

SUBMISSION

To Workplace Relations Inquiry
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Workplace Relations Framework: The Inquiry in Context

From the Australian Human Resources Institute
10 March 2015

On behalf of its 20,000 members, the Australian Human Resources Institute is pleased to respond to the invitation from the Productivity Commission to contribute to the Inquiry into the Australian Workplace Relations Framework.

AHRI has a longstanding interest in workplace relations, and has conducted periodic surveys of our members that resulted in research findings that we published in 2007 on the impact of Work Choices (in association with Deakin University), and in 2010 and 2012 on the impact of the Fair Work Act . Accordingly, we took the opportunity when this Inquiry was announced to survey our members on a number of matters that are touched on in the five Issues Papers circulated by the Commission.

This submission is largely informed by the responses to that survey.

SURVEY BACKGROUND AND DEMOGRAPHICS

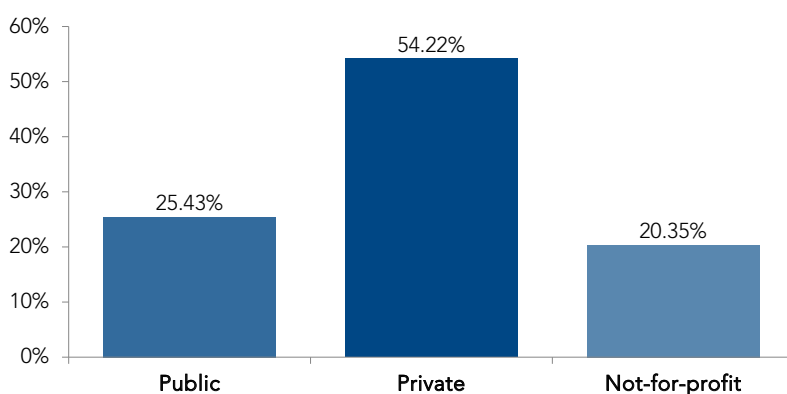
The survey was circulated online nationally to AHRI members for 12 days from 11th to 22nd February 2015. The questions were informed by the five Productivity Commission Issues Papers, mindful that we wanted to limit the questions to a manageable number.

A total of 813 members responded to the survey.

More than three quarters of the respondent sample (77%) were from metropolitan locations, approximately two thirds were female (64%), more than half (65%) were from manager or executive levels, a third (34%) were from organisations of between 250–2500 employees and a fifth (22%) were from organisations employing in excess of 2500 workers.

As indicated in Figure 1 more than half the respondents (54%) were from the private sector, a quarter (25%) from the public sector and the other 20% were from not-for-profits.

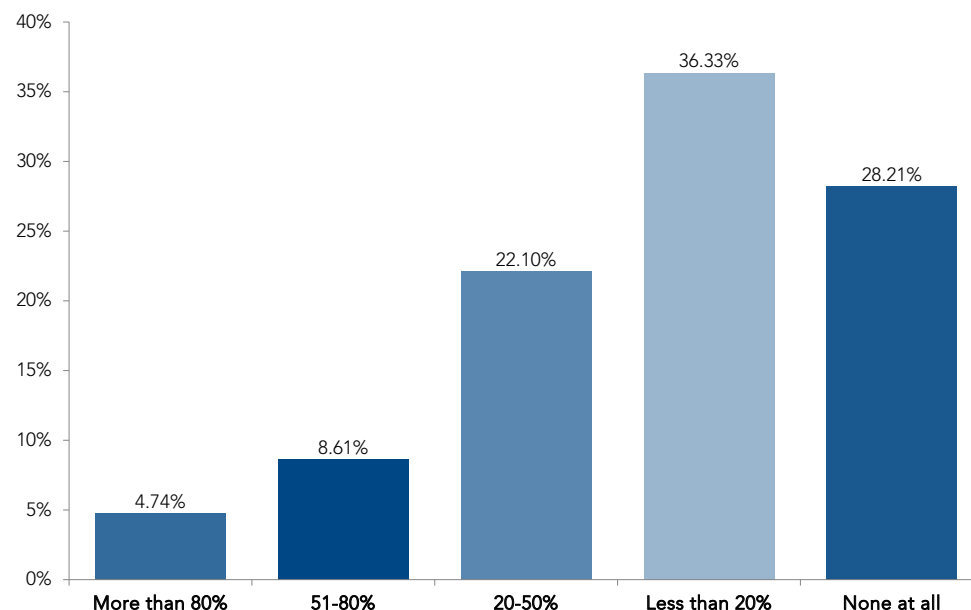
Figure 1. Sector of respondents



As indicated in Figure 2, more than a third of respondents (36%) estimated that less than 20 per cent of their 'award' workforce were union members, 22% estimated union membership of between 20-50 per cent of their award workforce, while 13% estimated that more than half their award workforce were union members. More than a quarter (28%) reported no union members among their award workforce.

Figure 2. What percentage of your 'award' workforce do you estimate are union members?

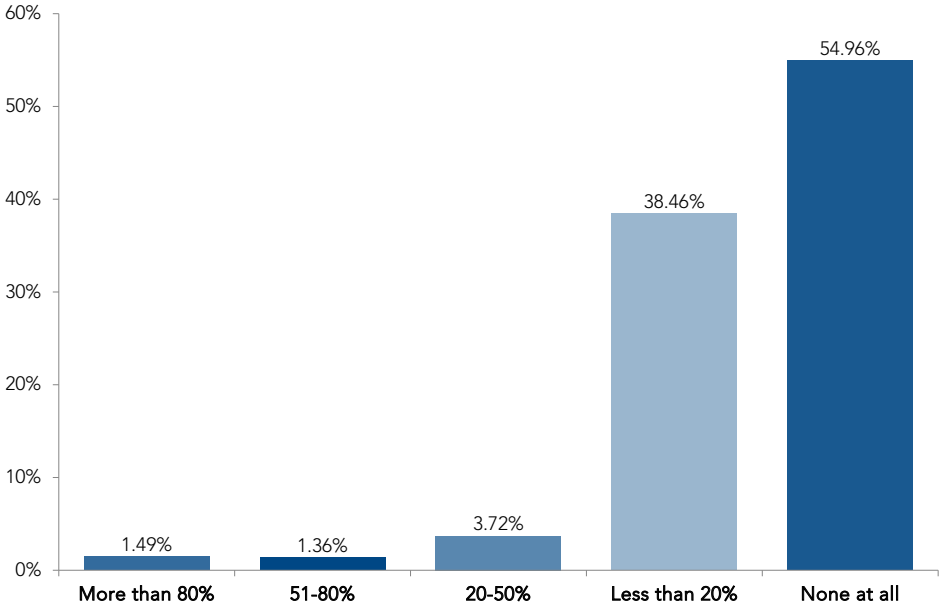
801 respondents



By contrast, as indicated in Figure 3, more than half of respondents (55%) reported no union members among their non-award workforce, with most of the rest (38%) estimating union membership of less than 20 per cent.

Figure 3. What percentage of your 'non-award' workforce do you estimate are union members?

