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# Productivity Commission Inquiry into the Workplace Relations Framework Draft Report

Submission from:



September 2015

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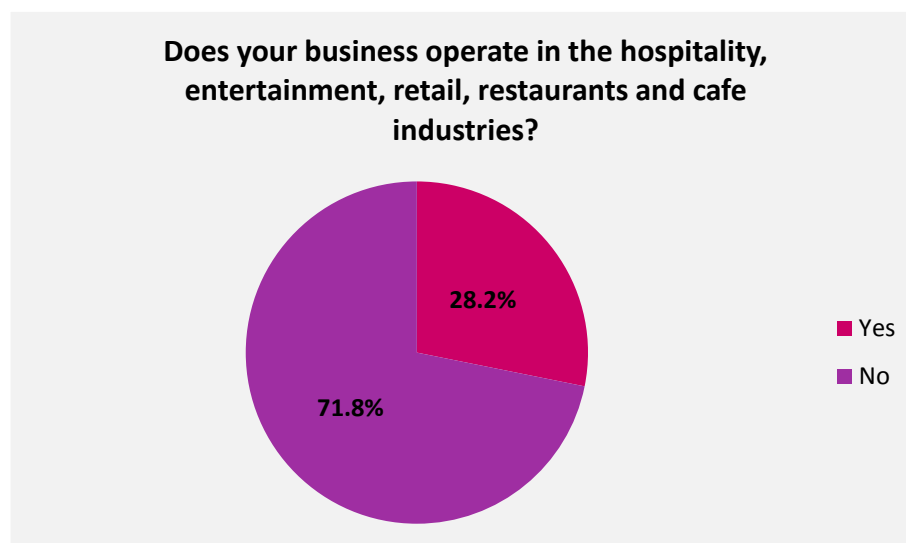
## Overview

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide feedback to the Productivity Commission on its draft report and recommendations with respect to improving the effectiveness of Australia's workplace relations framework.
2. CCIQ believes the Productivity Commission's review provides a significant opportunity to recommend a framework that better meets the needs of contemporary workplaces, fosters productivity, and improves competitiveness. As small business employs two out of five people in the workforce, it is critical that the Federal Government craft workplace relations policy settings that make it easier for small businesses to employ.
3. To this end, CCIQ were encouraged by recommendations provided by the Productivity Commission in its draft report into the workplace relations framework. CCIQ believes that many of the recommendations contained in the draft report align with calls to bring the Fair Work regime more in line with small business realities and expectations.
4. CCIQ acknowledges a raft of very good recommendations and observations in the report including:
  - a. Acknowledgment that the Fair Work Commission ought to become less procedurally bound, with greater emphasis placed on economic and social analysis;
  - b. The Fair Work Commission to have the legislative ability to action temporary variations to awards in exceptional circumstances, including natural disasters such as drought and cyclones, after a National Minimum Wage adjustment process;
  - c. Penalty rates should exist, but there is a strong case for merging Saturday and Sunday rates for hospitality and retail awards;
  - d. Unfair dismissal cases currently places too much emphasis on process and not on substance;
  - e. Individual flexibility agreements should have termination periods extended; and
  - f. A proposed enterprise contract designed specifically for small business.
5. In response to the draft recommendations, particularly those impacting small and medium Queensland businesses, CCIQ with the assistance of the Inquiry's Secretariat as well as Queensland Tourism and Industry Council (QTIC) surveyed over 400 Queensland businesses to assess the adequacy of the proposed recommendations and their impact on small business operations (please see Appendix One for survey details).
6. The findings provide a unique small business perspective on priority aspects of the workplace relations framework including a proposed 'enterprise contract' for small businesses, flexible working arrangements, penalty rates, unfair dismissals, as well as other issues of concern for small businesses in Queensland.
7. The survey results reinforce the need for reform to achieve greater balance in the Fair Work regime that is premised on the needs of small businesses and confirms that the Productivity Commission is on the right track with its recommendations.
8. Overall, the focus on workplace relations needs to get back to putting in place the best policy and legislative framework possible in response to the needs of employers, employees, and trends in the broader economy.

9. The following submission outlines the views of the Queensland small business community on the draft recommendations for consideration and analysis by the Productivity Commission.
10. Additionally, this submission builds on and should be read in conjunction with CCIQ's initial submission to the Productivity Commission Inquiry into the workplace relations framework lodged in March 2015.

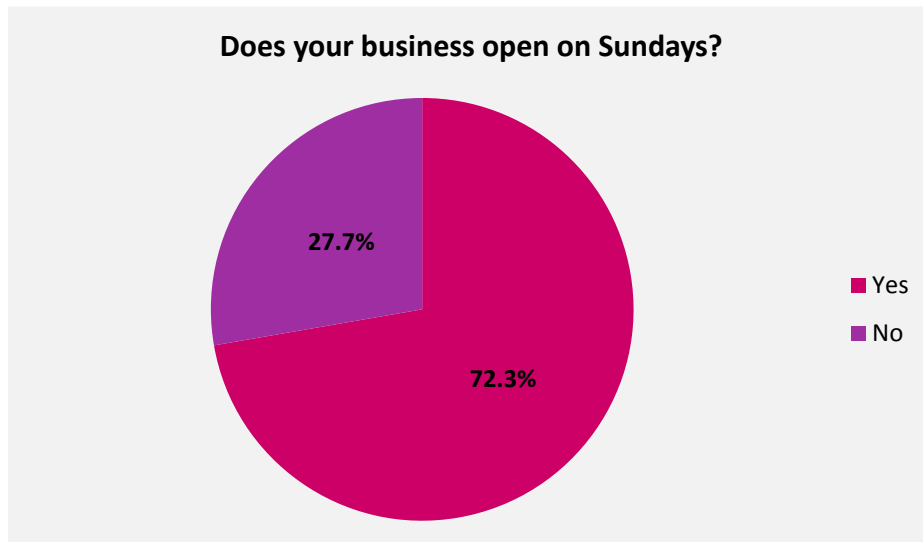
## Penalty Rates

11. Existing policy behind penalty rates represents a failure to recognise the requirements of businesses operating in the 24/7 economy such as retail, tourism, accommodation, and hospitality. CCIQ argues for changes to penalty rate provisions so as to allow for greater flexibility in businesses that operate outside of standard trading hours.
12. CCIQ surveyed a cross-section of Queensland businesses to ascertain their views on the Productivity Commission's recommendation that Saturday and Sunday rates be merged for hospitality and retail awards.
13. Of the total survey participants, 28 per cent operate in the hospitality, entertainment, retail, restaurants and café industries. The following responses in the Penalty Rates Section of this submission come from those businesses that operate in the abovementioned sectors.



Source: CCIQ Workplace Relations Survey September 2015

14. Of those businesses surveyed in the hospitality, entertainment, retail, restaurants and café industries, 27 per cent of them do not open on Sundays. When asked if the decision to open on Sundays was due to the level of penalty rates, the response was a resounding yes (71 per cent).
15. The survey results confirm that the current penalty rates regime acts as a disincentive to employers from having longer trading hours in those businesses that operate outside the traditional concept of 'normal trading hours' which unquestionably also impacts on employment hours able to be offered.



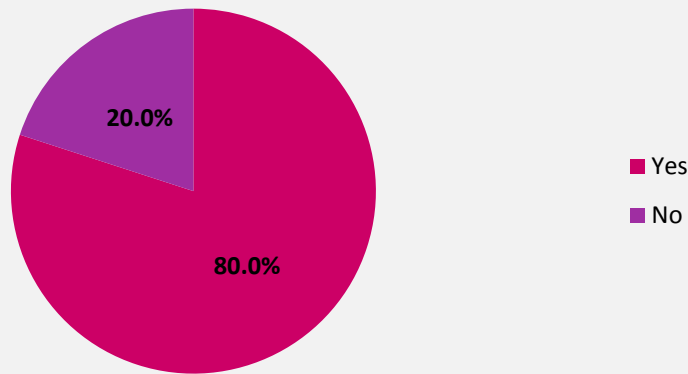
Source: CCIQ Workplace Relations Survey September 2015



Source: CCIQ Workplace Relations Survey September 2015

16. The survey results confirm that the impact of penalty rates is particularly acute for businesses in the hospitality, entertainment, retail, restaurants and café industries, and when asked specifically, small businesses operating in those sectors would open their doors on Sundays if the level of penalty rates was reduced.
17. A substantial majority (80 per cent) of businesses emphatically told CCIQ they would expand their operating hours and open on a Sunday if Sunday penalty rates were merged with Saturday. In other words, the penalty rates system appears to overwhelmingly influence decisions about opening hours, specifically for businesses operating outside traditional trading hours in these sectors.

