

FAIR WORK ACT REVIEW

CCIQ Submission to the Fair Work Act Review
Panel

16 February 2012

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“Too many employment rules and regulations are causing small operators to close down and simply become an employee themselves. The financial benefits are far greater in most cases.”

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

“Employers create jobs for the employees. No job, no pay. Small business needs to be able to govern itself to be successful as it does not have the resources to compete with larger corporate companies.”

- Queensland Business Operators

1.0 INTRODUCTION

- 1.1 The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback on the Review of the Fair Work Act. CCIQ has strongly advocated for this review and is optimistic that this process will deliver improvements to the current system. 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, and reintroduce flexibility into the workplace. The terms of reference of the current review are included in Appendix 1.
- 1.2 In the lead up to the review, CCIQ has undertaken two separate survey processes to gather feedback from Queensland businesses. The first survey was undertaken in October 2011, with the survey results published in a CCIQ report in November 2011 titled *Queensland business community's feedback on Australia's industrial relations system*.¹ A second and follow-up survey of the Queensland business community was undertaken in February 2012. The demographics of respondents from both surveys are included in Appendix 2.
- 1.3 Overall, Queensland businesses believe that the Fair Work Act has not met its core objective to provide a workplace relations system that is fair to working Australians, is flexible for businesses and promotes productivity and economic growth for Australia's future economic prosperity. There are concerns about the ongoing costs of employment that are not coinciding with increases in productivity. Australia requires an industrial relations system that enhances productivity, increases economic prosperity, ensures business sustainability and allows businesses to remain internationally competitive.
- 1.4 Businesses have raised a number of key issues that have been detailed throughout this submission to help reduce the negative impacts that the current system is having on their business. Numerous business quotes have been included to provide more first hand, evidence based examples of the impacts and concerns raised by Queensland businesses. Finally, a number of recommendations have been made to help achieve more harmonious and productive workplaces.
- 1.5 CCIQ, as a member of the Australian Chamber of Commerce and Industry (ACCI), provides support for the position and recommendations made by this organisation to the Review. CCIQ's submission is intended to complement ACCI's submission and provide the Queensland business community context.

“Staff Costs - Fair Work Act implications - is by far the biggest issue for businesses - outweighing other issues. Work Choices potentially went too far one way. Fair Work has over-compensated and even Industrial Relations Lawyers are uncertain.”

“The Act needs to be made more employer friendly, because without employers offering work to employees, there is no need for employees to look for protection as they will have no jobs!”

“Fair Work regulations are unrealistic for small to medium business.”

“With the economic climate at present, it is very difficult to achieve the necessary funds to meet the burdens imposed on small businesses and be able to move forward.”

“The lack of flexibility available to small business is particularly problematic.”

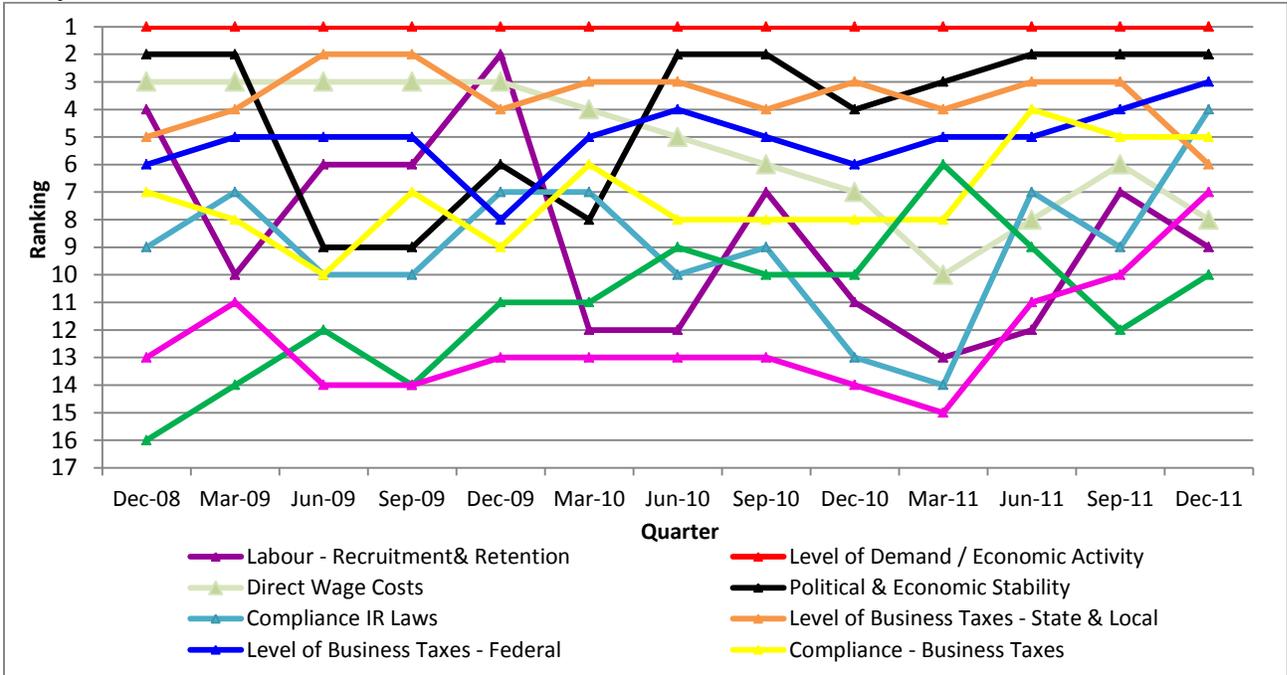
“Understanding where you stand as an employer. Not one small business I have worked with is operating compliantly with FWA and the FWA job employers off to find their own lawyer to get advice on things as basic as the right award. Small business can not afford lawyers, so it's a viscous circle.”

- Queensland Business Operators

2.0 IMPORTANCE OF WORKPLACE RELATIONS ISSUES TO QUEENSLAND BUSINESSES

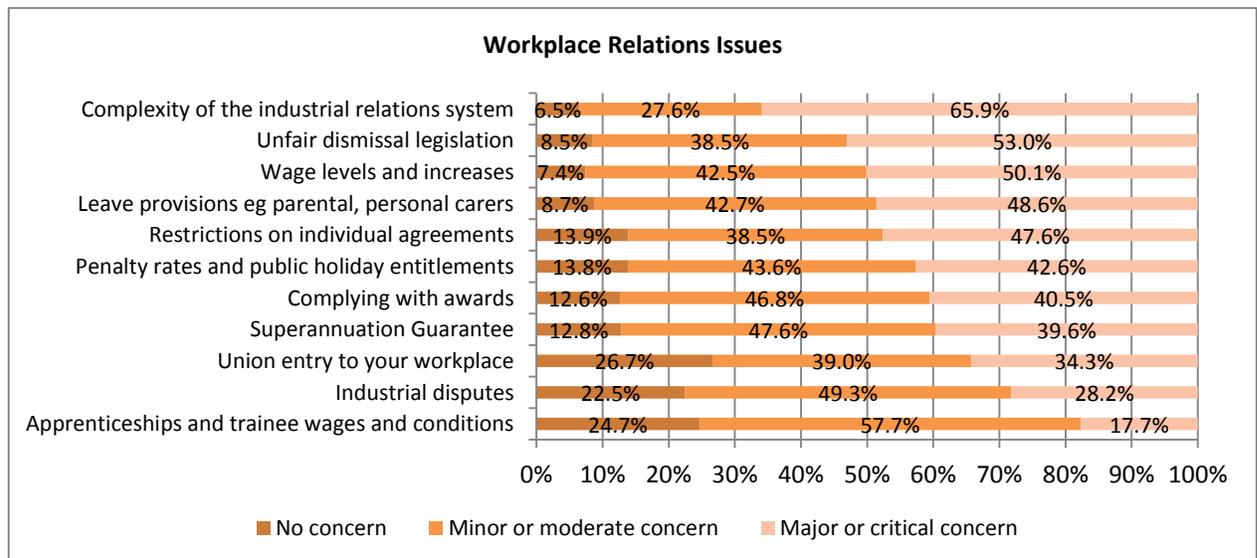
2.1 Compliance with industrial relations laws is a key issue for Queensland businesses. Since March 2011, compliance with industrial relations laws has increased from the 14th to the 4th most significant constraint on business growth in Queensland (behind the level of demand and economic activity, political and economic stability and the level of federal business taxes). These results demonstrate the rising impact of workplace relations issues on Queensland businesses.

Major Constraints on Business Growth



Source: Commonwealth Bank CCIQ Pulse Survey of Business Conditions: December Quarter 2011

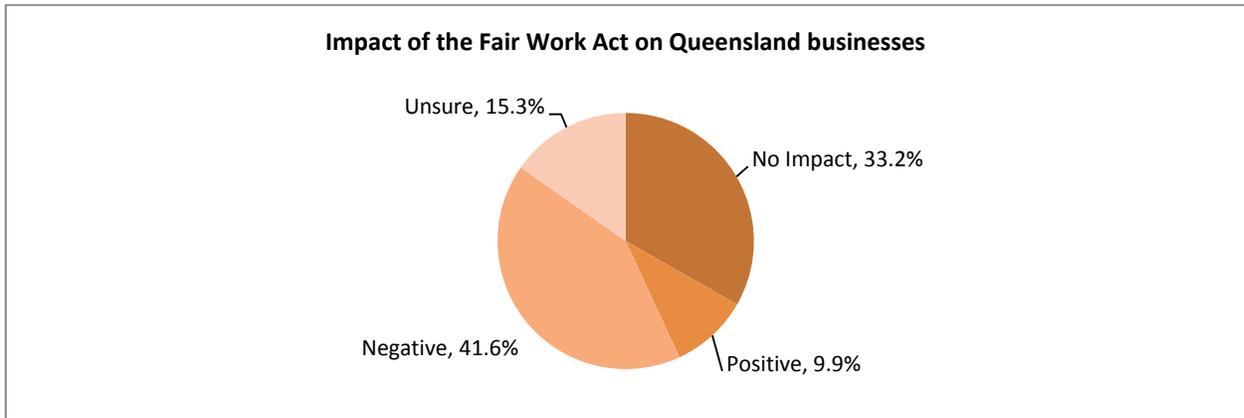
2.2 A recent CCIQ survey of over 1,000 Queensland businesses also confirmed that workplace relations issues and the Fair Work Act were of particular concern.² The majority of Queensland businesses (66%) expressed major or critical concern regarding the overall complexity of the Federal industrial relations system. Major concerns were raised about unfair dismissal legislation, wage levels and increases, leave provisions, restrictions on individual agreements, penalty rates and public holiday entitlements. These survey results highlight the importance of making changes to the industrial relations system to ensure better outcomes can be achieved for employers, employees and the economy. These issues will be addressed in more detail throughout this submission.