806 respondents



DETAILED GENERAL FINDINGS

The following questions provide a general background to the findings.

The first asks about the impact of the Fair Work Act on respondents' jobs, as set out in Figure 4.

Three quarters of respondents answering that question reported either that the Act has been somewhat onerous and selective amendments are needed (42%) or it has struck about the right balance (35%). While a total of 13% believe it has been unnecessarily onerous and the Act needs fundamental restructuring, another 11% believe that the Act requires amendments to further regulate workplace outcomes.

Figure 4. What has been the impact of the Fair Work Act on your job?

810 respondents

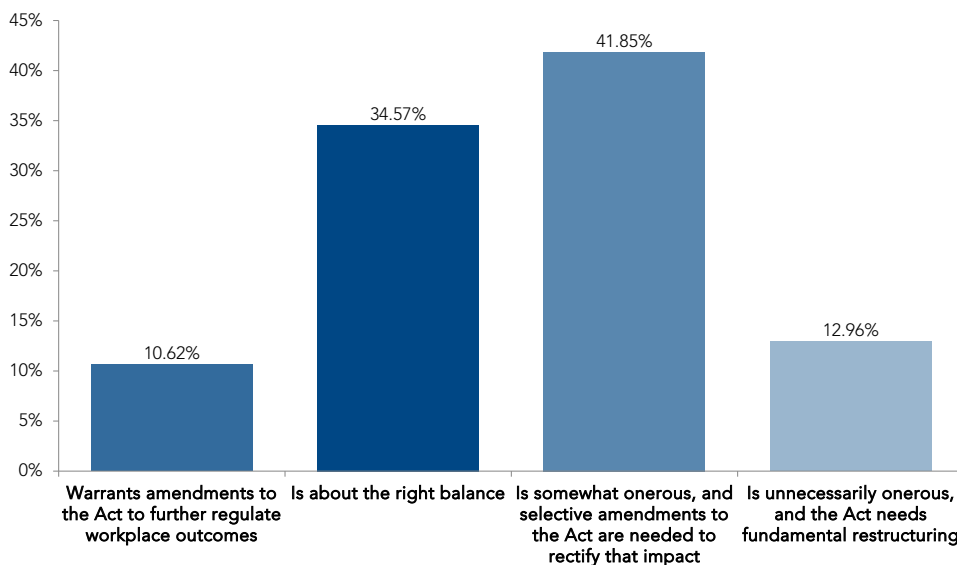
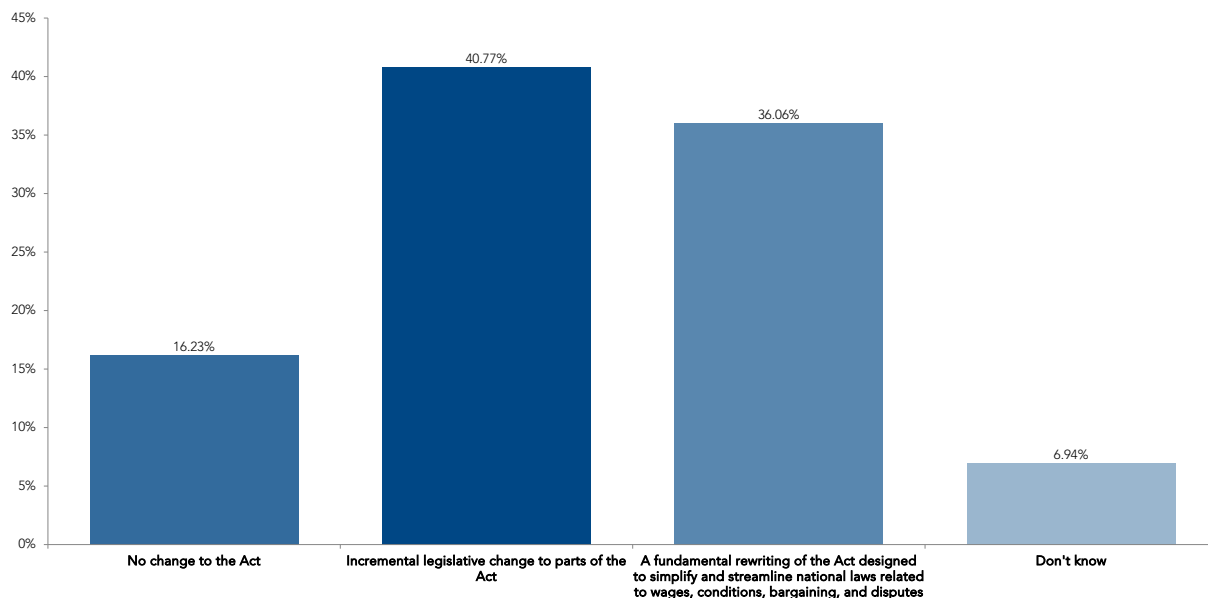


Figure 5 sets out what changes respondents would like to see made to the Act, with 57% favouring either no change (16%) or incremental change (41%), while more than one in three (36%) want a fundamental rewriting of the Act with respect to laws designed to simplify and streamline national laws related to wages, conditions, bargaining and disputes.

Figure 5. What changes would you favour to the Fair Work Act?

807 respondents



Of the 248 respondents favouring incremental change, Table 1 shows the areas most mentioned.

Table 1. Most mentioned areas by respondents favouring incremental change.

SUBJECT	PERCENTAGE OF RESPONDENTS WHO MENTIONED SUBJECT IN COMMENTS (APPROXIMATE)	TYPICAL RESPONSES
Unions	20%	Limit the right of entry requests unions are able to make Reduce involvement of unions where there are few or no union members in the organisation
Adverse Action	18%	Provisions need to be clearer or scrapped altogether
Unfair dismissal	17%	Unfair dismissal provisions are often costly and are highly restrictive for employers
Bargaining	15%	Simplifications to the process are required
Leave	14%	Greater clarity around entitlements, particularly regarding parental leave More standardisation across different states and territories
Awards	11%	Improve flexible work provisions and simplify the process to allow greater flexibility
Bullying	7%	Provisions should be amended or removed, as they are deemed either too broad or too narrow
Flexibility	5%	Improve flexible work provisions and simplify the process to allow greater flexibility

Table 2 sets out answers to a list of potential impacts to respondent workplaces due directly to the Fair Work Act.

The strongest general finding for most of the items on the list is that respondents reported no change. However, respondents reported in a few instances a marked increase in the level of record keeping (55%), flexible working arrangements (39%), union involvement in bargaining (35%), union involvement in disputes (35%), level of direct communication between management and employees (33%), overall remuneration (31%) and union visits to work sites (31%).

Though not as marked overall, respondents reported decreases in flexibility to determine pay rates (31%) and flexibility to determine the allocation of labour (31%).