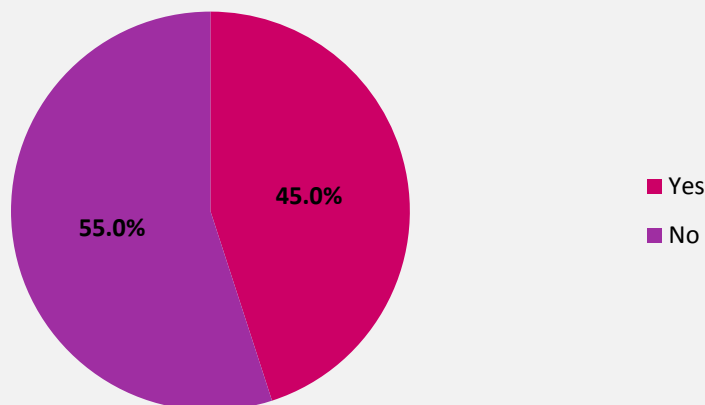
**If your business does NOT currently open on Sundays, and Sunday penalty rates were set at the Saturday rate, would you open on Sundays?**



Source: CCIQ Workplace Relations Survey September 2015

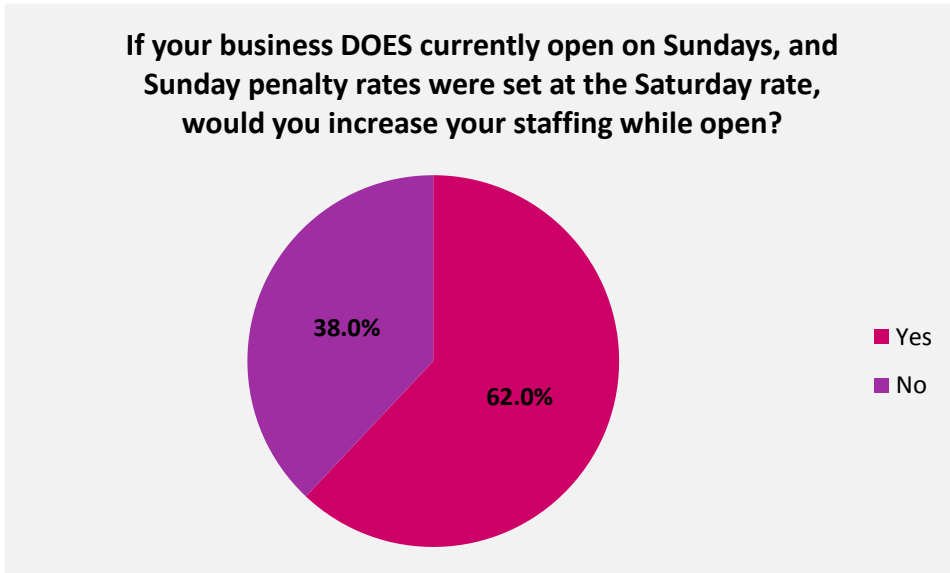
18. The cost impost of penalty rates appears to have lesser but still significant influence on whether or not businesses who already open on Sunday would increase trading hours. For those businesses that already operate on Sundays, 45 per cent told CCIQ they would open for longer, with 55 per cent indicating that reduced penalty rates would not necessarily influence their decision to open for longer. CCIQ notes many of those businesses indicated that they already take full advantage of this trading day in their opening hours.
19. For the 45 per cent of businesses that indicated they would open for longer if Sunday penalty rates were set at the Saturday rate, the average longer hours of opening indicated was 3.8 hours, and the median longer hours of opening was 3 hours.

**If your business DOES currently open on Sundays, and Sunday penalty rates were set at the Saturday rate, would you open for longer?**



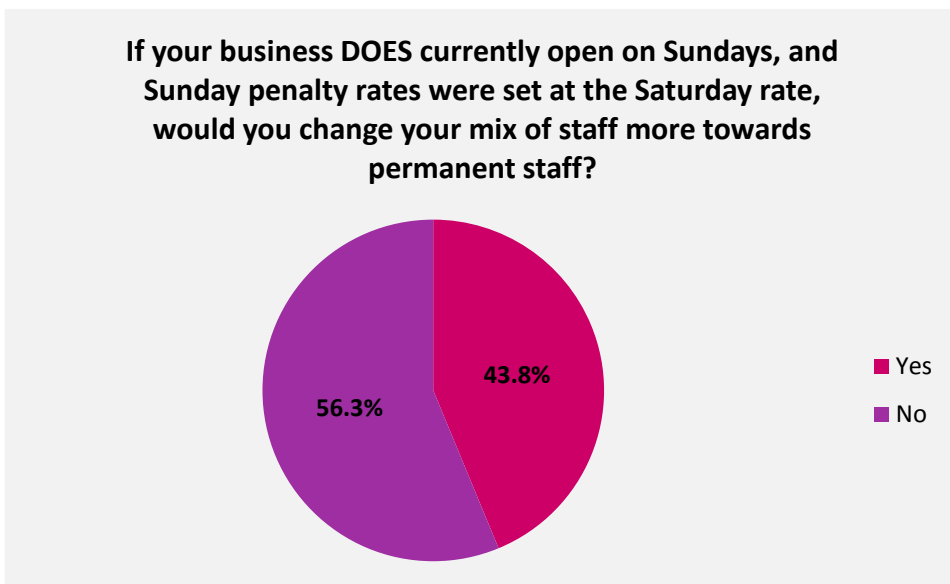
Source: CCIQ Workplace Relations Survey September 2015

20. The penalty rates system appears to influence employment decisions more so than business decisions about operating hours. The survey results show that the majority of small businesses (62 per cent) operating in the hospitality, entertainment, retail, restaurants and café industries who already open on Sundays would increase their staffing if Sunday penalty rates were set at the Saturday rate. ‘



Source: CCIQ Workplace Relations Survey September 2015

21. This indicates that businesses would opt to employ more staff if labour costs were reduced on Sundays, thereby having improved outcomes for local employment levels and youth unemployment, as well as customer service standards and the quality of service offerings across the board.



Source: CCIQ Workplace Relations Survey September 2015

22. When businesses were asked if they would change their mix of staff more towards permanent staff if Sunday rates were set at the Saturday rate, a slight majority of businesses (56 per cent) indicated they wouldn't necessarily adjust the composition of existing staffing arrangements if penalty rates were reduced.
23. Nevertheless, a large portion of businesses (43 per cent) said they would alter the character of existing staffing arrangements more towards permanent staff if labour costs on Sundays were reduced.
24. The survey findings highlight that for businesses that already open on Sundays, if penalty rates were reduced as per the Productivity Commission's draft recommendations, 49 per cent would hire additional employees. In other words, close to half of small businesses surveyed in the hospitality, entertainment, retail, restaurants and café industries would take on additional staff if it cost them less in wages to run their businesses on Sundays.