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

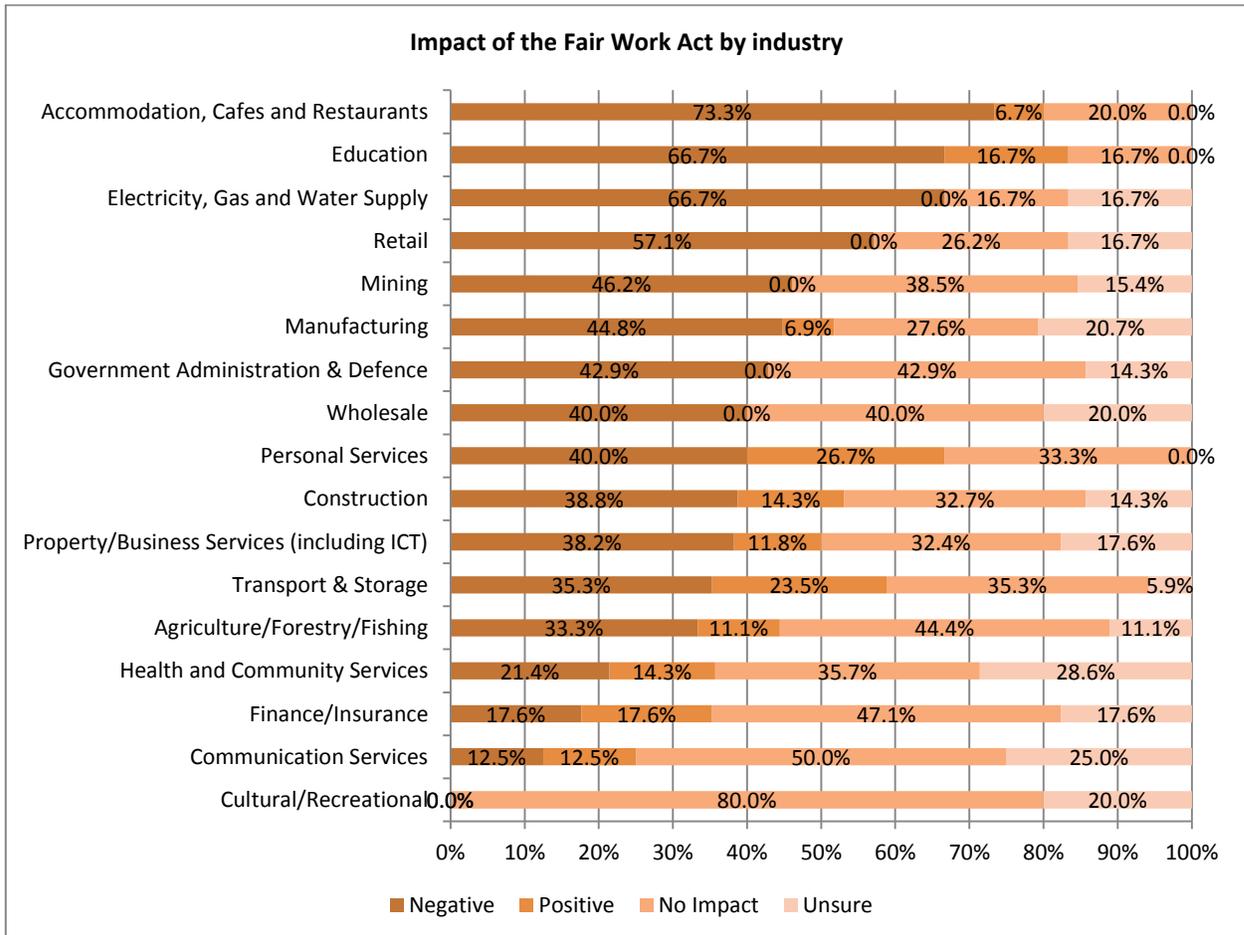
3.0 IMPACT OF THE FAIR WORK ACT ON QUEENSLAND BUSINESSES

3.1 Feedback from Queensland employers reveals that the Fair Work Act has unfortunately had 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 a small majority of businesses (10%) have experienced a positive impact following the introduction of the Act.



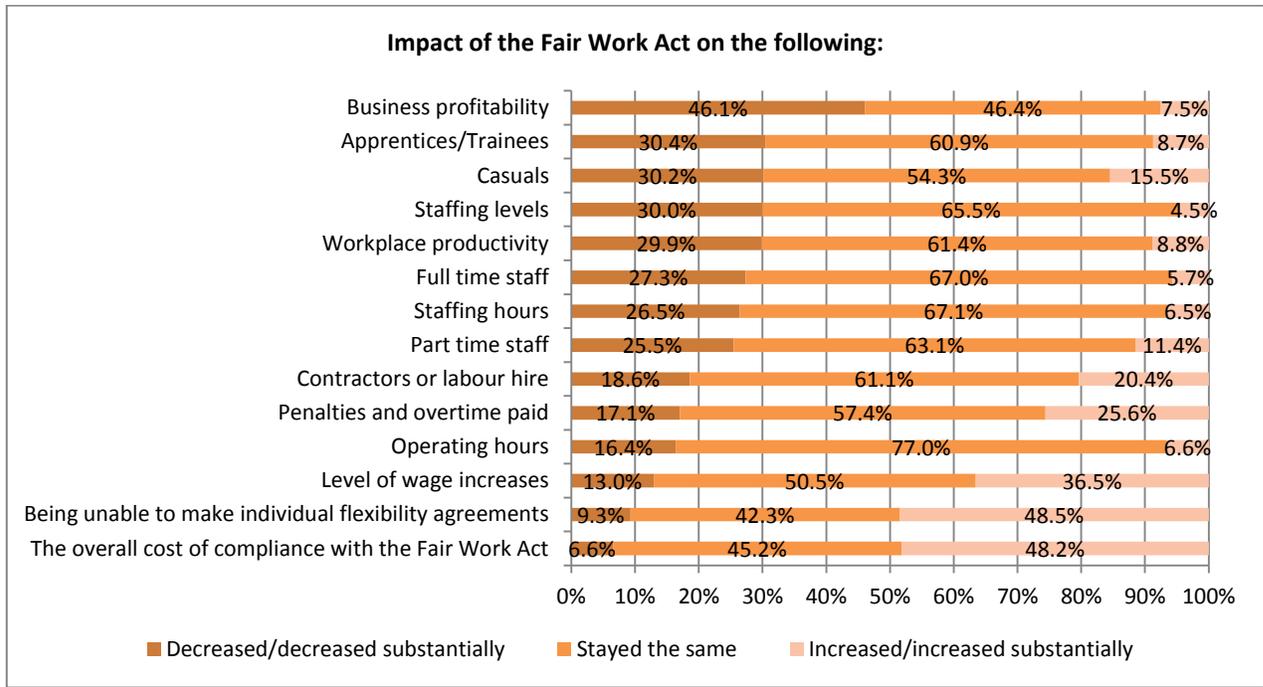
Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system- November 2011

3.2 It appears that the Fair Work Act is having a greater impact on some industries compared to others. A large number of businesses in the accommodation, cafes and restaurants (73%); education (67%); electricity, gas and water supply (67%); retail (57%) and mining (46%) industries indicated that the Fair Work Act had had a negative impact on their business. This is particularly concerns for Queensland because these industries are significantly important to the state's economy.



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

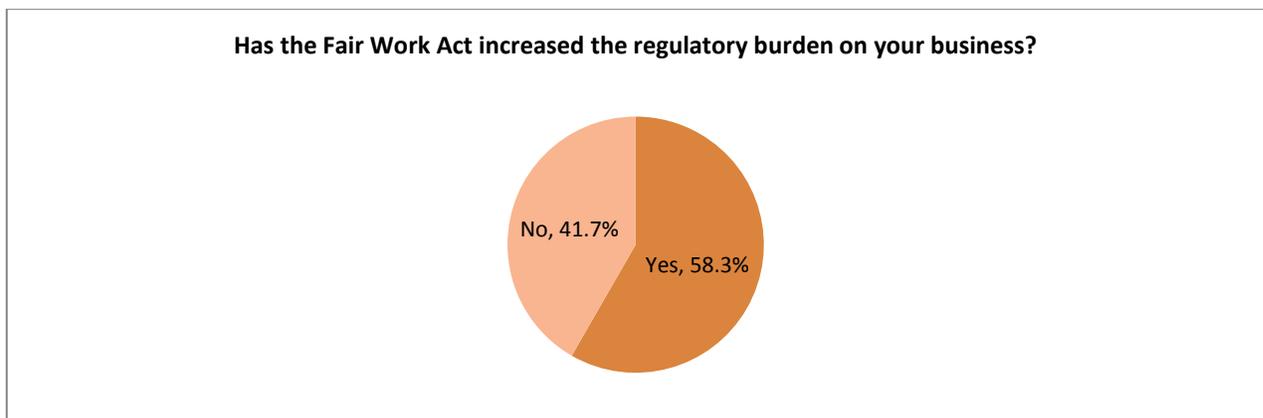
- 3.3 Businesses reported the following impacts of the new industrial relations system on their business:
- The overall level of compliance costs with the Fair Work Act has increased for 48% of businesses;
 - Workplace productivity has decreased in 30% of businesses as result of the Fair Work Act;
 - 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) as a result of the Fair Work Act;
 - One in four have seen a reduction in staff hours and an increase in penalties and overtime paid;
 - 36% of businesses have seen an increase in wage levels as a result of moving to modern awards.



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

3.4 Increased regulatory burden and compliance costs associated with the Fair Work system

In the February 2012 CCIQ survey, Queensland businesses were asked whether the Fair Work Act has increased the regulatory burdens on their business; 58% stated that it had.



Source: CCIQ Review of the Fair Work Act and Minimum Wage Survey – February 2012

- 3.5 Businesses have highlighted a number of issues that are increasing the regulatory burden and compliance costs on their business including:
- Existing red tape is restricting the number of people employed (cost of employment, restriction of junior hours);
 - Employment costs are increasing however productivity is remaining stagnate or decreasing;

- Difficulties in remaining up-to-date with changes and interpreting how the Act applies to particular businesses. Businesses are also required to refer to several sources when seeking employment information;
- Difficulties in obtaining information or advice from Fair Work Australia either through the website or by phone (see section 10.0 for more information);
- Unworkable clauses and obligations in modern awards and under the Act;
- Complex, time consuming and expensive compliance requirements with subsequent impacts on employment levels;
- Confusing transitional arrangements;
- Additional paperwork and record keeping requirements;
- Not hiring permanent staff and employing contractors, labour hire workers or casuals;
- Increased need for legal and/or specialist advice to ensure compliance;
- Difficulties in determining appropriate wage and award rates for employees;
- Trying to explain requirements to confused staff and seasonal/casual workers.

3.6 A number of additional concerns have also been raised throughout this submission that impact on the level of regulatory burden and the cost of compliance for businesses including unfair dismissal, agreement making, National Employment Standards and increased industrial action. Many businesses have also raised concerns regarding their uncertainty around their level of compliance with the system, potentially opening themselves up to penalties etc.

“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.”

“Keeping up with legislation and ensuring that all workers comply with regulations as well as trying to provide quality services and finished results for clients. As business owners we are very time poor.”

“Compliance is a major issue, especially if things are to change again. It is difficult to keep abreast of all the constant changes.”

“Additional paperwork and compliance burdens further adding costs and wasting time and money.”

“Greater amount of recording and action required to meet the requirements of the Act.”