Table 2. Workplace impacts due to the Fair Work Act

789 respondents

ANSWERS	INCREASED	DECREASED	NO CHANGE
Labour flexibility-financial (i.e. flexibility to determine pay rates)	12%	31%	57%
Labour flexibility - functional (i.e. flexibility to determine the allocation of labour)	11%	31%	58%
Labour flexibility - numerical (i.e. flexibility to determine employment numbers)	9%	20%	71%
Level of direct communication and consultation between management and employee	33%	15%	52%
Level of direct negotiation over pay and conditions between management and (groups of) employees	21%	25%	54%
Level of record keeping	55%	3%	42%
Level of union involvement in bargaining	35%	5%	60%
Level of union involvement in dispute resolution	35%	6%	59%
Level of workforce morale	9%	25%	66%
Level of overtime	13%	15%	72%
Union visits to work sites	31%	6%	63%
Overall remuneration	32%	9%	59%
Penalty rates for overtime	29%	7%	64%
Productivity	10%	27%	63%
Flexible working arrangements	39%	22%	39%

DETAILED SPECIFIC FINDINGS

The survey findings that follow are set out under three sub-headings:

- issues where respondents strongly indicate a need for change
- issues where respondent views are mixed
- issues where respondents indicate they are largely content with the way things are.

ISSUES WHERE RESPONDENTS STRONGLY INDICATE NEED FOR CHANGE

Agreements

Figure 6 indicates that a majority (60%) of respondents believe the workplace relations legislation should allow workers freedom of choice to participate in one agreement over another, with 39% of respondents agreeing to that proposition and 21% strongly agreeing.

Figure 6. The Fair Work Act should allow workers freedom of choice to participate in one agreement over another.

642 respondents

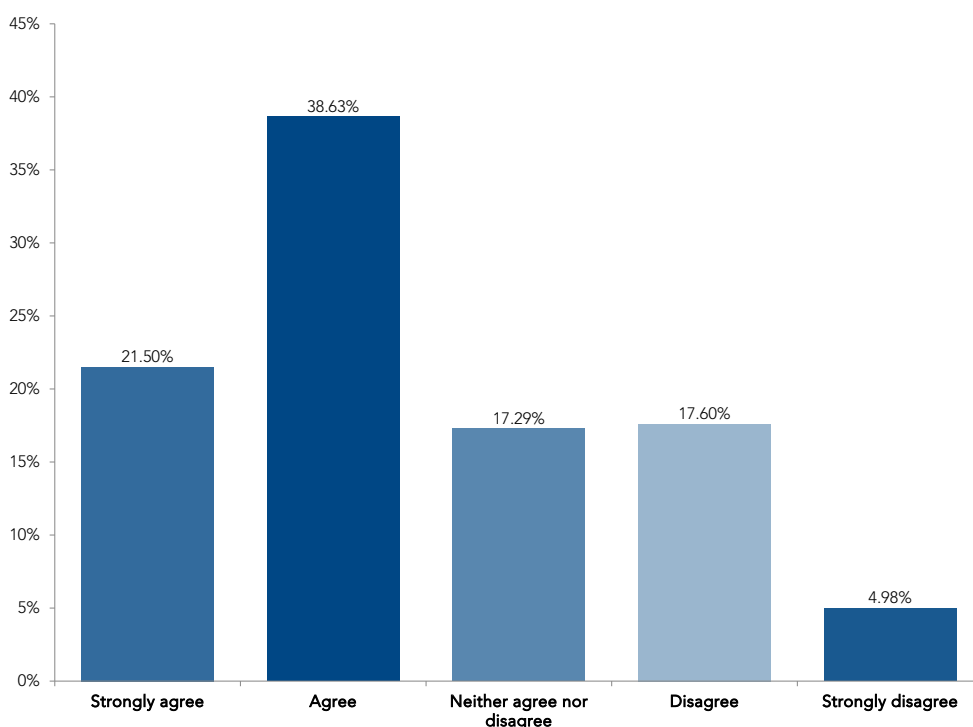


Figure 7 indicates that the vast majority (83%) of respondents believe the workplace relations legislation should include explicit protections against coercion of workers by employers, with 51% agreeing to that proposition and 32% strongly agreeing.

Figure 7. The workplace relations legislation should include explicit protections against coercion of workers by employers.

645 respondents

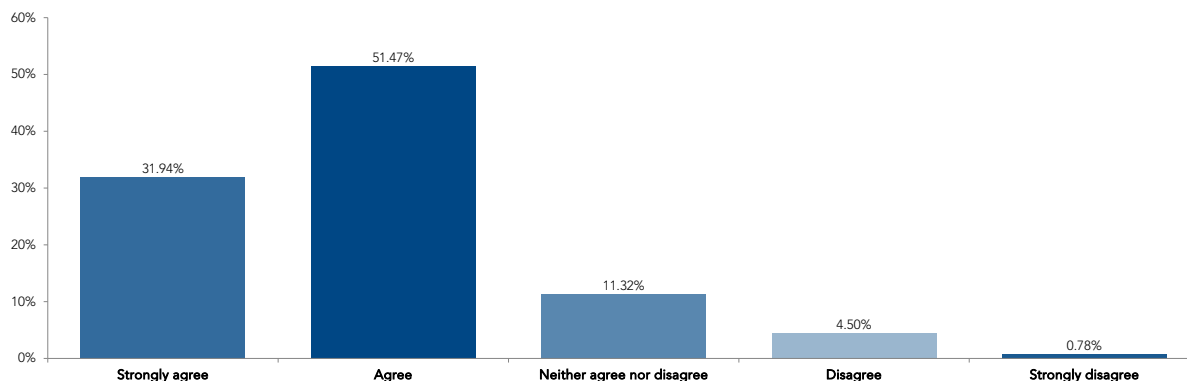


Figure 8 indicates that nine out of ten respondents (90%) believe the workplace relations legislation should include explicit protections against coercion of employers by third parties (e.g. unions, lawyers), with 53% in strong agreement with that proposition and 37% in agreement with it.

Figure 8. The workplace relations legislation should include explicit protections against coercion of workers by third parties (e.g. unions, lawyers)

645 respondents

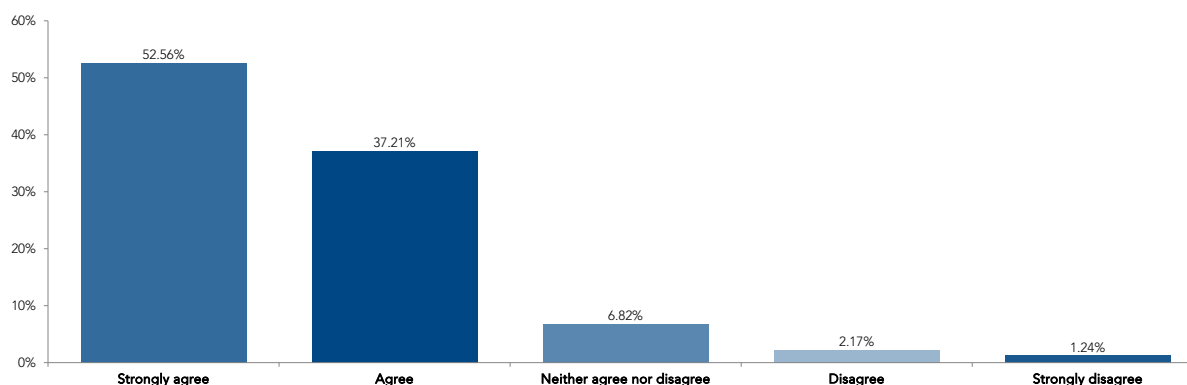


Table 3 indicates that a considerable majority of respondents would like to see, subject to minimum standards, amended provisions that allow either individual agreements (64%) or collective agreements without union participation (63%). A smaller proportion, though a considerable minority (31%), would like to see amended provisions that allow collective agreements with union participation.