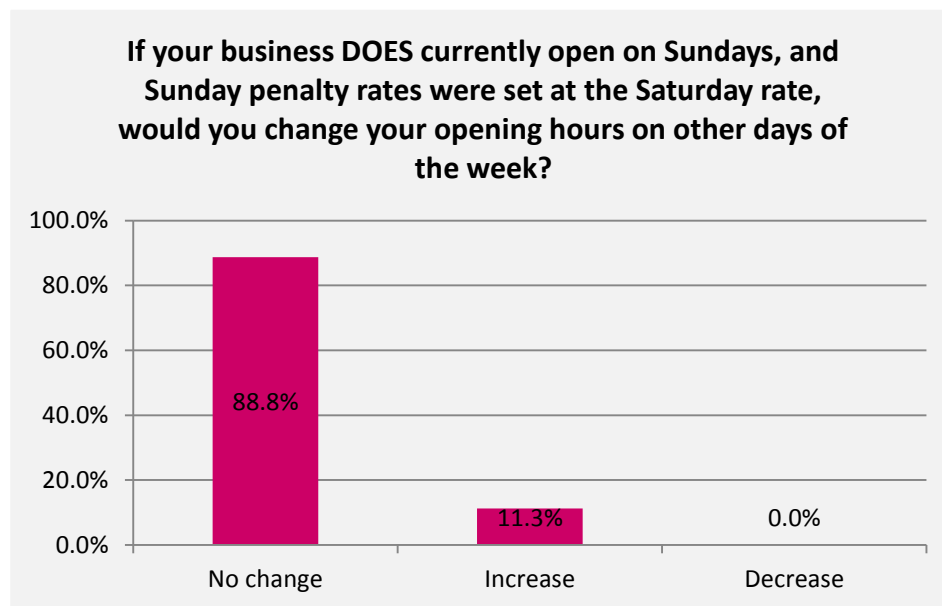


Source: CCIQ Workplace Relations Survey September 2015

25. The survey findings suggest in the strongest possible terms that businesses would hire more staff if penalty rates were reduced. Therefore, the proposal to set the Sunday rate at the Saturday rate would inevitably incentivise businesses to employ more.
26. For the 49 per cent of businesses that indicated they would hire more staff if Sunday penalty rate were set at the Saturday rate, the average number of additional employees was 5.1, and the median number of additional employees was 2.



27. For those businesses that do currently open on Sundays, when asked if they would change their opening hours on other days of the week if Sunday penalty rates were set at the Saturday rate, the majority of businesses (88 per cent) indicated they would not change opening hours. Only 11 per cent of businesses surveyed said they would increase opening hours on other days of the week, with no businesses decreasing opening hours.



Source: CCIQ Workplace Relations Survey September 2015

28. This suggests changes to the penalty rates regime to make it less costly for businesses to open on Sundays would at best increase opening hours during the week, and at worst, have no impact on existing opening hours for Queensland businesses. CCIQ believes these results demonstrate that businesses are more inclined to meet customer demand of increased opening hours if it cost them less to open their businesses on Sundays with an overall net positive impact to employment hours across the week.

29. The survey results confirm that the current system of penalty rates is preventing Queensland businesses from tailoring their staffing arrangements or opening longer in response to peak demand periods for their products and services. Not surprisingly, according to qualitative feedback provided by participants (as outlined extensively below), there is a strong desire for reform with the majority of businesses indicating strong support for setting Sunday penalty rates at the Saturday rate.

## **Business feedback on merging Sunday penalty rates with the Saturday rate for the hospitality, retail, restaurants and café industries.**

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About time, but it would be better if there were no penalty rates.

AGREED - In fact this should be across all industries including health, community and business as to compete in today's economic climate business operations are 7 days and staff often prefer to have days off on weekdays to assist with commuting, time management and improved quality of life so that the peak weekend times are actually avoided making for a more balanced lifestyle.

Although I would not change hours or add more staff, it would allow the business to grow and 'if' profits were improved, would allow me to invest more in the business. Retail hospitality is a tough game; margins are small and getting smaller due to the amount of regulation, competition and the like. If Sunday rates are not changed, businesses like mine will eventually be forced to close or charge extra for services on Sundays. The public clearly want cafes open on Sundays so why should the business owners have to suffer when they have all the risk.

As the Hospitality Industry is a 7 day-a-week industry there should be no penalty rates for Saturday or Sunday.

Being a Hotel we currently open 24 hours so changing the rate on Sundays would not affect this. However we currently try to cut as much costs as possible on Sunday's due to the high penalty rates we pay.

Currently our staffing level is determined by customer appointments, if appointments rise, we add more staff. 1/7 of our staff are full time as a 2IC, the rest are casuals. If we had to add more staff or open longer hours the current rates would absolutely factor into our costing.

Do not believe in this current era there should be any penalty rates for weekends at all as the concept of 'normal' working week in no more. I am not opposed at all to penalty rates for public holidays though.

I know for small businesses this would be beneficial and is always helpfully for others. I would like to see days like ANZAC Day penalty rates are lowered for RSL clubs, it maybe our biggest trading day but it is also our biggest day for wages.

I think it is necessary....we currently operate on absolutely skeleton staff on a Sunday....which leads to customer complaints....but we cannot add any staff as we would lose money. The Saturday rate would allow us to staff to the correct levels.

I think that it is needed as we have to pay for shifts from 7.00am until 7.00pm. It is very hard for restaurants and Coffee shops.

It is a sensible proposal.

Makes sense to align Saturday and Sunday pay rates. The significance of the traditional "Sunday" is no longer relevant to the majority of population.

Many businesses currently do not open (or open for very restricted hours) on Sunday primarily due to wage costs.

Longer opening hours under Saturday penalty rates would allow stimulate income with a reasonable increase in wage costs. Extra shifts / hours / positions would be created.

Margins within the hospitality industry are so tight, and payroll is the largest cost of operating. Any assistance with controlling these costs will only benefit the industry, increasing the ability of hospitality enterprises to succeed and the level of service in these businesses. Many of our staff are single and do not have family commitments, leaving them free to work weekends without impacting their lifestyle. A reduction of Sunday penalty rates would allow us to employ more staff whilst remaining profitable.

Savings would be spent in other areas of the business to improve customer service.

Sensible and will create jobs.

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Sunday is a period of high demand in our business and we have many people interested in working on Sunday but we can't afford them.

Sundays are standard operating days in the industry. Sunday penalty rates are crippling small - medium sized business. University students working casual jobs are paid unnecessarily high wages simply due to the day of the week, as opposed to their ability, training or competency at the role. As a business, we support and help our staff.

Penalty rates have a negative impact on our ability to do this. During the winter (off peak) season, we have had to cut staff roster hours as the decreases sales revenue and high wage bill was unsustainable. We could offer staff more roster hours, employ more staff and open for longer operating hours if the burden of paying staff Sunday wages was decreased.

The average person (including you) likes to go to cafes and restaurants on a Sunday, but would NOT like to pay extra. Why does the employer have to wear it? No wonder so many businesses in the hospitality industry are closing on weekends and public holidays....

The cost of wages is prohibitive. Try as we might our wage bills are running at 38-40% of our takings- soon it will better to simply close our doors as we cannot sustain this level of cost. All Australians will be forced to travel overseas to have a holiday.

The current rates for Sundays and public holidays reduce the viability of a business's operations.

The Public expect to be able to shop 24/7, yet we are penalized by having to pay penalty rates in order to serve our customers' desires.

There needs to be no Weekend penalty rates, Consumers want shopping 24/7 therefore no penalty rates.

There should be no penalty rates - if the standard rate of pay is good for Mon - Fri then it should also be good for Sat and Sun. This is the MINIMUM after all. As employers we can pay more and as employees we can ask for more.

It is not required to maintain a standard of living or to deter exploitation. Employees will still get a good wage.

There should be no penalty rates paid for weekend work in any industry. With all amenities available throughout the 7 day week, with dual income families working on different days throughout a 7 day week, weekends are no longer the only time when families get together for rest and recreation. Education (primary/secondary/tertiary) needs to be provided on a 7 day a week basis with parents choosing the school days for their children to coincide with their working days thus allowing family rest and recreation days on other than the traditional Saturday and Sunday. Consequently Saturday and Sunday penalty rates should be abolished in all industries with a resultant significant increase in employment and productivity as well as an improvement in competitiveness with our Asian neighbors.

This decision would definitely help small business

This would increase the number of staff that we would have working on Sundays.

This would significantly impact on labour costs and wage percentage."