“Increased wages and casual percentages as well as mandatory and increased reporting to government bodies (at our cost) means higher costs to our company which increases the costs to our client base. In our industry we are constantly competing with so many large and national companies who have ABA, AWA, EBA agreements we are finding we cannot compete with the larger companies as our costs place us out of the market in many cases which means loss of work and lowering our staffing levels. Decreasing margins by absorbing wage increases and government fees is the only way to remain competitive but when your costs outweigh your income it’s time to close the doors.”

“Our business has had to employ additional staff to meet the regulatory requirements of the Fair Work Act.”

“Afraid to put on more staff due to the Fair Work Act.”

“More red tape and we are still not too sure what is going on.”

“The industrial relations situation has forced our business to cease trading, putting 50 workers out of work.”

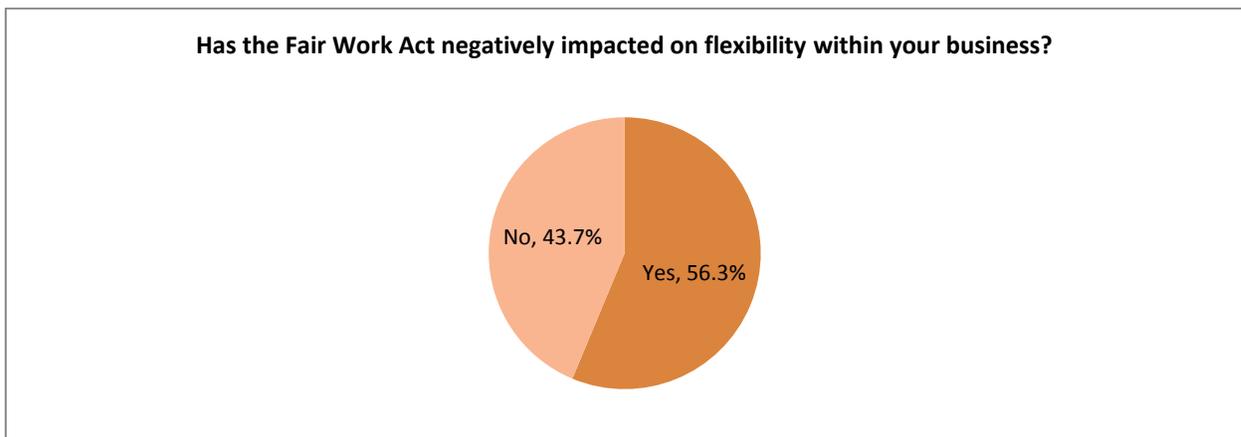
“Had to cut employees to be able to maintain bottom line. Difficulty ensuring compliance with new legislation but it is something that must be done.”

- Queensland Business Operators

3.7 Impact on workplace flexibility

Businesses have also raised concerns about the negative impacts of the Fair Work Act on their workplaces. The majority of businesses (56%) stated that flexibility within their workplace had been affected since the introduction of the Fair Work system. Queensland businesses identified a number of ways in which the industrial relations system has reduced flexibility within their businesses including:

- Unable to operate profitably within key operating times for businesses within particular industries (for example working 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;
- Inability to employ juniors for short time periods (for example, after school);
- Increased consultation requirements;
- Difficult to dismiss employees who are not performing or not following instructions;
- Restricts employees working the hours they want to work (for example minimum shift times, swapping days, penalty rates etc);
- Increasing automatic processes to decrease employee requirements;
- Ongoing fear of unfair dismissal or adverse action claims;
- Increased third party involvement in the workplace and management of staff;
- Increased paperwork and reporting requirements to meet the flexibility requests of employees.



Source: CCIQ Review of the Fair Work Act and Minimum Wage Survey – February 2012

“We have always paid substantially above award and provided many other non-award benefits such as working from home whenever specific client appointments not required, unrestricted motor vehicle, liberal TOIL arrangements - all these items must now be quantified and documented for every employee. Employees also have increased burden eg more onerous timekeeping, more vehicle logbooks etc.”

“Minimum shifts of 4 hours has greatly reduced flexibility.”

“In our business we have to work in the guidelines for the employee and not when the product is ready.”

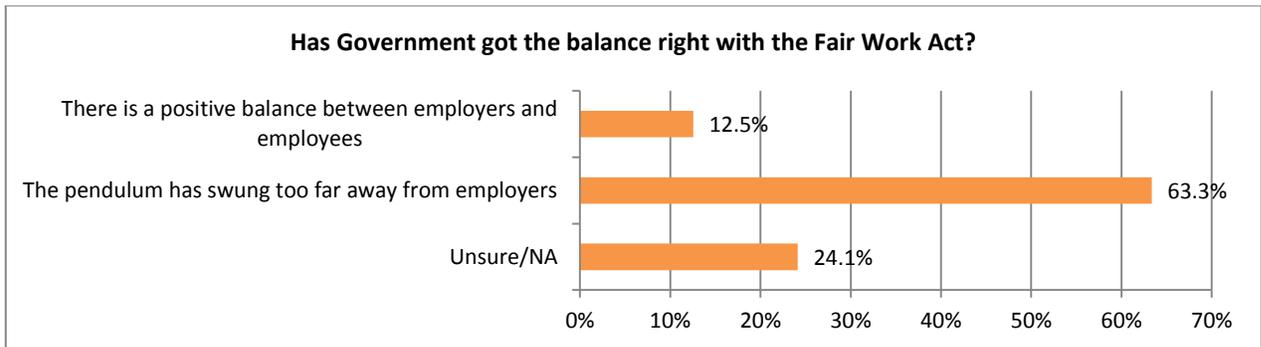
“Because of the requirement of a minimum 3 hour call I can't utilise juniors.”

“Removal of flexible working hours has caused multiple issues with staff. Staff were happy to start work at 5am and work through their 8 hours, but now the business has to pay overtime if the employee starts at 5am. The same scenario is when the staff member wishes to start at 11am and work past 6pm. We have lost 8 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 can not just keep absorbing these changes.”

- Queensland Business Operators

3.8 Appropriate balance between employers and employees

Currently, the majority of Queensland businesses (63%) believe the Federal Government has not got the balance right with the *Fair Work Act*, which is seen to overwhelmingly favour employees. Businesses believe much more needs to be done to provide an appropriate balance between the needs of employers and employees.



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

Recommendations:

- Simplify the Fair Work Act to reduce the negative impacts on Queensland businesses subsequently encouraging them to employ and retain staff;
- Restore the industrial relations balance in workplaces by delivering a more positive balance between employers and employees;
- Fair Work Australia to develop a better understanding of the cost impacts of the industrial relations system on businesses and undertake a cost benefit analysis for any proposed changes.

“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.”

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

“The onus is unfairly placed on the employer without a similar productivity expectation/requirement from the employee.”

“I would like to see equal emphasis placed on employee's and employer's rights. The balance is currently skewed in favour of the employee.”

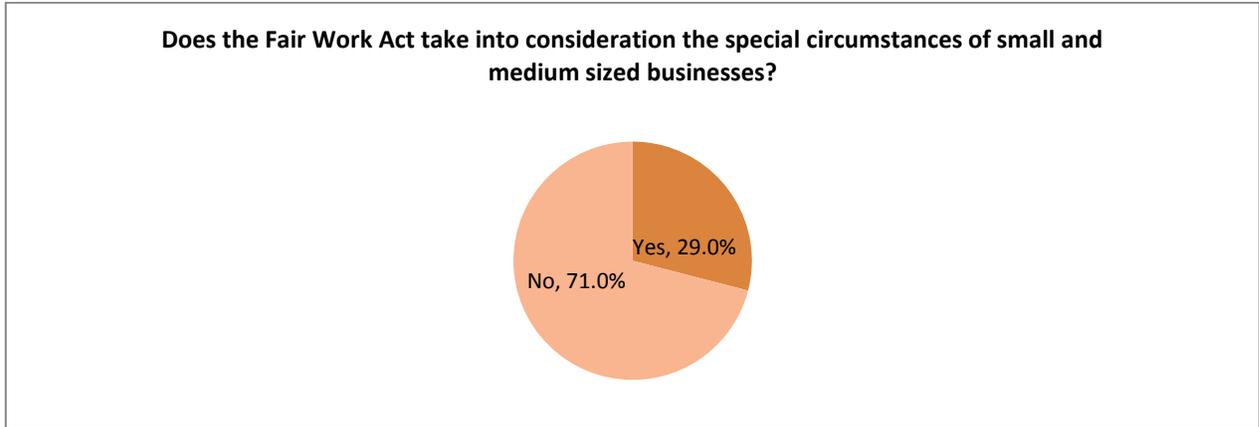
“We have lost our flexibility, and our staff have lost some of the benefits of that flexibility.”

“Balance the fairness between employees and employers.”

- Queensland Business Operators

4.0 SPECIAL CIRCUMSTANCES OF SMALL AND MEDIUM BUSINESSES

- 4.1 One of the objects of the Fair Work 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.”³ Currently 71% of Queensland businesses believe that the workplace relations system does not take into consideration the special circumstances of small and medium sized businesses. Many believe that there are currently no special considerations for small and medium businesses included in the Fair Work system.



Source: CCIQ Review of the Fair Work Act and Minimum Wage Survey – February 2012

- 4.2 Businesses were asked to outline what needed to be taken into consideration in relation to small and medium businesses. The key findings included:
- The significant time constraints faced by small and medium businesses (time poor managers);
 - The lack of resources available (for example many do not have their own HR or IR specialists);
 - Difficulties in understanding complex and burdensome regulations;
 - Unable to dismiss underperforming employees in a workplace where one employee’s productivity can make a huge 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 on employment in small and medium enterprises;
 - Cash flow constraints and inconsistent income of small businesses.

Recommendations:

- **To meet the objectives of the Fair Work Act, the circumstances of small and medium businesses must be taken into consideration to increase business flexibility and allow small businesses to employ and prosper;**
- **Increase support for businesses, particularly small businesses to ensure compliance and understanding.**

“SME's need flexibility in employment conditions to remain competitive in the marketplace.”

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

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

“I work 80+ hours a week just to keep everything going. I make as an employer on average 2/3 of what one of my operational staff do working only 38 hours. This is killing me & many other small business owners who do the same to provide employment opportunities for the Australian people. There is very little incentive to owning and operating a business in Qld.”

- Queensland Business Operators

5.0 INCREASING EMPLOYMENT COSTS

5.1 Queensland businesses are significantly concerned about the increasing costs of employment which are not being offset by productivity gains. There are concerns regarding the associated implications for the ongoing competitiveness and viability of businesses if these costs continue to increase with no associated returns for the business. The increasing costs of employment are even pricing some businesses out of the market, either encouraging them to move overseas, close their doors or decrease their employees (ie through investment in automatic processes or through the reduction of services offered). Businesses often comment that they would be able to employ more staff if the employment costs faced by their business were reduced. Key issues raised by businesses in relation to rising employment costs are addressed in the sections below.

“In the real estate industry our costs have substantially increased yet productivity and profit have decreased and will get worse as the end of the Fair Work transitional period draws closer.”

“We no longer have employees, too expensive and too complicated to comply with the legislation.”

“Employee costs have escalated. We now contract most of our staff from the UK. It is now cheaper to outsource to the UK, our employee costs have dropped at least 20%.”