Table 3. Collective agreements or individual agreements, subject to minimum standards
776 Responses

ANSWERS	COUNT	PERCENT
Amended collective agreements with union participation, subject to minimum standards	237	30.54%
Amended collective agreements without union participation, subject to minimum standards	485	62.50%
Amendments to allow individual agreements, subject to minimum standards	494	63.65%
None of the above	26	3.35%

Table 4 indicates the impact that respondents believe the options from Table 2 would have in their workplace, with the proportions from Table 3 strongly reflected among respondents who believe the impact on fairness and equity would be improved.

Table 4. Likely impacts of collective agreements or individual agreements on workplace fairness and equity

792 Responses

ANSWERS	IMPROVE	WORSEN	NO IMPACT
Amended collective agreements with union participation, subject to minimum standards	29.24%	33.68%	37.08%
Amended collective agreements without union participation, subject to minimum standards	64.39%	16.9%	18.71%
Amendments to allow individual agreements, subject to minimum standards	64%	22.84%	13.16%

Table 5 indicates a preference among respondents to restructure enterprise bargaining provisions to allow for individual agreements (53%) or to allow workers to participate in collective agreements not involving a union (50%). Noting that respondents could make more than one selection to this question, nearly one in four (24%) would like to see enterprise bargaining provisions remain intact, and one in five would like to see them restructured to allow for workers to participate in collective agreements involving a union (20%).

Table 5. Should enterprise bargaining provisions in the Fair Work Act be restructured or remain intact?

803 Responses

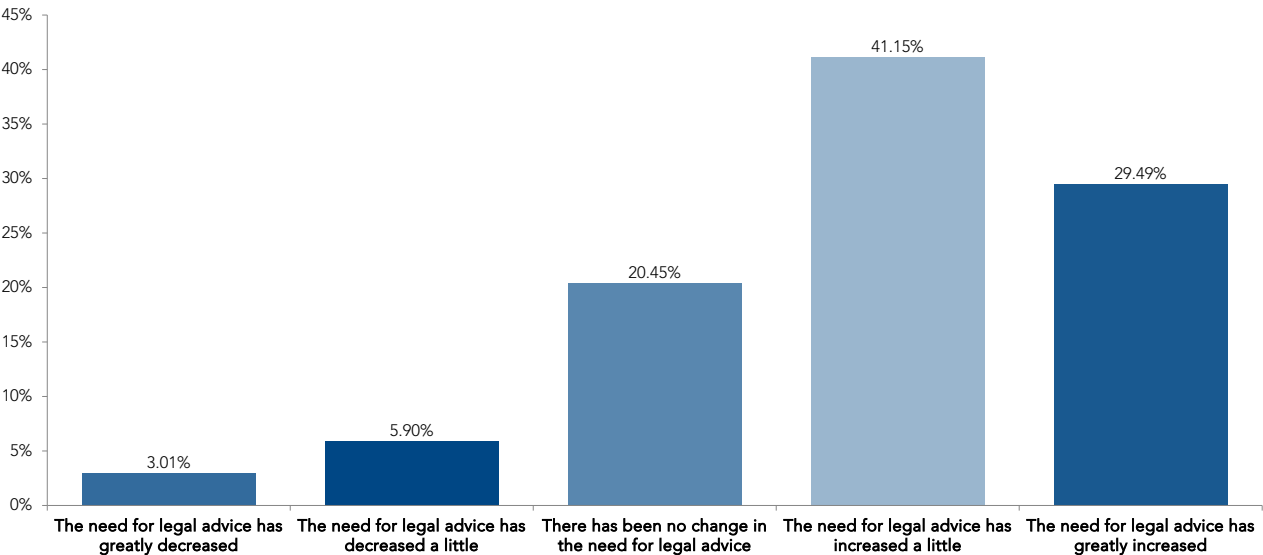
ANSWERS	COUNT	PERCENT
Remain in tact	189	23.53%
Be restructured to allow for workers to participate in collective agreements involving a union	158	19.67%
Be restructured to allow for workers to participate in collective agreements not involving a union	399	49.68%
Be restructured to allow for individual agreements	424	52.80%

Need for legal advice

Figure 9 indicates that a substantial proportion of respondents (71%) believe the impact of the Fair Work Act has either greatly increased the need for legal advice (29%) or increased it a little (41%), with one in five (20%) saying it has had no impact. Fewer than 10% of respondents report a decrease in the need for legal advice.

Figure 9. What impact has the Fair Work Act had on the need for legal advice?

797 respondents



Costs of dealing with industrial relations

Figure 10 indicates that a substantial proportion of respondents (64%) believe the impact of the Fair Work Act has either greatly increased the costs associated with industrial relations since 2010 (24%) or increased the costs a little (40%), with another 29% saying it has had no change to costs. Only 8% of respondents reported a decrease in costs.

Figure 10. What impact has the Fair Work Act had on the costs associated with industrial relations since 2010?