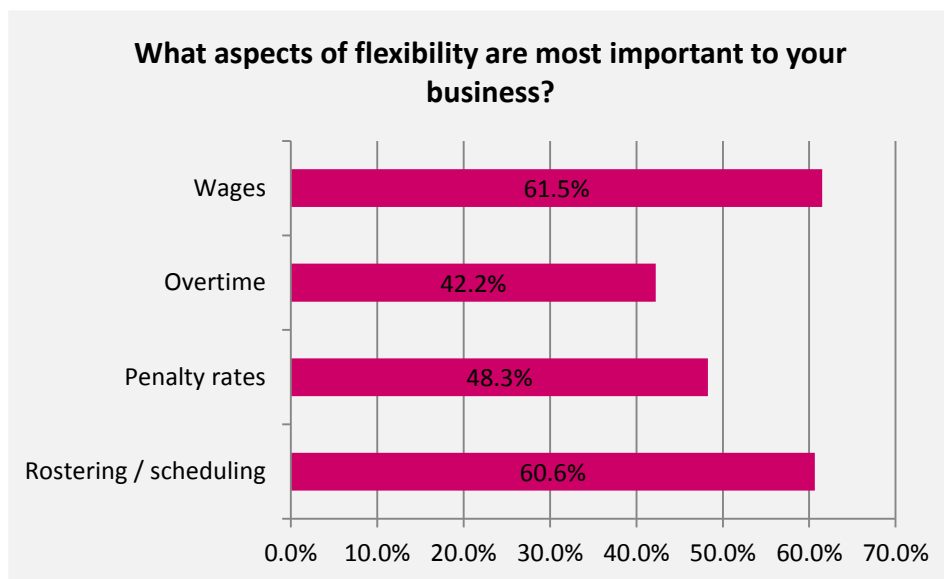
We are a community Club Licensed from 10am to 12pm seven days a week, any reduction in costs is a benefit.

We would possibly open longer on the Sunday - we only open for 4 hours now and we would extend this to 6 or 8.

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## Flexibility

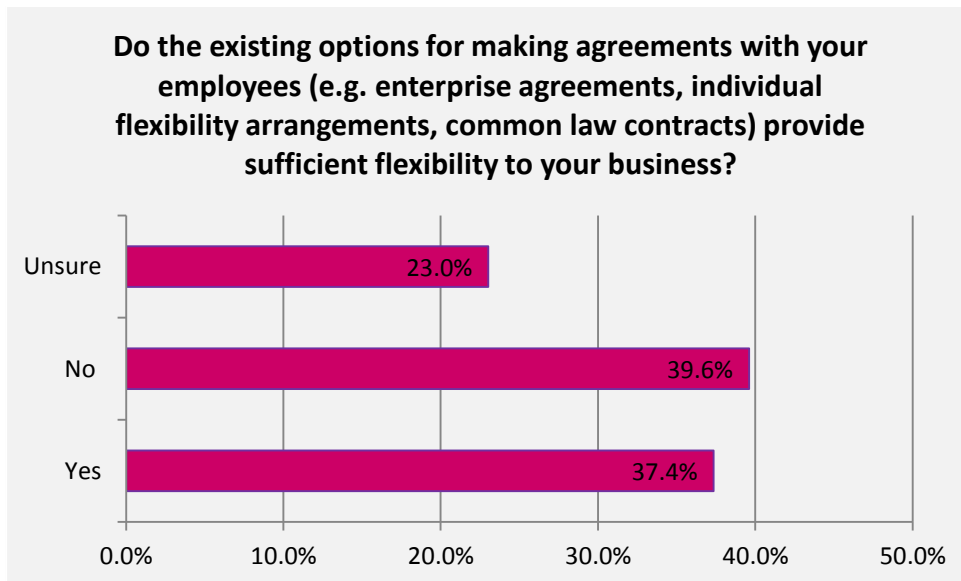
30. Queensland businesses believe the current Fair Work laws allow little flexibility and generally apply a 'one-size fits all' model to the diverse range of businesses in this State. CCIQ believes the workplace relations system needs to embrace flexibility as the key factor for delivering mutually beneficial outcomes and lifting productivity.
31. CCIQ argues for 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 flexible working arrangements to huge sectors of the economy, and the need for a simplified awards system.
32. This section relates to the need for additional flexibility in the workplace relations system, and outlines the views of Queensland small businesses with respect to improving flexibility practices including the proposed 'enterprise contract' for small business. This section also relays small business feedback on public holidays and long service leave offset arrangements.
33. A significant proportion of Queensland businesses cited wages and rostering/scheduling as the most important aspects of flexibility in their businesses (61.5 per cent and 60.6 per cent respectively).



Source: CCIQ Workplace Relations Survey September 2015

34. In the context of rostering/scheduling requirements, respondents indicated requirements such as minimum periods of engagement need be reviewed in order for small businesses to better tailor working arrangements to the needs of their business. In the context of wages, respondents indicated overtime and penalty rates were key areas that employers and employees wanted greater ability to tailor to their workplaces' individual needs.

35. When asked to comment on priority flexibility issues in the workplace, small businesses told CCIQ that flexibility arrangements within the current system were not adequately tailored to small business needs, thereby having a negative impact on productivity in their workplace.
36. Further, when surveyed, the majority of businesses told CCIQ that current options for making agreements with employees (e.g. enterprise agreements, individual flexibility arrangements, common law contracts) did not provide sufficient flexibility in order to effectively and efficiently run their businesses.



Source: CCIQ Workplace Relations Survey September 2015

### Business feedback with respect to existing flexibility arrangements

Ability to pay a salary based on work performed rather than hours spent in the workplace would be a better option for us in some cases.

In theory, IFAs would provide such flexibility, but with staff turnover, they are difficult and time-consuming to manage.

The present FWA does not allow all the flexibility that our employees ask for or would suit us to make more full time jobs and greater certainty to current jobs.

The restrictions and complications of making an individual flexibility arrangement deter me.

There are many pitfalls to each, not the least of which is rates of pay required to pass a Better Off Overall Test if wanting to remove/reduce penalty rates.

There is still too much expense and union intervention to negotiate an EBA with employees.

Too difficult to administer for a small business, let's lose the red tape and talk like real people. What works for one staff member may not be the best option for another staff member

We are extremely hamstrung by a combination of ridiculous workplace relations laws and current enterprise agreements. It would seem that our current system has forgotten that without small - medium businesses, the majority of Australia's workforce is out of a job. No employers = no jobs.

We have been advised that whilst we can make flexibility agreements they essentially offer no protection should an employee choose to dispute it. We cannot find a solution for the restrictive clauses of the award.

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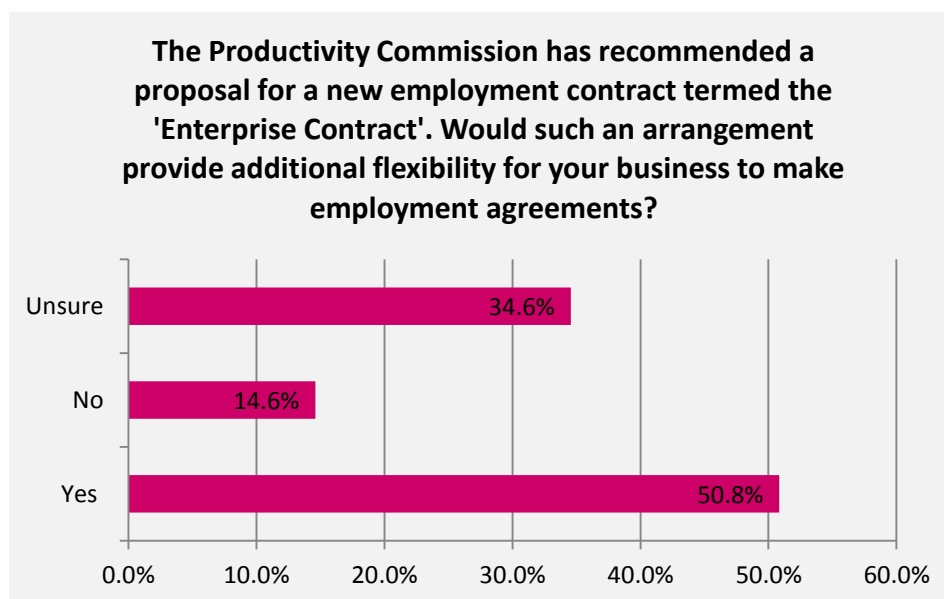
We have had enterprise agreement with part of our business and whilst this gave us flexibility to negotiate the agreement initially, when our business scenario changed, we have found it very difficult to re-negotiate / cease the agreement upon its expiration.