- Queensland Business Operators

5.2 Penalty rates

Many Queensland businesses, particularly those that operate 7 days a week or late weeknights have raised concerns regarding the impact of penalty rates on the viability of their business. There is concern that Government only considers Monday to Friday “normal trading hours”, which immediately disadvantages businesses that operate outside of these hours including the retail, tourism, accommodation, restaurant/café and agricultural industries. This also provides a disincentive for businesses thinking about expanding their operations to 7 days a week.

5.3 Common concerns raised by businesses regarding the burden of penalty rates include:

- Customers are not willing to pay extra for services/products outside of “normal trading hours”;
- Operating hours of some businesses have been affected because they are not profitable when being required to pay penalty rates (for example restaurants closing on Sundays, 24 hour services reduced, fruit not being harvested at optimal times;
- Introduction of weekend penalty rates were not offset by productivity gains.

5.4 Significant attention is required on this issue during the review of modern awards to enhance the competitiveness and viability of industries trading 7 days a week.

Recommendation: Reduce the burden of overtime and weekend penalty rates for industries trading 7 days a week.

“Weekend penalties are unfair to an industry trading 7 days per week and an impediment to full time employment. They resulted in no productivity gain and are generally bad for the economy.”

“Caused us to close our restaurant on public holidays due to high and un-commercial penalty rates.”

“If a business is trading 7 days a week there should be no penalty for weekends as they are part of the “normal” weekly trade hours.”

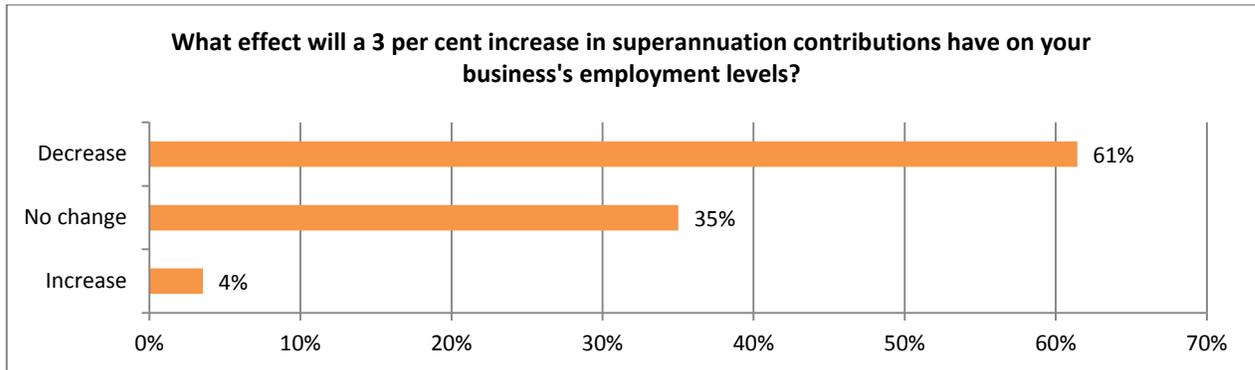
“The modern award reflects anything but modern society. We live in a 24/7 environment, and yet the award, through substantial penalty rates, is seriously affecting viability of trading on Sat, Sun, public holidays, early mornings and late nights. Even casual staff now receive ridiculous overpayments on these days, despite the fact that this is when they want to work (eg around uni timetables etc). This is totally unsustainable and will kill the hospitality industry and tourism in general.”

- Queensland Business Operators

5.5 Superannuation

Queensland businesses are strongly opposed to increasing the employer superannuation guarantee levy from 9 per cent to 12 per cent. Increasing the superannuation guarantee by 3 per cent 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 \$4 billion per year in superannuation payments for Queensland employers alone.

- 5.6 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 3 per cent. Only 4 per cent of businesses indicated they would increase employment levels.



Source: CCIQ snap poll, November 2011

- 5.7 The majority (78%) of Queensland employers recognise the need for increasing the superannuation savings of employees. 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 to the superannuation guarantee. Only 17.8% of businesses support an increase funded by employers on the basis of it being offset by future wage negotiations.⁴
- 5.8 It is clear that the next stage of retirement incomes policy should focus on increasing the self-reliance of employees and enhancing their capacity to adequately plan for retirement, subsequently encouraging more ownership of their financial future. Any increase in superannuation should be made through the introduction of employee contributions rather than further demands on already over-burdened employers.

Recommendation: The Federal Government to investigate alternative approaches for retirement income policy in Australia that will reduce the negative impacts on Queensland businesses.

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

“3% = \$600,000 that customers won’t pay, so we will have to make cuts to fund it.”

“A 3% increase means an additional cost. It will need to come from employment costs as there is no fat remaining to be trimmed anywhere else. Businesses are running very lean at the moment and will need to keep lean throughout this decade. There is currently a very real situation happening where Aussie jobs are moving overseas. Surprised the Government hasn’t yet accepted this reality.”

“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?”

- Queensland Business Operators

5.9 Other key issues regarding rising employment costs

Businesses have raised a number of additional issues they would like addressed in this Review including:

- **Increases to the minimum wage:** Wage increases continue to be awarded at levels that are unsustainable for many businesses. There are concerns that a significant increase in July 2012 will have negative implications for employment levels;
- **Impact of transitional arrangements:** Businesses are concerned about the rising employment costs associated with the ongoing phasing in of transitional arrangements;
- **Minimum shift lengths:** Minimum engagement provisions have restricted the employment of juniors who were previously employed after school. Businesses have also stated that minimum shift lengths during times when penalty rates apply has resulted in reduced hours for staff;
- **Allowances:** The increasing cost and employer obligations surrounding allowances is seen as unreasonable.

Recommendation: Changes be made to significantly reduce the cost of employing staff.

“Pay increases are not in line with the revenue and profits of our industry.”

“It has become too expensive to employ anyone.”

“We are now unable to provide the 24h/365 day service that we built our business on under the previous award. Wages have become too high. Under the new award, in most cases, what we were required to pay as a minimum was more than what the client was being charged for their service per hour. To combat this, we had to increase our pricing but clients could not afford the increases and either stop services all together or engaged another company who could provide the same service for a cheaper price. In turn, we had to reduce the amount of work for our team and some even lost their jobs because there was not enough to sustain them.”

“The day is coming where we will have to let people go. The wage rates increase again in July. We are a 7 day a week business - we will have to stop trading on Sunday and public holidays due to penalty rates.”

“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.”

“Junior hours limitation prevents us appointing schoolies who later used to become valued employees.”

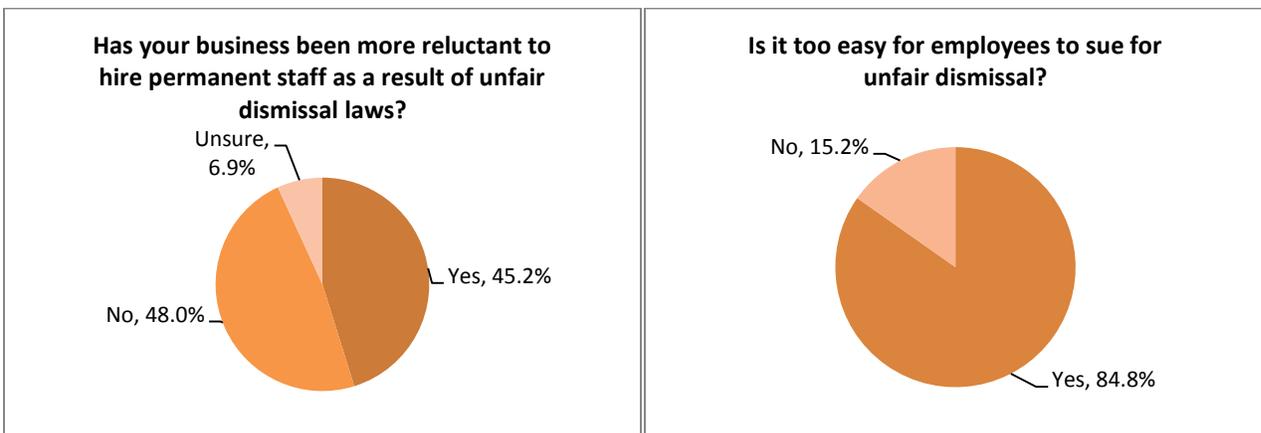
“The current labour laws disadvantage us to the point where there is hardly any point trying to continue. As a builder of patios - small custom designed projects in client homes, sales are by contract where labour costs have to be estimated months before work commences. Overtime, wages and allowances 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.”

“In my business the Fair Work Act has made business almost unviable and completely unworkable, particularly due to penalty rates. The award has so many bizarre clauses that stop events happening. For example the maximum hours a chef can work in one day is 11 - so we have a wedding to cater for in Port Douglas - 1 hours' drive away, the chef begins work at ay 10am to begin preparation, the crew all leave at 3pm to arrive to set up before the client arrives at 5pm, so what happens at 8pm - right in the middle of serving the main course - everyone downs tools and leave, so they can be back here to knock off by 9pm?”

- Queensland Business Operators

6.0 UNFAIR DISMISSAL & ADVERSE ACTION CLAIMS

- 6.1 Queensland businesses, particularly small and medium enterprises, raise concerns regarding the impact of unfair dismissal legislation on their business. Concerns raised include:
- Claims are an expensive, time consuming process that are rarely won by employers;
 - Employees require no proof to make a claim, with no penalties for false claims. However any claim made comes at significant expense (time and money) to employers;
 - Increased paperwork and procedures surrounding underperforming employees to ensure everything is documented in case of any unfair dismissal cases;
 - Many employers just settle any claims to allow them to get on with business (usually saves time and money);
 - Interests of employers are not taken into consideration by FWA;
 - Some employees make claims just to exploit the system for money, particularly due to the reputation of employers to just settle;
 - Difficult to dismiss employees in small and medium sized businesses even though their lack of performance is having significant negative implications for the business;
 - Businesses are too scared to make the right management decisions for fear of retribution;
 - Legislation is skewed in favour of employees who can terminate their employment at their discretion; however the employer has to follow numerous procedures at considerable expense to terminate an employee for any number of reasons.
- 6.2 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.

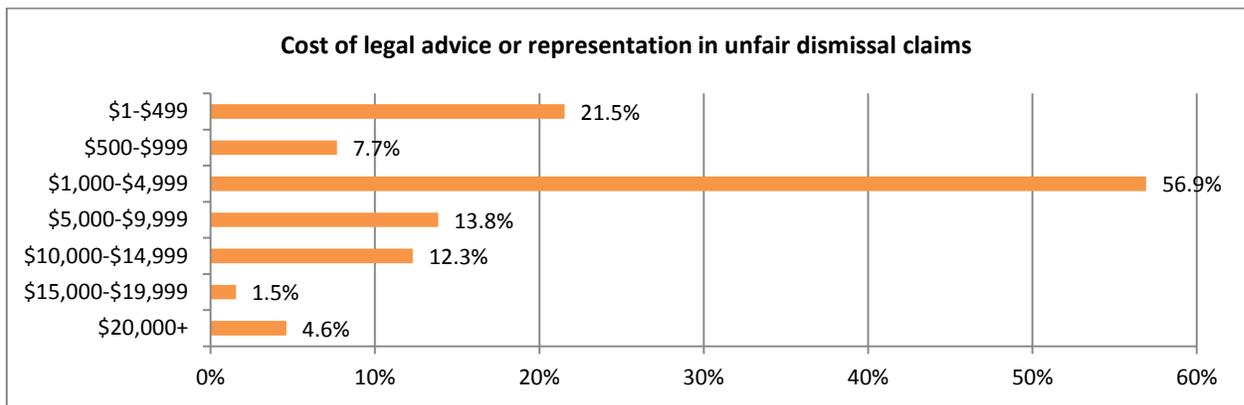


Source: CCIQ Report: Queensland business community's feedback on Australia's industrial relations system – November 2011

6.3 Cost of unfair dismissal claims

For those businesses that have been involved in an unfair dismissal claim, the majority were settled through the payment of monetary sums (65.9% prior to arbitration and 66.2% at the conciliation stage). The remaining claims were settled without the payment of compensation through methods including the employee withdrawing the claim or the employee being reinstated.