797 respondents

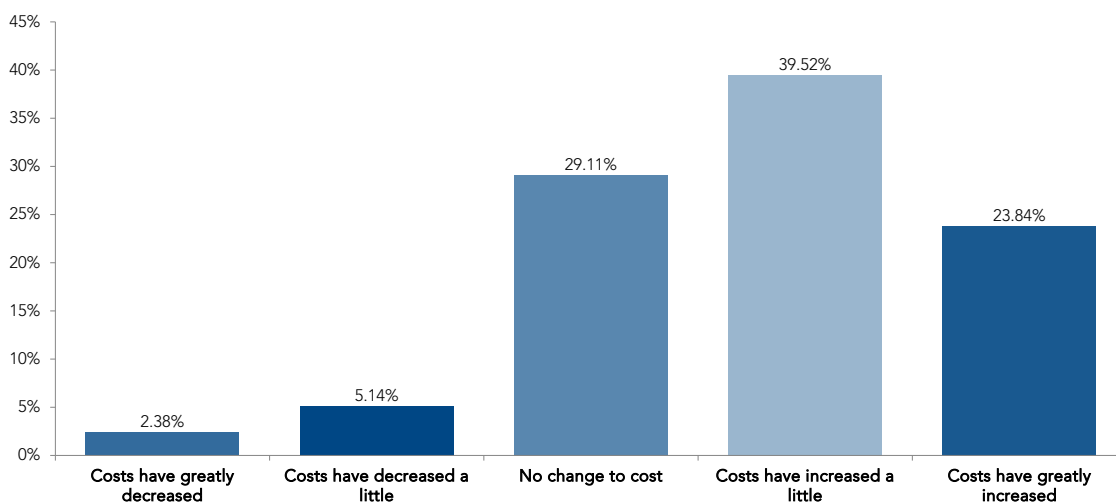
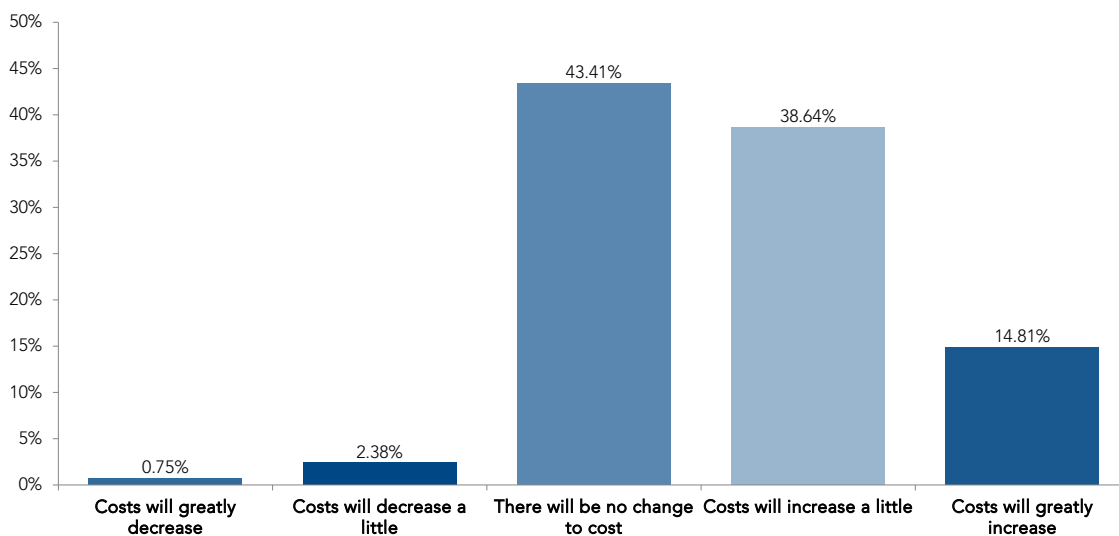


Figure 11 indicates that more than 95% of respondents believe that, in one year's time, an unchanged Fair Work Act will have no change on the costs of doing industrial relations (43%), or they will increase a little (39%) or greatly (15%). Coming from a high base of respondents who believe the costs are already too high (see Figure 10), there is precious little optimism revealed in these responses.

Figure 11. In one year's time, what do you imagine an unchanged Fair Work Act will have on the costs associated with industrial relations?

797 respondents



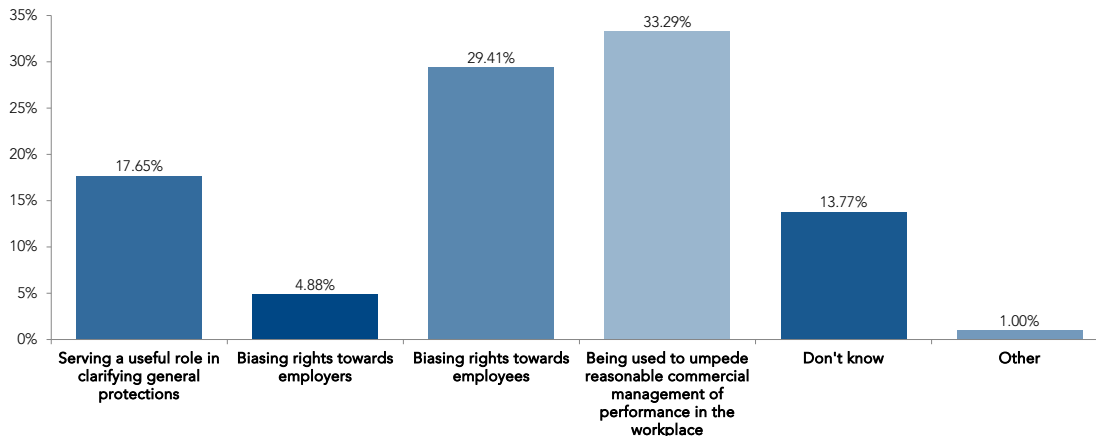
Adverse action provisions

Figure 12 looks at the respondent reaction to the adverse action provisions in the Fair Work Act. A third of the respondents (33%) reported that the provisions are used to impede reasonable commercial management of workplace performance and a slightly smaller proportion (29%) reported that the provisions are biased in favour of employees.

Of the remaining third of respondents, 18% believe they are serving a useful role in clarifying general protections, and 5% see them as biased in favour of employers.

Figure 12. What has been the impact of adverse action provisions in your workplace?

799 respondents



With respect to the answers provided in Figure 12, respondents were asked to draw on their experience to indicate the most common forms of adverse actions cited in general protection cases. The following is a list, in order, of the most frequently cited items:

- Adverse action linked to discrimination, specifically:
 - Illness/mental health/disability
 - Gender
 - Maternity leave/parental responsibilities
 - Union membership
 - Age
 - Race
- Adverse action linked to performance management
- Adverse action linked to bullying and harassment
- Adverse action linked to dismissal/termination
- Adverse action linked to workplace rights
- Adverse action linked to flexible work
- Adverse action linked to leave provisions
- Adverse action linked to changes in job and responsibilities.

ISSUES WHERE RESPONDENT VIEWS ARE MIXED

Willingness to employ

Table 6 indicates the impact that respondents believe the three amendment options set out in Table 3 would have in their workplace, with the strongest proportion of respondents generally believing there would be no impact on willingness to employ people. The largest majority (64%) believe that amended collective agreements with union participation would have no impact, and 59% believe that amended collective agreements without union participation would have no impact. However, on the question of amendments to allow individual agreements, the proportion of respondents are evenly split between those who believe those amendments would increase willingness to employ people (47%) and those who say they would have no impact (47%).