Whilst we fit our business within the current arrangements available, there appears to be too much uncertainty over whether actual modern award conditions are being met or not because we attempt to run with contracts that are not overly complicated and across a number of modern awards based on the respective employee's job description. Typically we consider we err on the side of caution by ensuring over award wages are paid.

Working conditions should not only be focussing on the \$ in the pay packet and the amount of hours worked on a daily or weekly basis, but working conditions must consider WHS Acts, Regulations and Codes of Practice. Whilst the existing options provide flexibility, they are complex to achieve for an employee. If Employees were individual entities, then yes enterprise agreements, individual flexibility arrangements and common law contracts would provide sufficient flexibility to a business.

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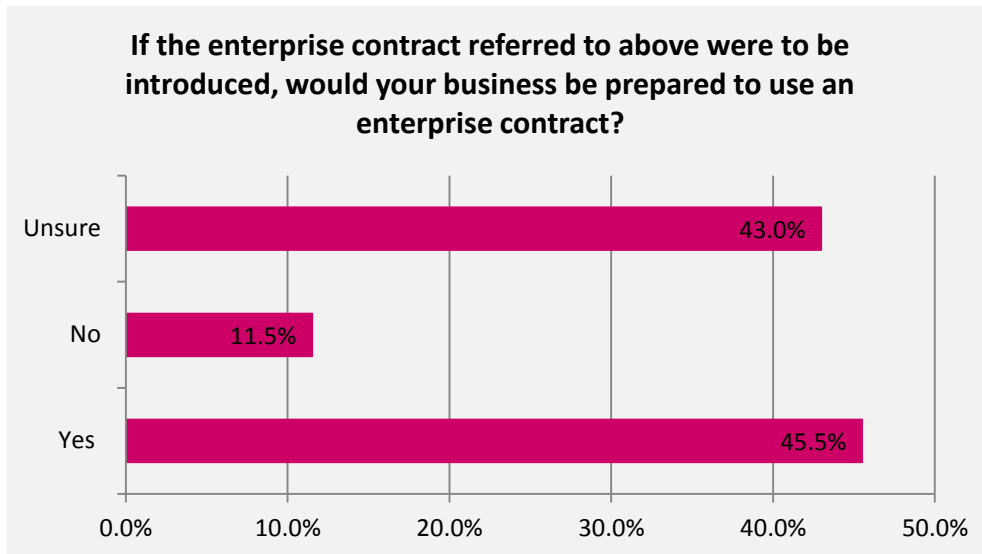
37. The survey shows overwhelmingly that the Productivity Commission's proposed 'enterprise contract' would provide additional flexibility for small businesses to make employment agreements (51 per cent).



Source: CCIQ Workplace Relations Survey September 2015

38. These results highlight an explicit need for greater options within the current system in order for small businesses to tailor workplace arrangements to meet their specific needs. Businesses in Queensland are calling out for an increased ability to implement meaningful flexibility in their workplaces, thereby giving small business owners an enhanced capacity to focus on running their businesses.

39. Nevertheless, a number of respondents remained unsure about how a proposed 'enterprise contract' would work within their business, highlighting a need for the Productivity Commission to provide more detail regarding its proposal in this space.



Source: CCIQ Workplace Relations Survey September 2015

40. When businesses were asked if they would be prepared to use an ‘enterprise contract’ in their business, 45 per cent of respondents said they would make use of an enterprise contract if it were to be introduced. This result demonstrates that a significant amount of small businesses in Queensland would utilise a contract better tailored to small business needs.
41. Nevertheless, 43 per cent of businesses were unsure if they would make use of a new contract in their businesses, suggesting that the Productivity Commission would need to outline in more detail and illustrate with examples how an ‘enterprise contract’ would introduce greater flexibility into small business workplaces. CCIQ acknowledge the difficulty of providing detail through the survey process.

### **Business feedback on the proposed ‘enterprise contract’ for small business**

Currently utilizing individual agreements which need to be checked regularly; an 'Enterprise Contract' could help this process.

Depends of what is required legally with the implementation of the 'enterprise contract'.

Depends on how complex they make it.

Depends on how easy it is to implement. If there is weeks of consultation and meetings and redrafts and negotiations then it is still difficult for small business to implement particularly in an industry where the staff may not necessarily have great literacy skills.

Each employee separately requiring agreement - time consuming

Helps simplify the employment contract in relation to flexible working arrangements where awards allow for flexibility but make the process of agreeing these arrangements appear detrimental to the employee even though the future viability of a business is critical to employees.

Hopefully, yes, but the details of the arrangement would need to be known.

I think there is an argument for another type of contract that is less restrictive but industrially fair that would create further employment opportunities.

If it allowed us to become more competitive in the industry, we would use them.

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If we can tailor it to suit our business

It would allow us to negotiate conditions that work for both parties in one or more of our facilities but not have to apply it to all (noting that facilities vary greatly in relation to metro / regional / remote as well as financial health).

It would be beneficial to be able to work things out with the people involved. This way we should all be able to work out an agreement that suits both parties (Employer and Employee)

Many small and medium sized businesses do not have the luxury of extra management resources unlike larger corporate business. Whilst the enterprise agreement arrangement may offer many advantages often it is too complicated to do in-house and too expensive to outsource. Agreements need to be simple, clear and fair; not overly complicated. It would be great if the enterprise contract fell into this space.

Most important aspect is in relation to flexibility of hours when our workload peaks and troughs. We can better customise payments of allowances etc. with regards to our particular business scenario.

My business model does not currently fit "nicely" under the award, and we pay more than we should because of it. I desperately want an enterprise agreement or working agreement but can't afford the cost involved.

Provided a template of the contract is made available so that individual businesses can adapt to suit, there may be provision for flexibility in this area. It depends on what the agreements will stipulate as being mandatory

Provided it had proper legal effect and allowed me to set terms that are appropriate to my business not just those that sit in the award.

That is what our EBA lacks. I like the idea of flexibility among my employees of that is what the Enterprise Contract incorporates.

This would be beneficial to have. It wouldn't take as long to prepare as EBAs, as long as there were guidelines to direct the development of these.

We are a business with many different job roles. Enterprise Agreements have proven too difficult and individual agreements are not an option either.

We are only a small Community not-for profit Association with limited financial resources. Any proposal to make it easier for us to remain in business would be welcome. I often find that we aren't defined as a small business because of the number of employees where as our annual turnover is not significant.

We need something for protection of the small business owner when they take all the liability of hiring staff.

We would consider greater flexibility should be possible although it ultimately depends on how these arrangements are administered.

We would like the option to have a 40 hour week without the additional penalties associated with the extra time being at overtime rates.

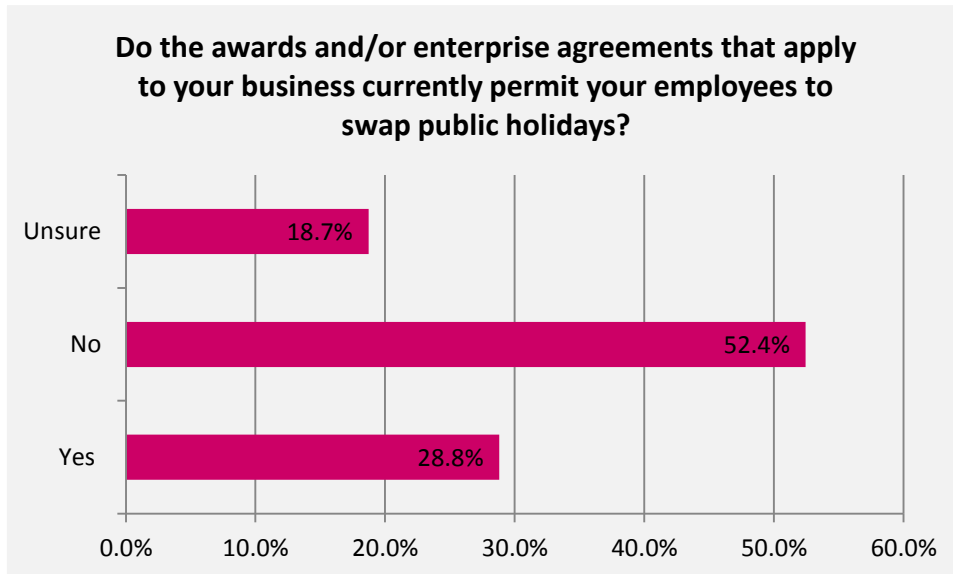
We would look to keep the employment arrangements as simple and easy to understand as possible.