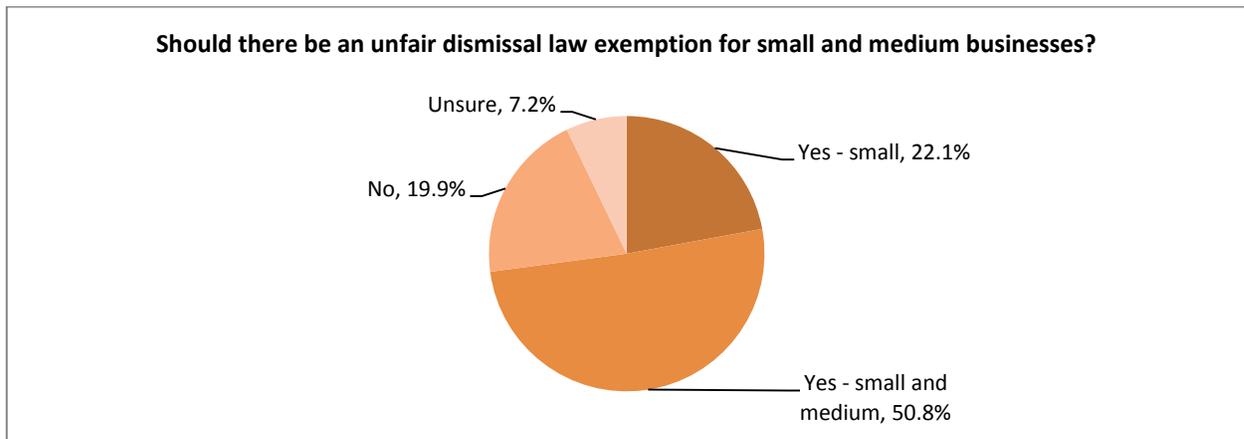
- 6.4 The majority of businesses (75.3%) who settled the unfair dismissal matter with a monetary payment have done so to avoid further time and expense in defending the matter. This is understandable when the majority of businesses (56.9%) spent between \$1,000 and \$4,999 on seeking advice or being represented in unfair dismissal proceedings. One third of businesses (32.2%) spent more than \$5,000. Compensation payments were generally \$5,000 or less, with the majority of respondents (70%) who provided details of their compensation payments paying equal to or less than this amount. One in four businesses paid compensation higher than \$10,000.



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

6.5 Unfair dismissal exemption

There is a strong belief that an unfair dismissal law exemption should be re-implemented. 73% of Queensland businesses believed that an unfair dismissal law exemption should be implemented, 22% supported such an exemption for small businesses and 51% supported an exemption for both small and medium businesses. This would help reduce the inflexibility experienced by small and medium businesses and reduce the threat and expense of unfair dismissal claims. Subsequently, this would encourage small and medium businesses to employ more people.



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

Recommendation: An unfair dismissal law exemption should be re-implemented for small and medium enterprises.

6.6 Adverse action claims

Businesses are becoming increasingly concerned about the rising number of general protection or adverse action claims. The general protection provisions of the Fair Work Act state that an employer must not take any adverse action against an employee because the employee has exercised or proposes to exercise a "workplace right".⁵ This has opened up employers to claims on a wide range of issues resulting from everyday activities such as performance management, pay enquires, handling of employee complaints or decisions surrounding flexible work arrangement requests. An adverse action is basically anything that can affect an employee adversely. If a claim is made, the onus of proof lies with the employer, who must then prove that the adverse action was not a result of the employee attempting to exercise their workplace rights.⁶

6.7 Adverse action claims are placing further restrictions on businesses to make the management decisions necessary to run successful and sustainable businesses. Furthermore, adverse action claims can result in substantially higher payouts than unfair dismissal claims as wages and damages can be claimed. Queensland businesses are calling for a more even playing field to be created between employers and employees.

Recommendation: Adverse action claims to be removed.

“I am stuck with unproductive employees who do not want to work and know 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.”

“We sacked a worker for constant serious breaches of WH&S policy, and were taken to FWA where a payout was awarded? Where does commonsense and accountability fit in? We can't hand hold all the time!”

“The potential of an Adverse Action claim to be reduced significantly. The onus of proof to be equal to both employee and employer. Limit union involvement.”

“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'.”

“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.”

“Remove adverse action claims.”

“Balance of employer interests in unfair dismissal claims.”

“It has become a nightmare to dismiss an employee. Dishonesty, poor work performance, in fact every moral and ethical standard that was once considered a vital element for continued employment, no longer can be taken as grounds for dismissal of an undesirable employee. The paper trail, counselling and monitoring to carry out such necessary management duties as controlling the staff you employ and having them maintain a work standard that your company requires, is so unweildy and costly that many small business persons will not employ a worker, even though their enterprise could sustain increased employment.”

“No clear guidelines when it comes to the termination of staff for non performance / attitude / desire to work. The unnecessary counselling of staff who really don't want to work but are protected by unfair dismissal laws.”

“Focus is squarely on the employee's rights, and the employer seems to have no rights. Lots of hoops to jump through to dismiss an unsuitable employee.”

“The amount of evidence and documentation that employers now must provide in the case of dismissal is ridiculous. It is effectively impossible to sack a staff member once they have been employed for 6 months or more, even in the case of serious misconduct. The Act is heavily skewed in favour of employees. We have personally experienced this in a claim of unfair dismissal when the employee did not even lodge the claim within the 14 day time frame however it still went ahead, and she won despite serious misconduct.”

“These rules stop us from employing extra staff as we do not want to be burdened with not being able to move people on if they do not do their job.”

“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, however great cost to the business to fight these unsubstantiated claims is troubling.”

“Movement towards more neutral framework. Currently employers have very little scope for action without receiving claims for unfair dismissals.”

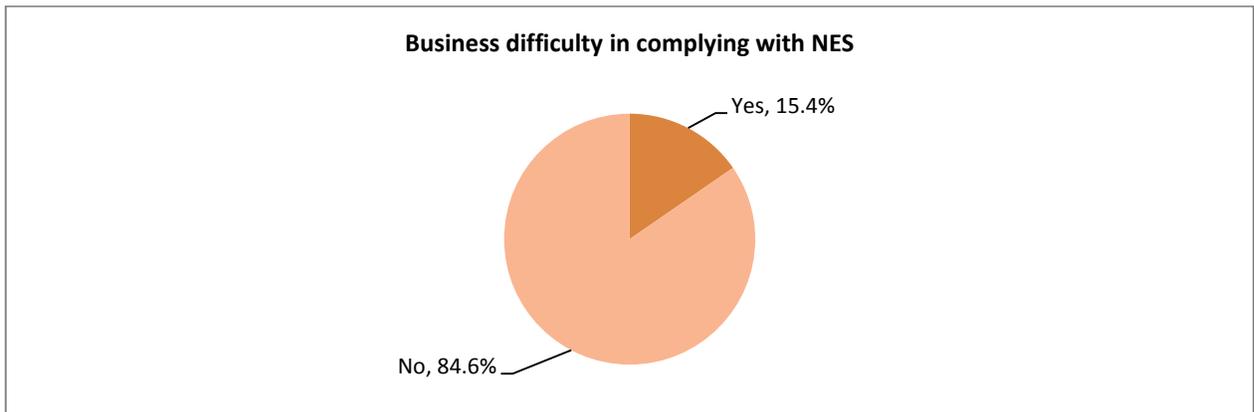
- Queensland Business Operators

7.0 NATIONAL EMPLOYMENT STANDARDS

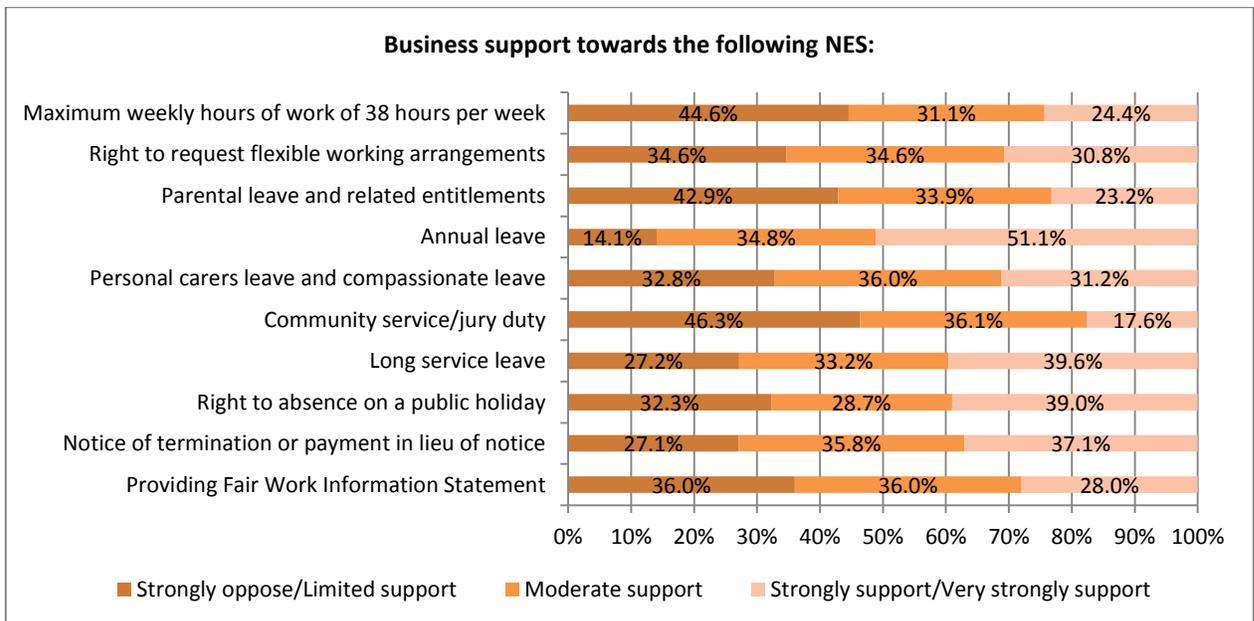
7.1 There are 10 National Employment Standards under the Fair Work Act. These standards relate to:

- 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;
- Fair Work Information Statement.⁷

7.2 Businesses were asked if they had experienced any difficulties in complying with the National Employment Standards (NES). 85% indicated that they had not had any significant compliance issues. Although the majority of businesses have not had any concerns regarding compliance, many are not supportive of the requirements. More than 40% of Queensland businesses raised 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). Specific concerns regarding some of the NES are addressed in more detail below.