Table 6. Likely impacts of collective agreements or individual agreements on willingness to employ people

787 respondents

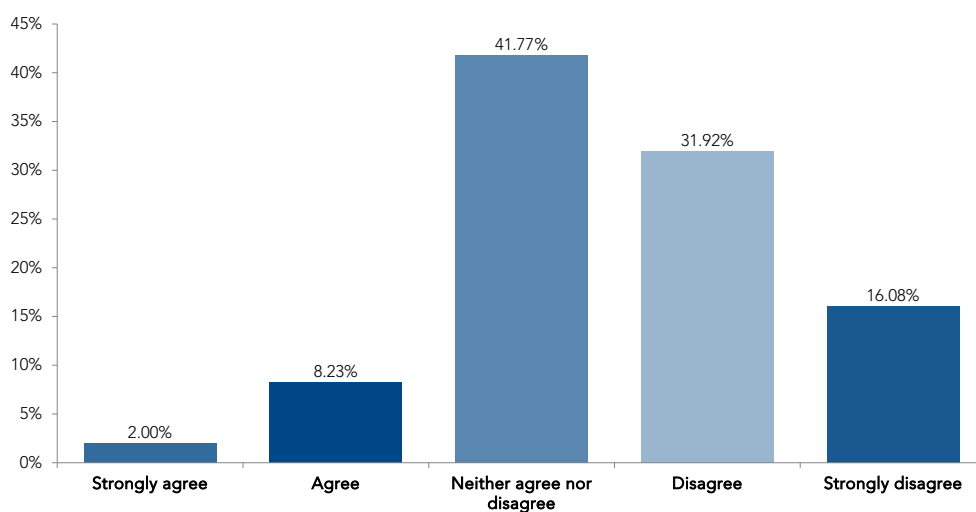
ANSWERS	INCREASED	REDUCE	NO CHANGE
Amended collective agreements with union participation, subject to minimum standards	7.33%	28.4%	64.27%
Amended collective agreements without union participation, subject to minimum standards	35.53%	5.68%	58.79%
Amendments to allow individual agreements, subject to minimum standards	46.72%	6.56%	46.72%

Productivity

Figure 13 indicates the extent to which respondents agree with this statement: "operating under the Fair Work Act 2009 will improve productivity within the organisation over the next three years". While nearly half (48%) the respondents disagree (32%) or strongly disagree (16%) with the statement, a substantial 42% neither agree nor disagree, and only 10% agree or strongly agree.

Figure 13. How strongly do you agree or disagree with this statement: "operating under the Fair Work Act 2009 will improve productivity within the organisation over the next three years"?

802 respondents

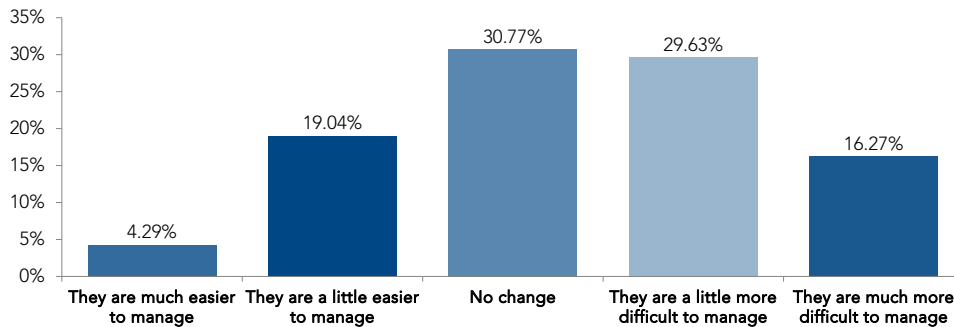


Workplace disputes

Figure 14 indicates that while nearly half (46%) of the respondent sample find workplace disputes more difficult (30%) or much more difficult (16%) to manage, nearly a quarter (23%) find them easier (4%) or a little easier (19%) to manage, while 31% report no change.

Figure 14. What impact has the Fair Work Act had on how workplace disputes are managed since 2010?

793 respondents

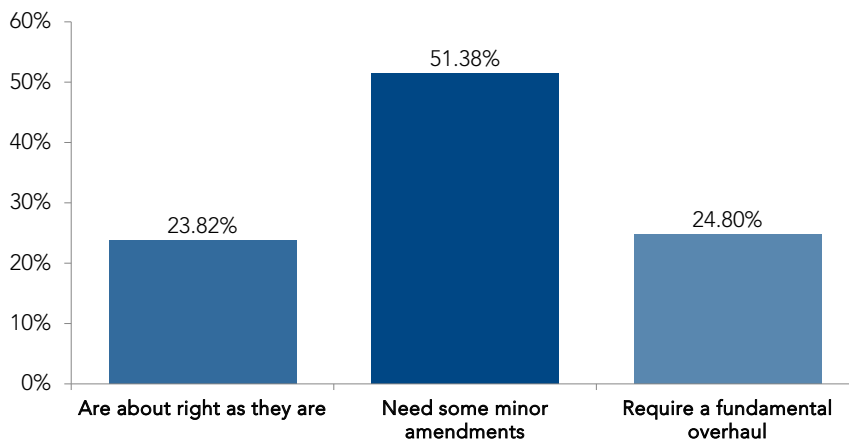


Modern awards

Of the 508 respondents whose role involves implementation of modern awards, Figure 15 indicates that around half (51%) believe they need some minor amendments. Of the remainder, a quarter (25%) believe a fundamental overhaul is required, while a similar proportion (24%) believe the awards are about right as they are.

Figure 15. Do you believe the modern awards need a fundamental overhaul, some minor amendments or are about right?

508 respondents



Respondents were invited to comment on their answers to the awards question posed in Figure 15. These are a sample of responses:

Modern awards are about right as they are

"Much better than the old system and seem to be improving both worker morale and productivity per dollar"

"They give enough clarity on terms and conditions and relatively easy to implement for organisations with limited or no HR or legal resources"

"I have had no issues with the modern awards. Our company is very generous with remuneration and benefits and is working towards being an employer of choice."

"Awards reflect enforceable conditions of employment. Stripping awards of conditions under the pretext of streamlining into 'policy' undermines the good faith bargaining principles between employer and employees. Recent movement to strip awards in this fashion by redeveloping the Act is in my opinion unconscionable conduct."

"The modern awards are not onerous and act as a genuine safety net."

Modern awards need some minor amendments

"Any award system needs to be routinely monitored and modified to reflect social, political and economic needs and circumstances."

"As they currently stand, most modern awards are far too generic to be of much use at all."

"Need to be able to negotiate more flexible arrangements at local levels"

"The penalty rates are somewhat excessive and can be difficult to interpret and apply"

"I believe that the modern awards are a solid starting point for industry entitlements; however they need modernising to remove unworkable, antiquated provisions that prevent flexibility in workplaces."

"Modern awards require further amalgamation to simplify the process of compliance for business. I have worked with small organisations who are covered by several awards - this creates unnecessary complexity resulting in additional costs and productivity losses"

"I believe the way the Awards are written can be confusing to most people unless you have a law degree or you are reading these documents on a daily basis."

"In some instances the modern awards appear to have been written by different people in isolation. Therefore, some clauses seem contradictory and confusing."

"The Awards are too broad in some areas and have to be added to by enterprise agreements yet in other areas they are too constraining and cause an inability to bargain successfully such as penalty rates across the hospitality and retail sectors"

Modern awards need a fundamental overhaul

"They are still too complicated and not standardised enough across multiple awards applying in same organisation"

"Modernisation process was about process not substance. A fundamental review is required to strike a balance between business imperative and employee conditions."