Would be excellent as the majority of staff want to work these days it is only the penalty rates that keep staff levels to a minimum.

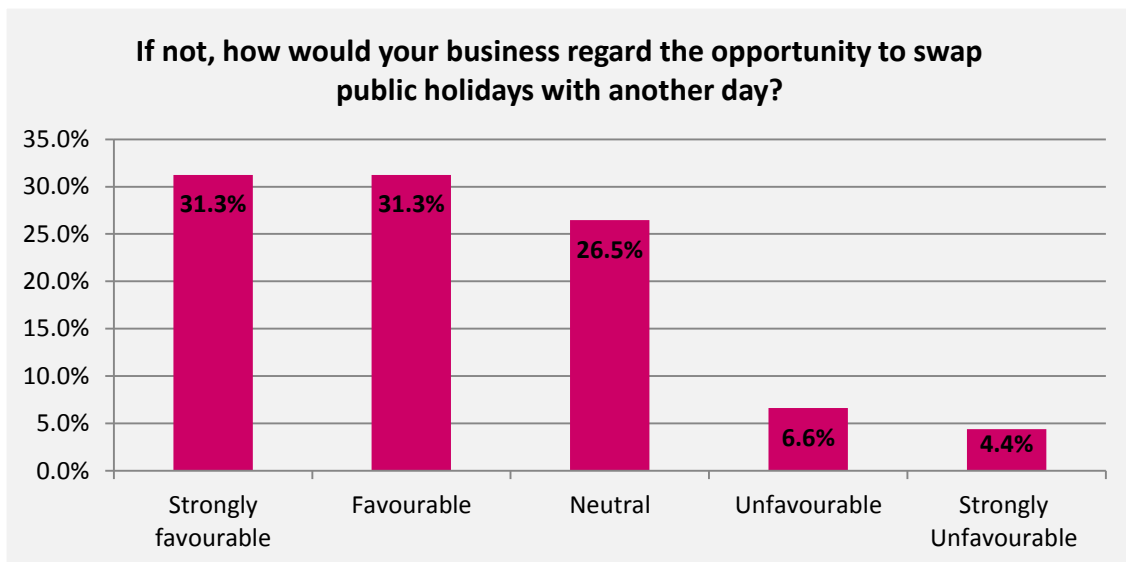
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42. When surveyed, a significant portion of Queensland businesses (52 per cent) are unable to allow their employees to swap public holidays with another day. When asked if the opportunity to swap public holidays with another day was permitted, the majority of Queensland businesses (62.6 per cent) indicated they were either strongly in favour or in favour of such a reform being integrated into the workplace framework.





Source: CCIQ Workplace Relations Survey September 2015



Source: CCIQ Workplace Relations Survey September 2015

43. A reform such as this would assist small businesses to overcome jurisdictional inconsistencies between public holidays and grant those businesses operating outside standard hours a level playing field on their busiest days, thereby providing some wage cost relief on public holidays. Nevertheless, when providing feedback on this particular recommendation, businesses stated they would expect penalties to not be applicable on the swapped day, as it would largely defeat the purpose of such a reform.

## Business feedback on swapping public holidays with another day

I believe the ability to swap public holidays would be largely beneficial. My business sees staff servicing customers interstate on a regular basis meaning it may be a public holiday in QLD but could be a peak time for our customers. Also some staff prefers to travel or holiday in other times and has previously negotiated to work public holidays

Our business services the food industry; public holidays are busy periods for us whilst we incur increased wage costs with no increased revenue. Have staff swap public holidays with normal days would work favourable for our business.

The ability for employees to swap a public holiday for another day would only be favourable if there was no additional penalty involved for working the public holiday.

The ability to swap public holidays would make my business able to have a better "offer" for clients as we work across Australia and need to work around different states, legislations etc.

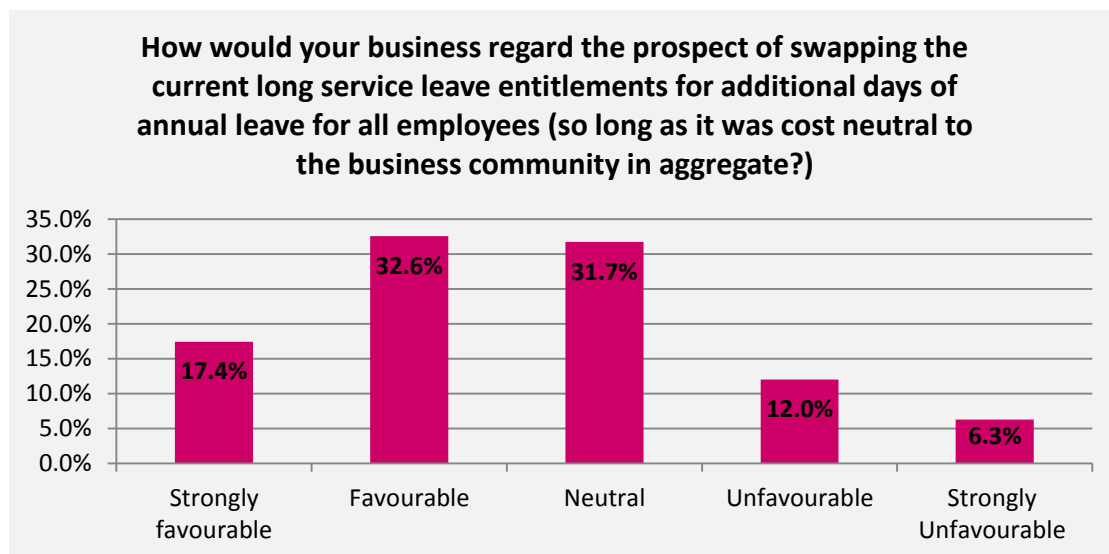
This would be an advantage especially for show holidays as on the Sunshine coast there are several of these affecting different areas, whereas we service the whole of the sunshine coast and require our employee to work these days.

This would be an advantage for small businesses provided that penalty rates did not apply to the swapped day.

This would give us the ability to man the office for interstate clients and also enable us to meet the employee's needs more when they want a day off that suits them more. Often employees choose to work a public holiday because they can work in an uninterrupted environment and can often be far more productive.

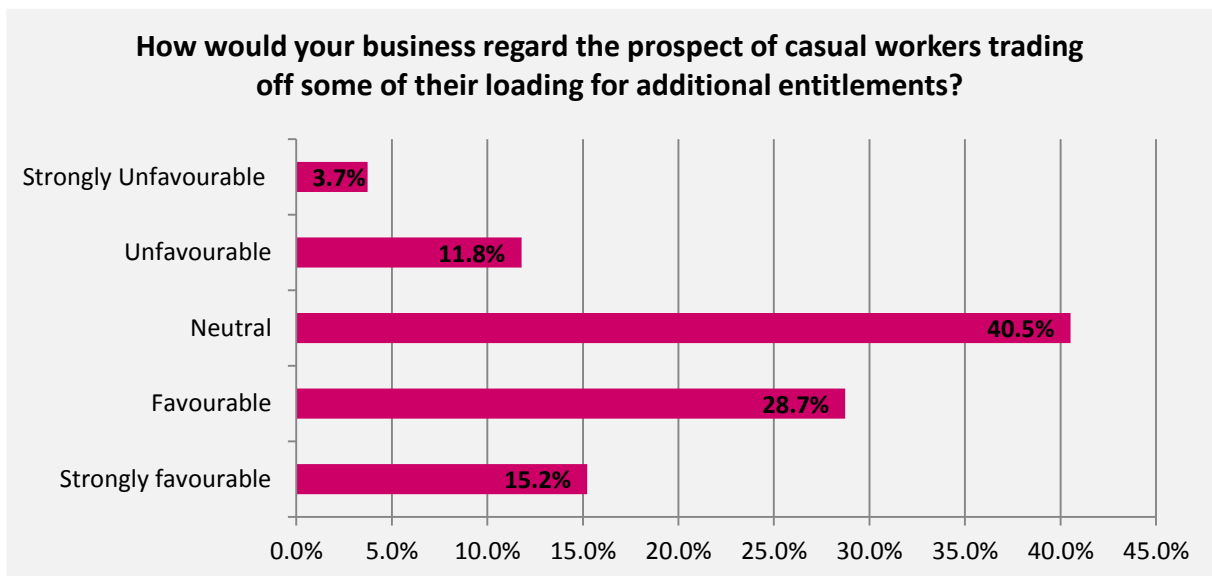
This would only really apply to the local show public holiday but would give flexibility to staff that have a partner working in a different area and receiving a different public holiday.