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



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

7.3 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 if the hours are unreasonable.⁸ The legislation states 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 have been outlined to be considered when determining if the hours are unreasonable including the employee's personal circumstances, the needs of the workplace and the notice given by the employer. An award, agreement or an agreement between award/agreement free employees and employers can also include provisions for the averaging of hours over a specified period (maximum averaging period of 26 weeks).

- 7.4 45% of Queensland businesses were strongly opposed or only provided limited support for the maximum weekly hours of work of 38 hours per week. As raised in section 5, there is a need for more flexibility to work more than 38 hours for normal pay if both the employer and employee agree with these conditions. Businesses are supportive of increasing the maximum averaging period to take into consideration high and low periods, particularly within small and medium enterprises.

“Any deviation from the set hours can result in overtime. Any change in hours requires both parties to agree and record in writing. Nothing flexible with this arrangement!”

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

- Queensland Business Operators

7.5 Flexible working arrangements

The NES include a right for certain employees (for example, an employee who is a parent and/or responsibility for a child) to request flexible working arrangements from their employer. An employer can only refuse such a request on reasonable business grounds.⁹ Although most employers are willing to compromise and do what they can to assist their employees, flexible working arrangements are simply not possible in some business settings. Businesses have also raised concerns regarding the impact of modern award clauses on employers' ability to offer flexible working arrangements (for example, if an employee wishes to work through their lunch break to finish an hour earlier, or if an employee would rather work on Sunday rather than a Friday on normal pay rates). Increased scope is required in the current system to allow employers to reasonably meet the flexibility needs of their employees.

“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.”

“Flexible working hours for juniors/after school work.”

- Queensland Business Operators

7.6 Parental leave and related entitlements

Parental leave provisions include birth related leave and adoption related leave. Generally all employees are eligible for up to 12 months of unpaid parental leave with the ability to extend a further 12 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.¹⁰ Employees can also be eligible for the Federal Government's paid parental leave scheme.

- 7.7 CCIQ has long advocated for a Paid Parental Leave Scheme that does not require employers to manage and administer payments on behalf of government. CCIQ supports a significant reduction in the red tape and administrative requirements placed on employers surrounding the eligibility of their employees for government payments, including Paid Parental Leave. Employers also raise concerns about the implications of employees on maternity leave being able to extend their leave a further 12 months (24 months in total).

7.8 Public holidays

Employees are entitled to be absent from work on a day that is declared a public holiday. The NES protect an employee's workplace right to reasonably refuse to work on a public holiday, and will guarantee payment where an employee is absent from work because of a public holiday.¹¹

7.9 CCIQ has raised concerns about the lack of consideration by the Queensland Government of the impact of decisions relating to Queensland public holidays on the state's business community. In 2011, the Queensland Government undertook a consultation process regarding a proposal to change public holidays in Queensland. CCIQ provided strong support for streamlining Queensland's public holidays with other jurisdictions to help support business continuity and ensure minimal disruption to business operations.

7.10 However CCIQ has expressed strong opposition to the Queensland's Government's decision to add an additional public holiday in Queensland in 2012 (the Queen's Birthday holiday will be celebrated in October in 2012, however an additional special holiday to mark the Queen's Diamond Jubilee will be held in June). This additional public holiday creates a \$342 million liability for Queensland employers in wages paid for no productive return.¹²

7.11 Furthermore, the Queensland Government has also made changes to allow an additional public holiday to be declared for both the actual and substitute dates when a public holiday falls on a weekend. This change also creates a significant additional liability for employers, effectively creating additional public holidays just for businesses that operate 7 days a week and/or over the weekends. This would undermine business profitability and the capacity of businesses to employ during this period due to the substantial increase in labour costs. Every business and 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.

7.12 CCIQ is concerned about the Queensland Government and other state governments continuing to make decisions regarding public holidays that fail to recognise the impact on the business community.

7.13 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 what redundancy pay may be applicable to an employee on the termination of their employment.¹³ Queensland businesses have raised serious concerns regarding the termination of employees (see section 6.0 for more information).

Recommendation: Increase the flexibility of businesses in applying the NES to their workforce in a way that delivers mutually beneficial outcomes for both the employer and employee.

“Staff levels need to decrease but can't afford to lay off staff due to unrealistic costs to lay off people. Would send business into bankruptcy to lay off staff.”

“The introduction of penalty rates where none existed before resulting in wage expense increase of 20%. Changes to conditions, changes to introductory levels. These massive increases in expense have made it very difficult to remain viable. Opening public holidays and staying open after 9pm is more and more difficult. This has resulted in reduced hours of operation and staff cuts to help offset the additional cost.”

“I would like to see systems that encourage work practices that are sufficiently flexible to allow small business employees and employers to reach their own terms. Small business has to be generous to attract talent, but inflexible rules add costs that reduces budgets for wages and salaries. The result is teams stressed and strained to the limits, without the resources or time to apply the safety, service and quality standards any of them would wish for.”

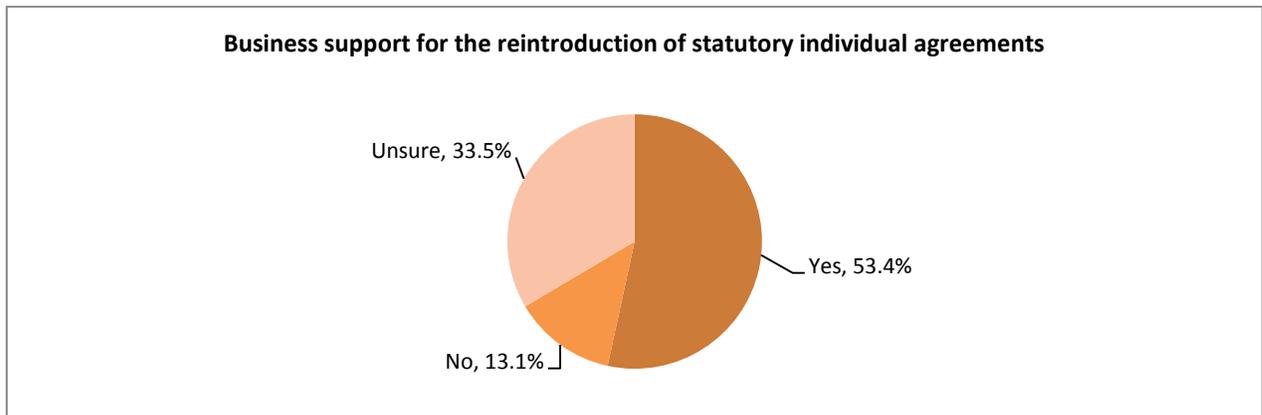
- Queensland Business Operators

8.0 WORKPLACE AGREEMENTS

8.1 Queensland businesses continue to raise concerns regarding the inflexibility of enterprise bargaining agreements, particularly to meet the needs of individual employees. There are concerns surrounding the inability to lodge agreements online, with the increased time and cost associated with a Commissioner being required to sign off on agreements resulting in negative impacts on businesses and employees. Other concerns surrounding workplace agreements raised by Queensland businesses include:

- Approval times for workplace agreements are too long;
- Increased involvement of unions in negotiations is further delaying the process;
- The time and cost involved in drawing up agreements is too high and continues to increase;
- Reasonable time frames are required to allow small business operators with no formal representation, to successfully complete their obligations in relation to approving agreements;
- Remove the need for statutory declarations (form F17);
- Increase flexibility by allowing agreements to be completed and lodged online;
- The complexity of workplace agreements has resulted in many small and medium businesses spending thousands of dollars on legal fees and advice.

8.2 Queensland businesses remain strongly supportive of reintroducing individual agreements which are assessed against a safety net of minimum terms and conditions under a no disadvantage test.



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

Recommendation: Allow more flexible workplace agreements to be negotiated between employers and employees.

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

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

“Workplace agreements should be negotiated to reward productive, hardworking, reliable workers and accommodate flexibility to help these staff wherever possible. In addition, incompetent, lazy, disorderly, disruptive, dishonest employees should not be protected by his/her workplace agreement and be able to be held accountable for their actions without fear of reprisal by the employer.”

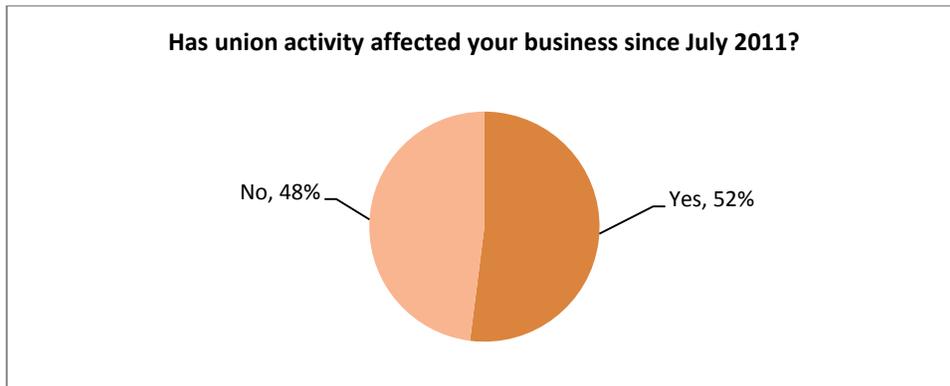
“We have been forced to have a workplace agreement which of course is extra cost + also extra paperwork to allow us to pick when it is sunny and the fruit is ready whether this be Sunday or Monday.”

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

- Queensland Business Operators

9.0 INCREASED INDUSTRIAL ACTION AND THIRD PARTY INVOLVEMENT

- 9.1 Employers are concerned about the increases in industrial action and third party involvement in workplaces. A snap poll question on the CCIQ website during the week of 11 October 2011 found that 52% of businesses had been affected by union activity since July 2011.¹⁴



CCIQ Snap Poll, October 2011

- 9.2 According to the latest ABS statistics, there have been 342 industrial disputes in Australia since the introduction of the Fair Work Act (March Quarter 2010 to September Quarter 2011). In Queensland, there have been 75,300 working days lost over the same period.¹⁵ Based on average weekly earnings for all employees, this represented a \$15.5 million liability for Queensland employers.¹⁶ There are ongoing media reports regarding strikes or threats of strikes in Queensland and throughout Australia suggesting that these figures will only escalate moving forward.
- 9.3 Many businesses are strongly supportive of reducing the powers provided to unions to reduce their involvement in their business. There is concern that unions are being provided within increased powers/influencing capabilities in areas which were traditionally management's responsibility. The current situation creates uncertainty for both the business and employees and needs to be managed appropriately as a matter of importance.

Recommendation: Limit the involvement of third parties in workplaces.

"Union interference is sometimes unrealistic."

"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."

"Less union participation is required."