"The modern awards we work with are not aligned to the qualifications framework that we work with and consequently we pay above award in order to attract properly qualified applicants - their relevance is very limited and increments very vague and open to different interpretations"

"Collapsing of modern awards has led to employees getting paid more than they otherwise would have - e.g. lifting of casual loading"

"Anyone who has read the awards would understand that they are too detailed and complex. The grades and categories are confusing and are being misinterpreted. The details regarding leave are open ended and subject to abuse by both employer and employee."

"Our modern award has not been really reviewed and it wasn't in the award modernisation process. This means it is way out of alignment in terms of the contemporary workplace and conditions."

"Some of the modern awards do not have clear classifications and are not easy to read. They need to be simplified"

“Modern awards regulate too many areas of operations. Flexibility agreements are too restrictive. Award rates, particularly penalty rates, deter employment in small employers”

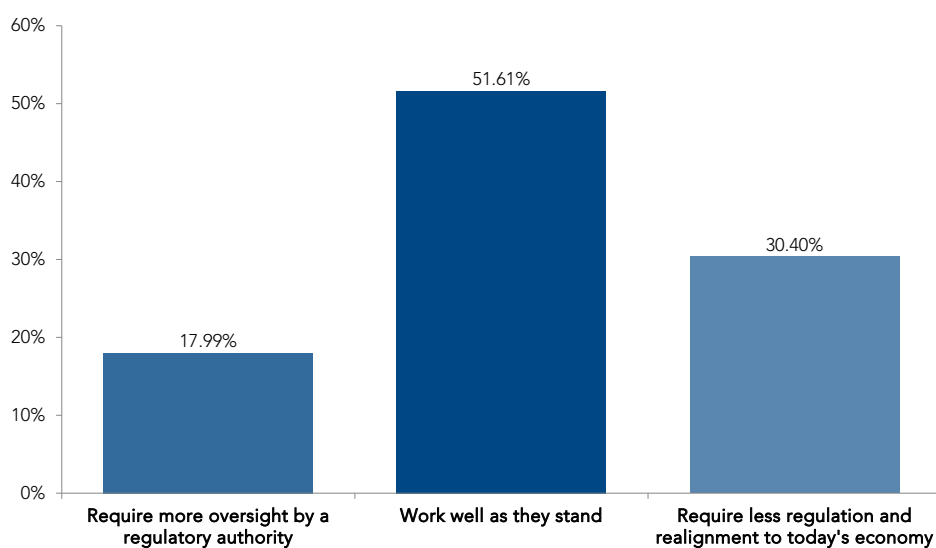
“Remove the modern awards and include safety nets as part of the Fair Work Act.”

Minimum wage provisions

On the matter of minimum wage provisions, Figure 16 indicates that a narrow majority (52%) believe they work well as they are, though a substantial minority (30%) expressed a preference for less regulation and realignment to today's economy. On the other hand, 18% of respondents would like to see more regulatory oversight.

Figure 16. Do you believe the minimum wage provisions need more regulation, less regulation or work well as they stand?

806 respondents

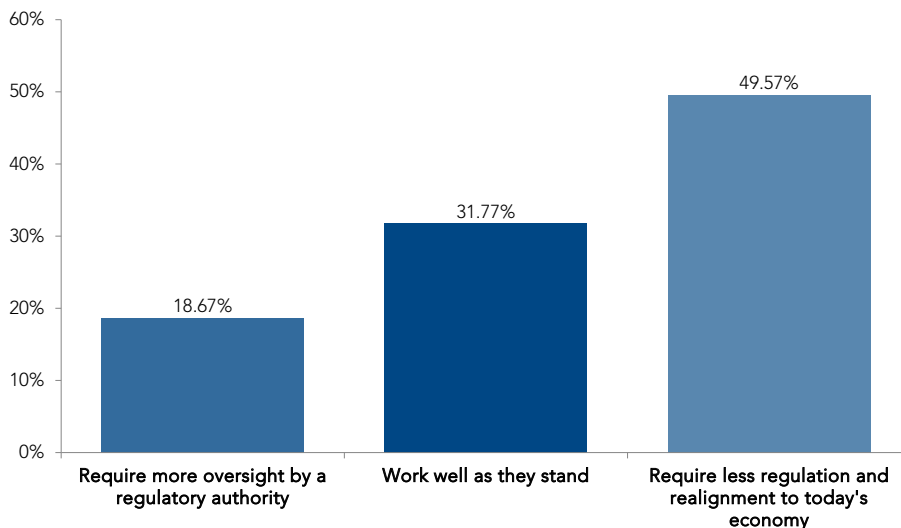


Penalty rates

On the matter of provisions relating to penalty rates, Figure 17 indicates that while half the respondents (50%) would like to see less regulation, the other half would like to see more regulation (19%) or believe they work well as they are (32%). Given that the survey demographic is skewed towards respondents from big business, we are conscious that these numbers might look different were there a greater proportion of small business respondents making up the survey sample.

Figure 17. Do you believe the penalty rate provisions need more regulation, less regulation or work well as they stand?

809 respondents

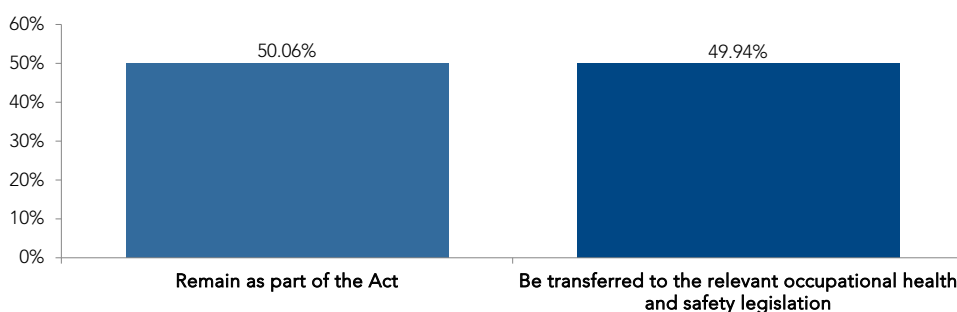


Bullying provisions

Figure 18 indicates the responses to a question about whether the bullying provisions in The Fair Work Act should remain as part of the Act or be transferred to the relevant section of the occupational health and safety legislation. The respondent sample is evenly divided on the issue.

Figure 18. Do you believe the bullying provisions in The Fair Work Act should remain as part of the Act or be transferred to the relevant section of the occupational health and safety legislation?

805 respondents

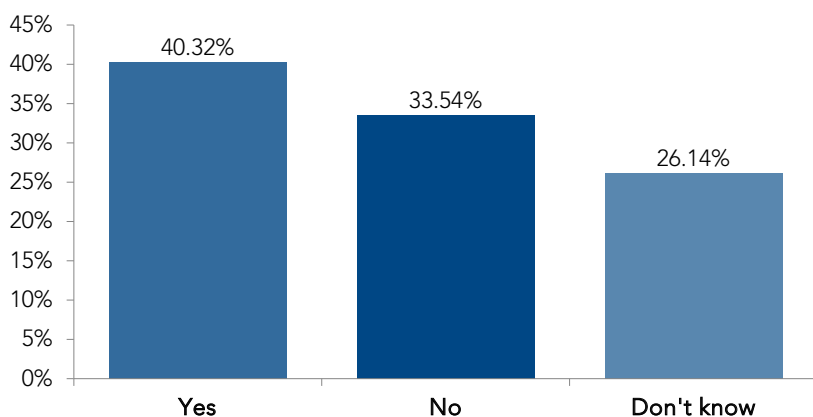


Fair Work Commission

Figure 19 indicates the responses to a question about whether the Fair Work Commission should have a role in productivity bargaining and determination. A substantial 40% agreed that it should exercise that role, while a third (34%) believed that it should not. More than a quarter of respondents remained on the fence (26%).