44. When businesses were asked about how they would regard the prospect of swapping current long service leave entitlements for additional days of annual leave for all employees, 50 per cent of employers indicated that they were either strongly in favour or in favour of such a proposal.
45. Feedback from businesses in favour of reform in this space indicated broad support provided there was mutual agreement between employer and employee and sufficient planning processes in place so that businesses could cater for disruptions. Conversely, those businesses that were neutral or found the notion unfavourable pointed to long service leave being an out-dated concept in transient modern workplaces, and that it was still a cost businesses had to factor in.



Source: CCIQ Workplace Relations Survey September 2015

46. When Queensland businesses were asked about how they would regard casual workers trading off some of their loading for additional entitlements, 43 per cent of employers indicated that they were either strongly in favour or in favour of such a proposal. However, a significant number of businesses responded to this question as neutral, again indicating some ambiguity as to its application and/or relevance in the context of a small business.



Source: CCIQ Workplace Relations Survey September 2015

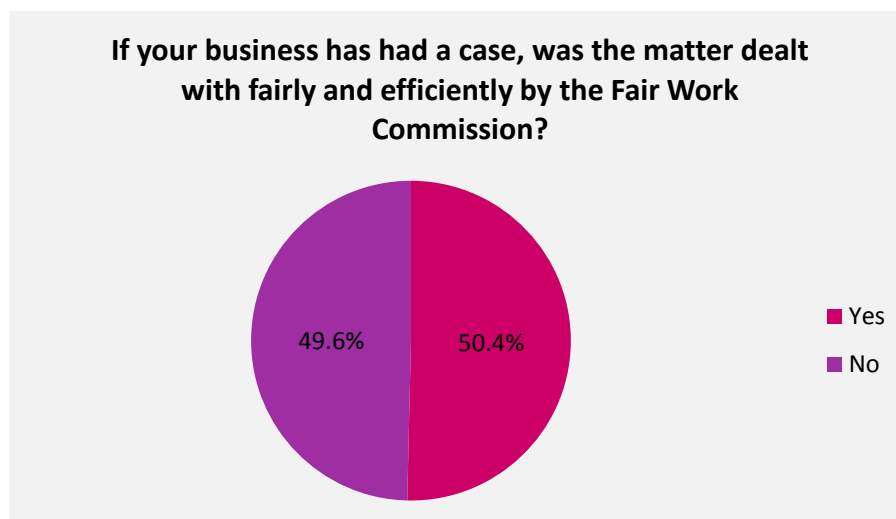
47. Feedback from businesses who would adopt this practice if available to them noted that in so far as this reform goes to increased flexibility in the employment relationship, or if it can be specifically tailored as an incentive to retain staff in small businesses, then those employers would be in favour. Alternatively, those businesses neutral to the idea stated it would largely depend on the entitlements being traded. Lastly, businesses that were not in favour of this reform believed it would undermine the concept of casual employment, and has the potential to add an administrative burden on business.

48. Overall the survey highlights the need for an increase in the scope of flexibility terms in modern awards and/or enterprise agreements to give business owners the freedom to identify arrangements that meet both the businesses' needs, as well as the needs of employees. A modern workplace relations system must allow employers and employees to negotiate individual arrangements that meet both parties' needs. Queensland business owners need freedom to identify arrangements that increase the take-up of innovative practices that make best use of workers' skills and expertise.

49. The Productivity Commission's recommendation of an 'enterprise contract' has received a significantly favourable response from Queensland small business.

## Unfair dismissal

50. Unfair dismissal is a significant workplace relations issue for Queensland businesses. Current unfair dismissal legislation is having adverse impacts on all businesses regardless of their direct exposure to an unfair dismissal claim or not. CCIQ is calling for a true unfair dismissal exemption for small business in order to reduce 'go away payments' and more emphasis on substance over process.
51. The survey asked respondents how many dismissals 'with cause' ended up as unfair dismissal cases. Based on survey responses, approximately 39% of dismissal 'with cause' ended up as an unfair dismissal.
52. When businesses were asked when they had had an unfair dismissal case, if the matter was dealt with fairly and efficiently by the Fair Work Commission, nearly half of small businesses told CCIQ that their matter had not been fairly or efficiently dealt with.



Source: CCIQ Workplace Relations Survey September 2015

### Business feedback on interactions with the Fair Work Commission regarding unfair dismissals

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All aspects unfairly weighted in favour of the employee.

All were unsubstantiated and our opinion is that they were all financially motivated and vexatious.

However some of the cases were frivolous in their nature, and I believe we have spent a lot of time in preparing responses when there was clearly no basis to a claim. For example an employee who had received 8 written warnings for poor punctuality and quality of work should not have proceeded to conciliation. Also, the current system is seen by some ex-employees as an easy way to earn "go-away" money - and rather than appear at a tribunal hearing many employers, including myself, see a few weeks' pay as an easier alternative, even when the case has no basis.

Seems to be given too much weight to the applicant with no regard for the employer. Timelines are very flexible and again favour the employee.

The FWC does seem to vet/question the applications and in the conciliation pressures for a \$ payout to settle the matter when at times this is simply inappropriate. The system encourages employees to "have a go" for some additional \$s as they know the application will not be rejected and the view seems to be that employers will pay some money for the claim to go away whether it has merit or not.

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They are a convoluted process and incur exorbitant legal costs. The process is employee favoured and is not overly considerate of circumstances leading up to the 'unfair' dismissal. It requires employers to be expert HR operators with robust and diligent processes. They are also resource intensive and disruptive to normal operations.

We had to pay funds for an unfair dismissal where the employee was breaching safety and bullying policy by threatening to hurt others. The government contradicts itself when it required companies to have these policies in place but will not back the employer when they try to enforce their policies. We were advised to pay the employee off to get rid of the claim quickly.

We paid the employee "go away money" despite the honest situation. Employees tend to have a completely different version of events which they don't need to prove as opposed to employers. FWC and Work Cover need neutral people who have an understanding that there are two versions that need to be heard and judged.

We were caught on an obscure point of law and processed to the compulsory arbitration phase. We accrued fees of more than \$50,000 before an entirely absurd claim was dropped.

While the purpose of conciliation is positive and in principle a good process, it was encouraged 'off the record' by the conciliator to offer some settlement to the employee in a matter where there was no manner in which it would have been deemed unfair.

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53. When Queensland small businesses were asked if they had ever paid an employee dismissed 'with cause' a payment to avoid the threat of/or an unfair dismissal case being brought against their business, 25% of respondents indicated in the affirmative. This feedback was slightly lower in percentage terms than feedback received from small businesses in CCIQ's workplace relations survey conducted in February, which indicated around 41% of claims were settled with go away money. Nevertheless, whether it be 25% or 41%, a significant proportion of businesses in Queensland are actively choosing this option.



Source: CCIQ Workplace Relations Survey September 2015

## Business feedback on 'go away money'

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After going through an unfair dismissal case, we will look at this option if put in the position again. I would suggest it would be a cheaper option.