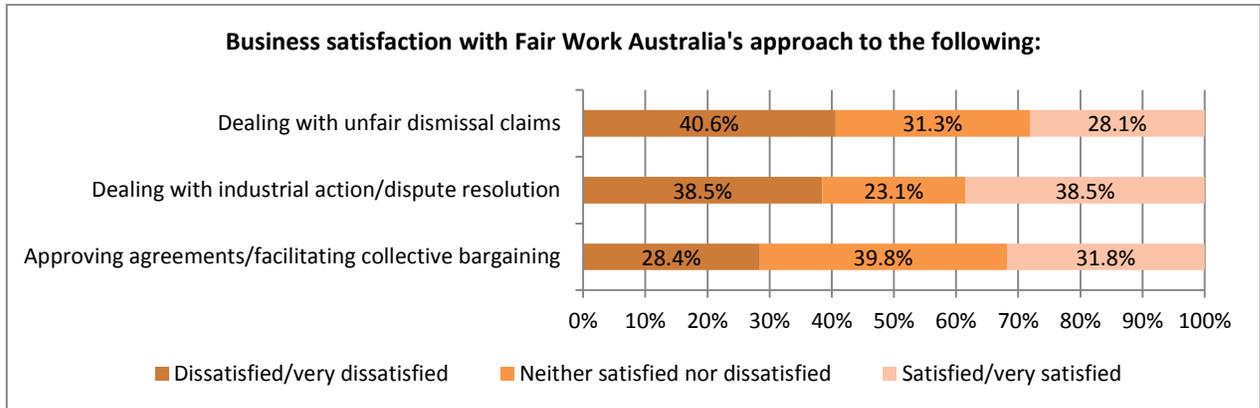
"Less unionised bias, after all the employer takes on all the risk."

"Too much union say between management and workforce."

- Queensland Business Operators

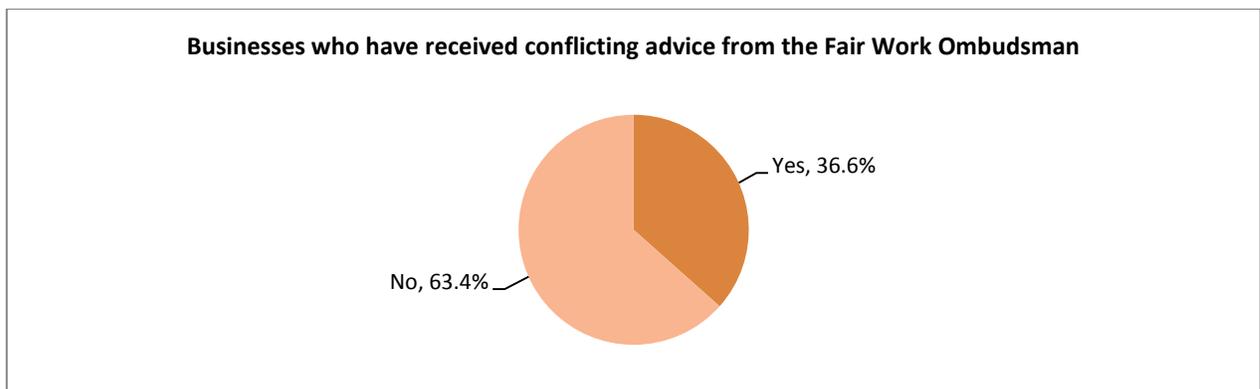
10.0 INTERACTION WITH FAIR WORK AUSTRALIA AND FAIR WORK OMBUDSMAN

10.1 Businesses interaction with Fair Work Australia and the Fair Work Ombudsman has a significant influence on the regulatory burden and the cost of complying with the Fair Work system. Of those businesses who had been in contact with Fair Work Australia, around 40% were dissatisfied or very dissatisfied with the way in which Fair Work Australia dealt with unfair dismissal claims and industrial action/dispute resolution. 28% of businesses were dissatisfied or very dissatisfied in the way in Fair Work Australia dealt with approving agreements and facilitating collective bargaining.



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

10.2 More than one on three businesses (37%) who have been in contact with Fair Work Australia on more than one occasion had received conflicting advice.



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

10.3 Many employers report significantly varying experiences with Fair Work Australia with half positive on the good advice and assistance provided while an equal amount are 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 referred to the Act/award/website or seek their own legal advice. Substantial delays have also been experienced when calling the office. Businesses are concerned about the Fair Work Ombudsman refusal to put any advice in writing. There is also the perception that the Fair Work Ombudsman only benefits employees and provides limited benefits to employers.

10.4 Queensland businesses have raised concerns regarding the usability of the Fair Work Australia and Fair Work Ombudsman websites. Information can be difficult to interpret and understand, with many also reporting difficulties in finding the information they are looking for. There is scope for increasing engagement with industry associations to improve the availability of information available to businesses.

Recommendation: Fair Work Australia implement a customer engagement improvement process to ensure employers who engage with the service by any method receive accurate and reliable advice and feedback that results in reduced negative impacts on businesses and employment.

"I'm concerned that you can't ring FWA and seek help, as it is a service for the employee. Instead you are advised to seek legal advice. What small business can afford to engage a lawyer at ridiculous prices to get help? Plus, the site is not very user friendly and it can take an educated person on the topic hours to decipher what is needed to stay compliant."

"Lack of direction from Fair Work and they do not like to be accountable for advice they provide."

"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."

"Basically Fair Work Australia are 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. In affect any staff person can claim knowing that they do not have to prove their case to get a further payout."

"We could not determine how much to pay our casuals when they work overtime because of the unbelievably confusing way the act was drafted so we asked FWA. We got advice that when we thought it through we disagreed with so we rang back. We could not speak to the same person. We got different advice from the next person. This happened FIVE times. I have spoken to FWA inspectors who do not agree on this issue. Whoever drafted this legislation could not have made it more confusing if they had tried."

"They are impossible to deal with. Never speak to same person twice. Everyone gives you differing interpretations. They are a joke."

"As an employer, treated by Fair Work as guilty before provision of information. No support for us, only the worker, very one-sided."

"I have found I have been unable to get any advice on even a basic query about any work conditions. Their comment seems to generally be, we are unable to give any advice on this - just read the award/act."

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

"I have used the website and I have not been able to find an employment category. The website is very difficult to use."

"Hopeless, rang twice and received two different levels of advice on the same subject. Result- didn't hire anyone."

"Different responses to the same query led me to believe they didn't understand the legislation they are supposed to be informing us of and only resulted in more questions and confusion. It's too complicated."

"To get the response in writing is near impossible."

"Four times I contacted Fair Work for confirmation of payroll liabilities and got different answers so I demanded they email me the correct payroll details with a refusal to comply."

"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."

I have issues with the advice from the Fair Work Ombudsman advisors as I often wait for long periods on the phone only to be told when eventually answered that they cannot help with my query. The service could be greatly improved by hiring staff who actually know the legislation.

- Queensland Business Operators

11.0 RECOMMENDATIONS

- 11.1 CCIQ is keen to work with the Federal Government to deliver an improved workplace relations system that reduces the regulatory requirements on employers and increases their capacity to employ and retain staff.
- 11.2 Considering the impacts that the Fair Work Act has had on Queensland businesses (as raised throughout this submission), it is important that the current regulatory requirements are significantly reduced and streamlined to increase employers' capacity to employ and retain staff. Strengthening the current regulatory requirements is likely to have the opposite impact resulting in loss of employment and less sustainable businesses.
- 11.3 CCIQ has made the following recommendations throughout this submission:
- Simplify the Fair Work Act to reduce the negative impacts on Queensland businesses subsequently encouraging them to employ and retain staff;
 - Restore the industrial relations balance in workplaces by delivering a more positive balance between employers and employees;
 - Fair Work Australia to develop a better understanding of the cost impacts of the industrial relations system on businesses and undertake a cost benefit analysis for any proposed changes;
 - To meet the objectives of the Fair Work Act, the circumstances of small and medium businesses must be taken into consideration to increase business flexibility and allow small businesses to employ and prosper;
 - Increase support for businesses, particularly small businesses to ensure compliance and understanding;
 - Reduce the burden of overtime and weekend penalty rates for industries trading 7 days a week;
 - The Federal Government to investigate alternative approaches for retirement income policy in Australia that will reduce the negative impacts on Queensland businesses;
 - Changes to be made to significantly reduce the cost of employing staff;
 - An unfair dismissal law exemption should be re-implemented for small and medium enterprises;
 - Adverse action claims to be removed;
 - Increase the flexibility of businesses in applying the NES to their workforce in a way that delivers mutually beneficial outcomes for both the employer and employee;
 - Allow more flexible workplace agreements to be negotiated between employers and employees;
 - Limit the involvement of third parties in workplaces;
 - Fair Work Australia implement a customer engagement improvement process to ensure employers who engage with the service by any method receive accurate and reliable advice and feedback that results in reduced negative impacts on businesses and employment.
- 11.4 Implementing these recommendations will strengthen the Act in meeting its objectives.

“Promote best practice, and give bare minimum, but do not subscribe all details.”

“More support and balance directed towards employers.”

“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.”

“There are far too many restrictions on owner’s ability to run their business to suit circumstance and market conditions. There is no ability on most small businesses to easily meet those conditions which are set under the Fair Work Act if and when a business experiences difficult economic circumstances such as is currently occurring. Free up small business compliance regulations.”

“We have a number of plants in Brisbane, we can not transfer people between them even though they want to as we would be obliged to introduce their working conditions from their original plant. While we respect the core reason for this ruling; it limits companies who are restructuring their footprint to remain competitive. This not only restricts people on EA's moving within the business, it also adds costs when consolidating plants onto one site to gain logistical advantages.”

- Queensland Business Operators

APPENDIX 1: TERMS OF REFERENCE FOR THE REVIEW OF THE FAIR WORK ACT

The review is an evidence based assessment of the operation of the Fair Work legislation and the extent to which its effects have been consistent with the Object of the Act.

