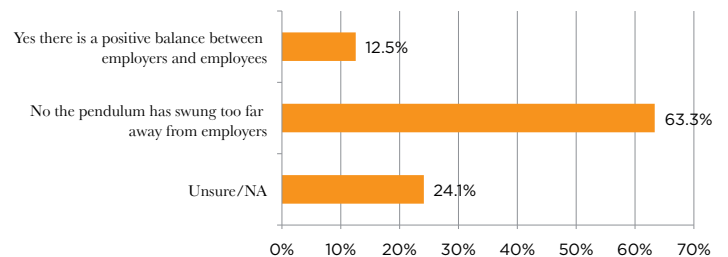
“Business can not support an increase to 12% at this time. I am also strongly against existing compulsory superannuation structure. The average worker does not have the financial literacy to manage their own fund. Most would not be aware that their fund is reduced severely depending on the economic climate. Far too much money is lost to fees in low contributing employees funds.”

– Queensland Business Operators

Conclusion

Queensland businesses are highly supportive of reviewing the *Fair Work Act* to reduce the negative impacts on their business that have unfortunately occurred and to enhance their capacity to employ and retain staff. Currently, the majority of Queensland businesses (63%) believe the Federal Government has not got the balance right with the current Act, which is seen to overwhelmingly favour employees.

HAS GOVERNMENT GOT THE BALANCE RIGHT WITH THE FAIR WORK ACT?



Source: Commonwealth Bank CCIQ Pulse Survey, November 2011

Businesses have suggested a number of changes that they would like made to the current Act to achieve a more harmonious and productive workplace:

- Simplify the Act;
- Allow more flexible arrangements to be negotiated between employers and employees ie individual agreements (53.4% of businesses support the reintroduction of statutory individual agreements);
- Amend unfair dismissal laws;
- Limit the involvement of third parties;
- Increase support for businesses, particularly small businesses to ensure compliance and understanding;
- Review of overtime and weekend penalty rates for industries trading 7 days a week;
- Electronic platforms for negotiating and establishing agreements.

CCIQ will continue to work with Government and industry to achieve an improved workplace relations system that reduces the regulatory requirements on employers and increases their capacity to employ and retain staff. CCIQ is currently working on a Workplace Relations Blueprint that will be released in early 2012.

“Small business is the largest employer in Australia and need to be protected and given more consideration for their contribution to the Nation as a whole.”

“The current number of strikes is indicative of the state of the levels of satisfaction. The lack of flexibility available to small business is particularly problematic.”

“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.”

– Queensland Business Operators

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