We have made a payment after an employee left of their own volition, and 6 months later made a claim of harassment. This was investigated by appropriate bodies and no evidence was found. Unfortunately, 'go away' money is often the best option because even when things are found in your favour, the time required to gather information is crippling to the business.

It is commonly known that at first arbitration 'go away money' is paid, most employees know this so it is worth their while to 'go through the motions'

The process of written warnings has become a recurrent necessity. As the threat of an unfair dismissal case is often high priority in the minds of disgruntled employees who are disgruntled because they have received written warnings. They then proceed after an amount of time to be unhappy with their employment and eventually will give notice that is usually by this time accepted and paid out as it is easier to pay them their notice and be "rid" of the issue than to have them complete their notice period.

The process was unnecessarily stressful on managers just trying to do the right thing.

These matters have always been dealt with at the conciliation phase of the process. Our processes are robust enough that would only pay out money for about half of the matters they have gone to conciliation. We generally end up settling these matters with not more than 4 weeks wages.

We are always guilty as an employer and sometimes you have to take the low cost option. Time of senior management is very expensive to waste on bogus claims and belligerent FWA staff.

We have only ever paid the amount that Fair Work have told us to & we have never been successful in having a case dismissed, only keeping payments to a minimum. The common term in our industry is go away money. It helps the government by not having to pay any benefit until this money is used & hopefully they will get a job elsewhere as in all settlements we must agree to give a good reference even when it is not true.

Yes, but only after the matter was brought before Fair Work and considerable time and resources were wasted on it.

Yes, I have paid wages for an extra two years or more for a number of average staff. This was after taking legal advice from my Industrial Lawyer. It is called 'show them to the door slowly' action. You can't sack them because their average/poor performance is not deemed serious enough, so you are stuck with them. You can't reduce their pay, you try and try to motivate them but they don't respond. Other staff become annoyed because they are not as productive, they are just average performers.

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54. Overall, CCIQ believes the Productivity Commission must recommend a solution with respect to unfair dismissals that embodies a true exemption for small business coupled with a clearer process for the termination of an employee. CCIQ believes at present the Productivity Commission's recommendations in this space do not go far enough for small businesses to have confidence that their legitimate concerns regarding problematic unfair dismissals have been heeded through this opportunity.

## Business feedback on unfair dismissals

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A business will always need to weigh up the cost of defending a spurious unfair dismissal claim versus a "payout" to finalise the matter. This potentially very unfair on the business.

A clearly defined pathway to legitimately dismiss an employee.

An employer should have the right to dismiss an employee on genuine performance or economic grounds without the worry of having to face an unfair dismissal case.

Anything under 12months is not even heard.

Business owners can be overwhelmed and often find the whole process of dismissing an employee very intimidating. We read articles on cases that have been before the FWC and are in awe of the complexity of the cases, the cost and the finding handed down by the FWC. Ultimately the cost associated with such legal matters is extraordinary and not maintainable by a small business. Interestingly enough an employee can walk into your office on Monday and resign and inform you they want to leave on Wednesday to take a new position and the employer is supposed to find that acceptable. What I have observed over the years is that an employer will suffer an employee's inadequacy and disruption rather than manage them out of the business.

Clear cut guidelines there are too many grey areas at the moment.

Consultation requirements in genuine redundancy are not always practical to businesses.

Fair Work to follow the law and common sense instead of at all cost to ignore the employer's perspective.

FWA needs to stop paying 'go away money' for every unfair dismissal case. Sometimes, an employee has been dismissed for a valid reason and needs to be upheld.

Have a threshold of the equivalent of 30 full time employees before unfair dismissal laws kick in.

Having cases reviewed on the papers prior to conciliation. It is incredibly demotivating for managers and HR alike to handle a case carefully only to then find it's cheaper to pay someone 12 weeks 'bonus' at conciliation then prove we were right.

I believe there should more focus on the reason/substance of an unfair dismissal and a little less attention given to the procedure.

I think for small business, we take all the risk if we find an employee is not working than we should be able to remove the employee much easier. This does result in me not employing local staff and instead I have employed offshore.

Increase the number of employee's threshold to extend exemption to SMEs.

It would be useful to impose a penalty on employees who brought forward an unsuccessful case and to ensure there are fewer commissioners with union backgrounds in the FWC.

It's all about the rights of the employee and no longer the rights of the employer. The rights of the employer are quickly diminishing to the point where the risk reward of employing staff may reach the point where an employer thinks twice.

More balanced approach, and more screening at the initial phase to reduce time wasted with frivolous claims (ie: our last 4 claims have been during probation and each case has wasted lots of time and the claimant hasn't been successful at any of them.)

More protection for business from unfair dismissal claims. A clearly legislated process for dismissing employees that is not onerous.

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## Conclusion

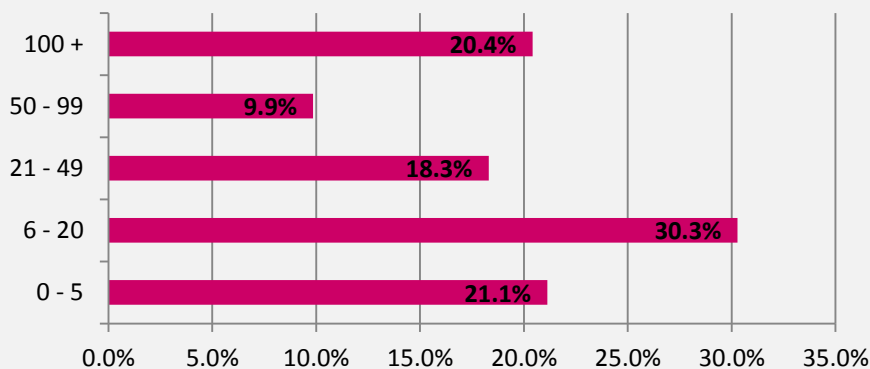
55. Workplace relations are one of the most significant issues facing Queensland businesses as it directly shapes their employment and operational arrangements, and influences their cost bases.
56. In this submission, CCIQ outlined the views of Queensland employers with respect to the Productivity Commission's draft recommendations on matters such as penalty rates, flexibility, a proposed 'enterprise contract' for small business, and unfair dismissals.
57. CCIQ believes that many of the recommendations in the Productivity Commission's draft report achieve greater balance in the Fair Work system premised on the needs of small businesses.
58. Specifically, if the proposal to merge Sunday penalty rates with Saturday rates were adopted, businesses would open for longer, increase overall employment hours and employ more staff. Overall, businesses responded favourably to the suggested reform and CCIQ encourages this position be incorporated into the Productivity Commission's final report to the Federal Government.
59. Regarding flexible working arrangements, businesses told CCIQ that current options for making arrangements with employees did not provide sufficient flexibility in order to effectively and efficiently run their businesses. In this light, Queensland small businesses appeared largely supportive of a proposed 'enterprise contract' insofar as it would introduce greater flexibility into the employment relationship, but required more detail from the Productivity Commission as to its application in a small business context to avoid any additional administrative burden.
60. With respect to exchanging loading for leave and/or entitlements, businesses favoured the proposed reforms to the current arrangements, highlighting the immediate need for an increase in the scope of flexibility terms in modern awards.
61. Lastly, businesses told CCIQ that current unfair dismissal process is having adverse impacts on all business regardless of their direct exposure to an unfair dismissal claim, with the Fair Work Commission displaying favouritism towards employee claims, and the ongoing prevalence of 'go away money'. CCIQ believes the Productivity Commission must respond to the legitimate concerns of small business in this space by recommending a true exemption for small business from unfair dismissal, recommending a clearer process for employee termination, and focusing on substance over process.
62. 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 and competitiveness.
63. To this end, CCIQ urges the Productivity Commission to provide recommendations in its final report to the Federal Government that embody the reforms necessary to achieve these much needed outcomes for Queensland's and Australia's economy.



## Survey Method

The analysis undertaken by CCIQ in the preparation of this report is based on 427 survey responses from Queensland businesses. The survey was conducted between 9 and 16 September 2015 to inform our feedback and participation in the Productivity Commission’s inquiry into workplace relations, specifically with respect to the release of the draft report on 4 August 2015.

### What is the total number of employees in your organisation?



### Which industry sector is your business primarily involved?