The object of the 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:

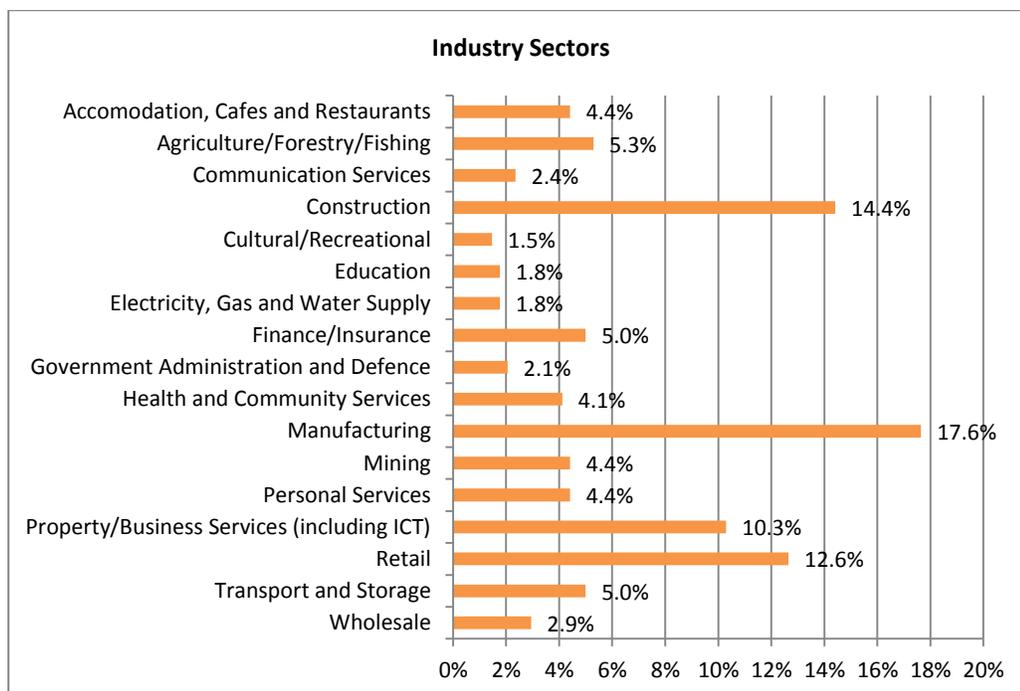
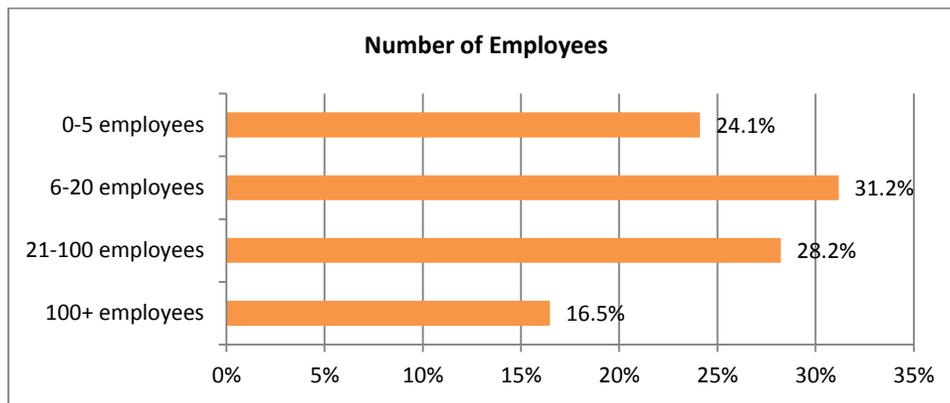
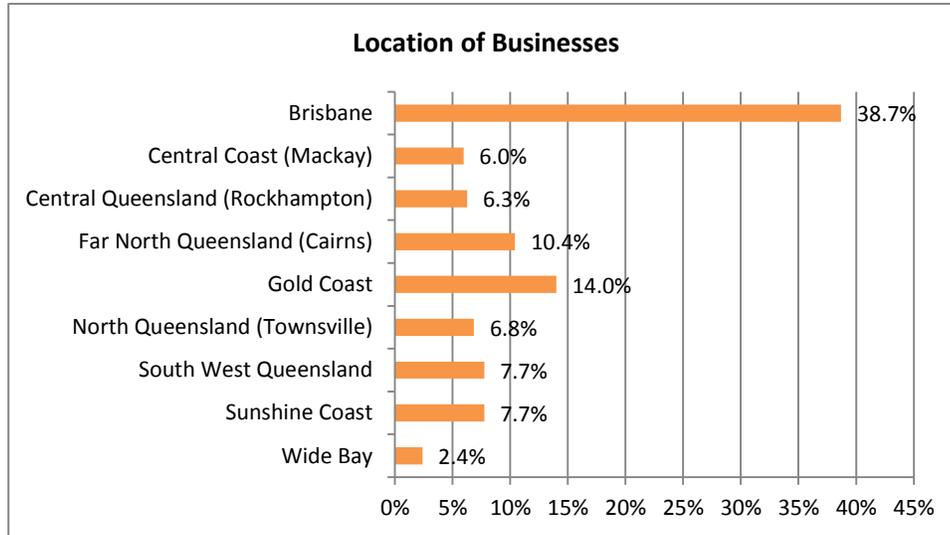
- Providing workplace relations laws that are fair to working Australians, are flexible for businesses, promote productivity and economic growth for Australia's future economic prosperity and take into account Australia's international labour obligations;
- Ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through the National Employment Standards, modern awards and national minimum wage orders;
- Ensuring that the guaranteed safety net of fair, relevant and enforceable minimum wages and conditions can no longer be undermined by the making of statutory individual employment agreements of any kind given that such agreements can never be part of a fair workplace relations system;
- Assisting employees to balance their work and family responsibilities by providing for flexible working arrangements;
- Enabling fairness and representation at work and the prevention of discrimination by recognising the right to freedom of association and the right to be represented, protection against unfair treatment and discrimination, providing accessible and effective procedures to resolve grievances and disputes and providing effective compliance mechanisms;
- Achieving productivity and fairness through an emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and clear rules governing industrial action;
- Acknowledging the special circumstances of small and medium sized businesses.

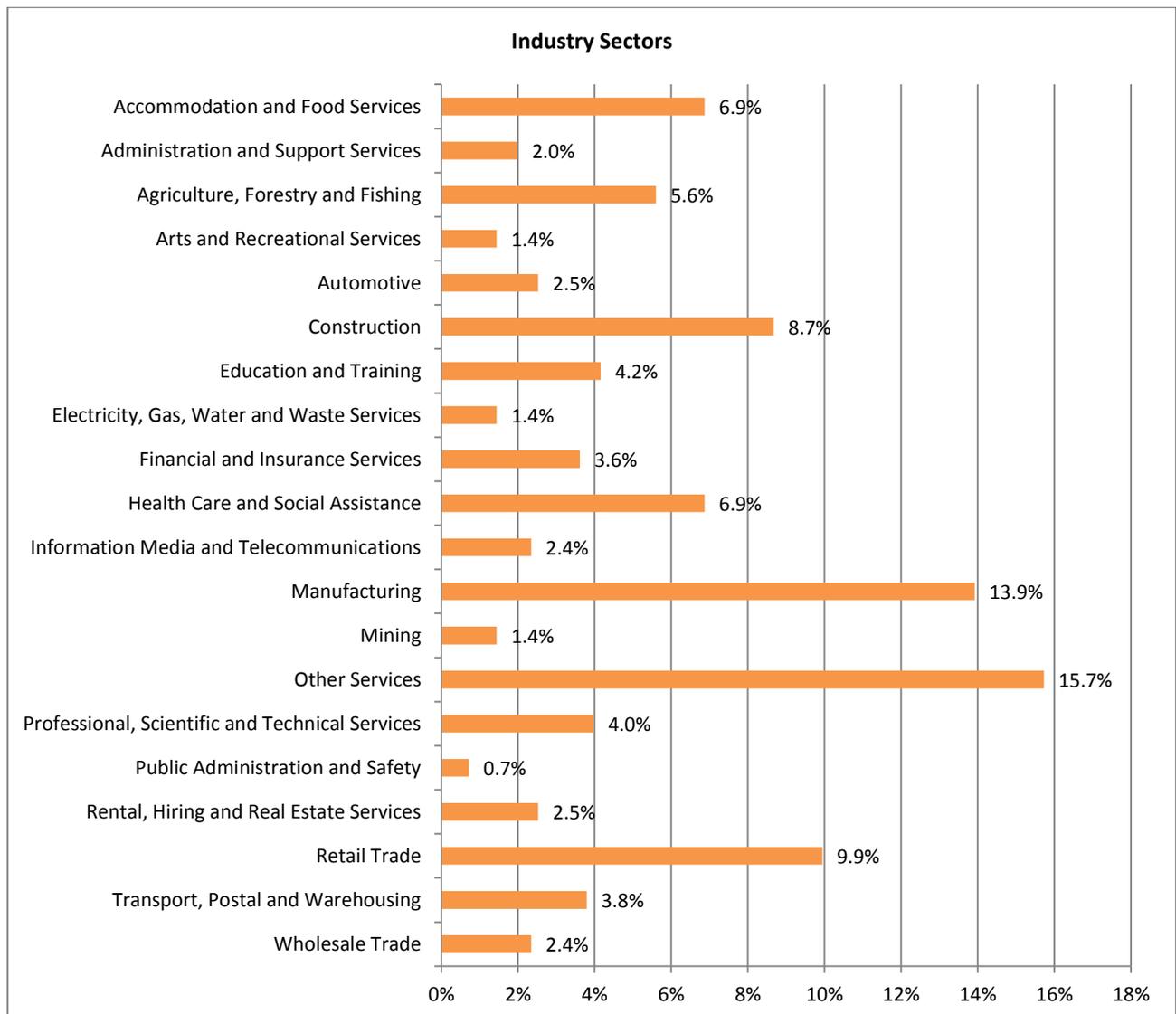
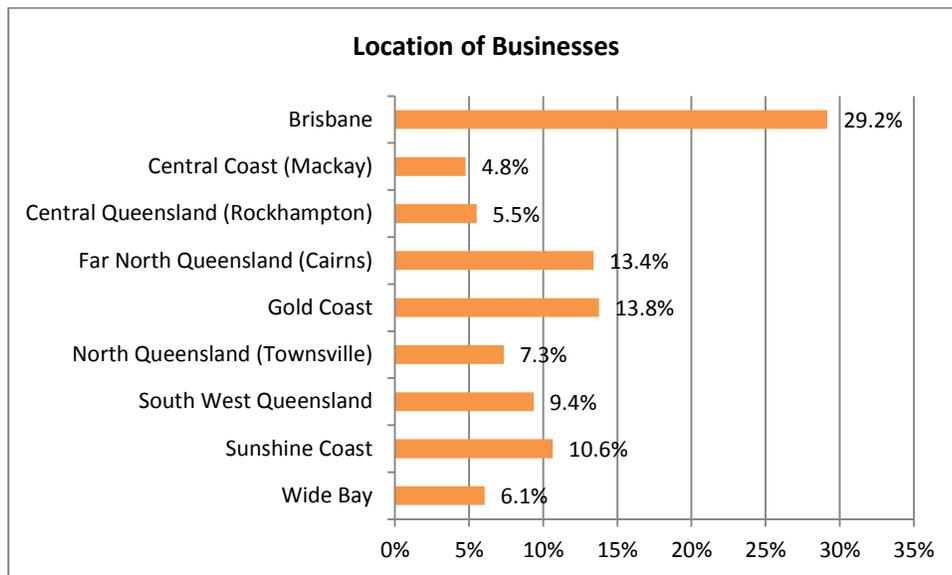
The Minister for Employment and Workplace Relations has also directed the Review to examine the extent to which the Fair Work legislation is operating as intended, including in the following seven areas:

1. The creation of a clear and stable framework of rights and obligations which is simple and straightforward to understand;
2. The emphasis on enterprise-level collective bargaining underpinned by simple good faith bargaining obligations and related powers to Fair Work Australia;
3. The promotion of fairness and representation at work;
4. Effective procedures to resolve grievances and disputes;
5. Genuine unfair dismissal protection;
6. The creation of a new institutional framework and a single and accessible compliance regime;
7. Any differential impacts across regions, industries, occupations and groups of workers including (but not limited to) women, young workers and people from non-English speaking backgrounds.

APPENDIX 2: DEMOGRAPHICS OF CCIQ SURVEY RESPONDENTS

CCIQ Survey No 1: Undertaken between 3 October - 14 October 2011, 416 survey respondents





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