Figure 19. Should the Fair Work Commission have a role in productivity bargaining and determination?

811 respondents



Respondents to that question were invited to comment on their answer. Here is a sample of responses:

Yes

In your own words comment on what that role should be

"Advisory role, with some solid recommendations which look after the interests of both employer and employee"

"Arbitration when negotiations fail."

"As a regulator, to ensure agreements are fair and reflect the workplace environment"

"Assistance in brokering satisfactory outcomes where bargaining reaches stalemate"

"Impartial arbitrator and ensuring that minimum standards on both employer and employee obligations are met."

"Regulating and governing - ensuring organisations/unions and employees are consulted and follow a fair process"

"To ensure that employees are fairly represented and that there is some equality across agencies."

No

In your own words comment on why not

"Fair Work Commissioners are so far disconnected to the real workplace they'd add no value"

"Bias towards employee. Commissioners have little or no knowledge of how business needs to operate in this day and age."

"Commercial arrangements should be between the parties concerned with minimal external interference"

"The Fair Work Commission is full of Labor's mates, ex union heavies, and would be highly biased towards employees as is the current situation with claims brought before the Fair Work Commission."

"I think work arrangements should be on the discretion of the parties involved. The involvement of external parties brings about rigidity, loss of trust and long costly processes. The modern workforce has a fair comprehension of their rights at work."

"Because the FWC should remain focused on employment terms and conditions as they are set out in the Act rather than become embroiled in the commercialism of productivity"

"It is not the function of the commission - they do not have the skill set or jurisdiction."

"Not necessary - other instruments better placed to do so"

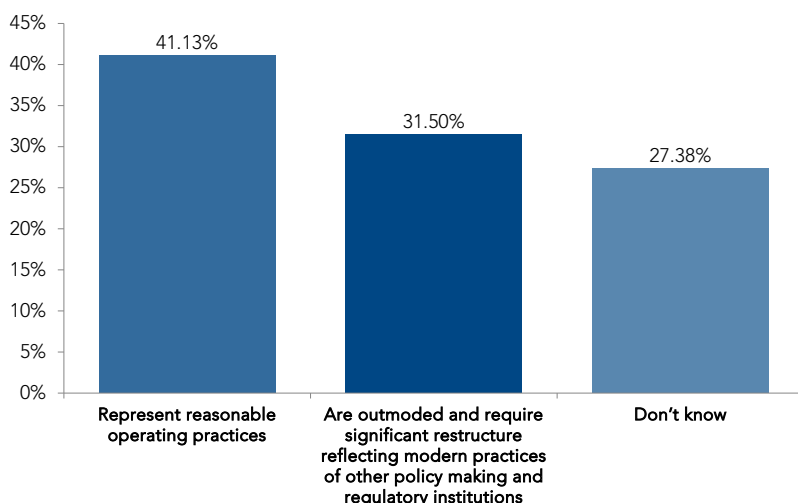
"The focus should be on setting and maintaining a fair and balanced framework, and leave issues of productivity to employers."

"The bureaucracy would cause stagnation."

Respondents were asked, as indicated in Figure 20, whether they believed the structure and operations of the Fair Work Commission were appropriate. Around four out of ten respondents (41%) thought it represented reasonable operating practice, while nearly three out of ten thought it was outmoded and required a restructure reflecting modern practices of other policy making and regulatory institutions. A substantial 27% remained on the fence.

Figure 20. Do you believe the structure and operations of the Fair Work Commission represents reasonable operating practice or is outmoded and requires significant restructure?

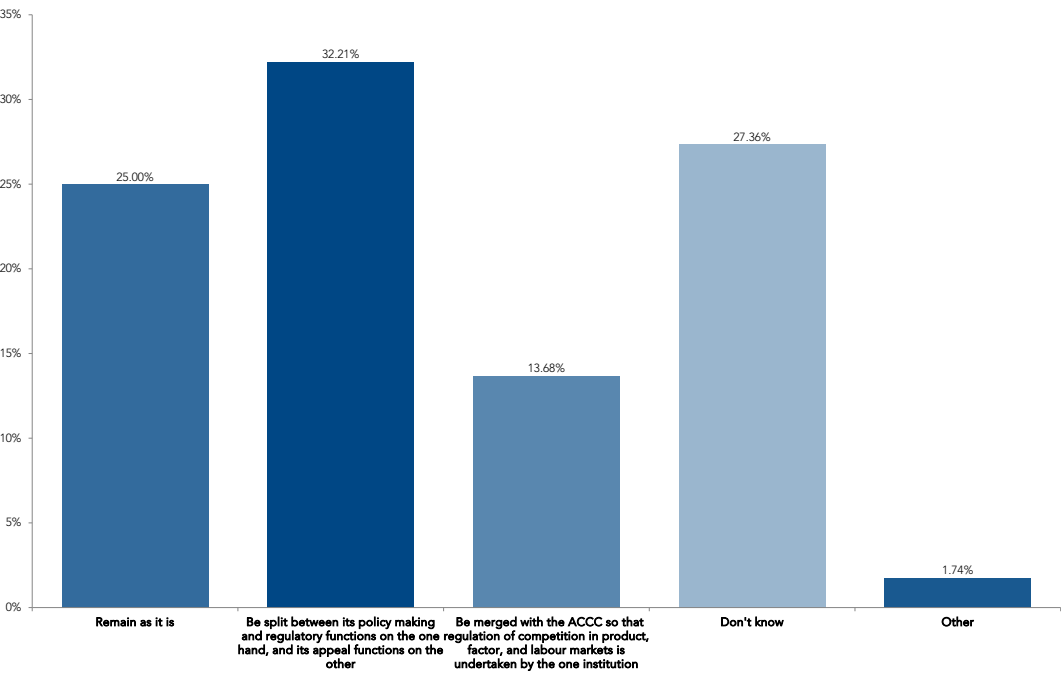
800 respondents



A final question on the Fair Work Commission asked respondents whether it should be split between its policy making and regulatory functions, be merged with the ACCC or remain as it is. Figure 21 shows that around a third of respondents (32%) believe it should be split, 14% would like to see it merged with the ACCC, and a quarter of the sample (25%) believe it should remain as it is. A substantial 27% did not express a view on the matter.

Figure 21. Should the Fair Work Commission be split between its policy making and regulatory functions, be merged with the ACCC, or remain as it is?

804 respondents



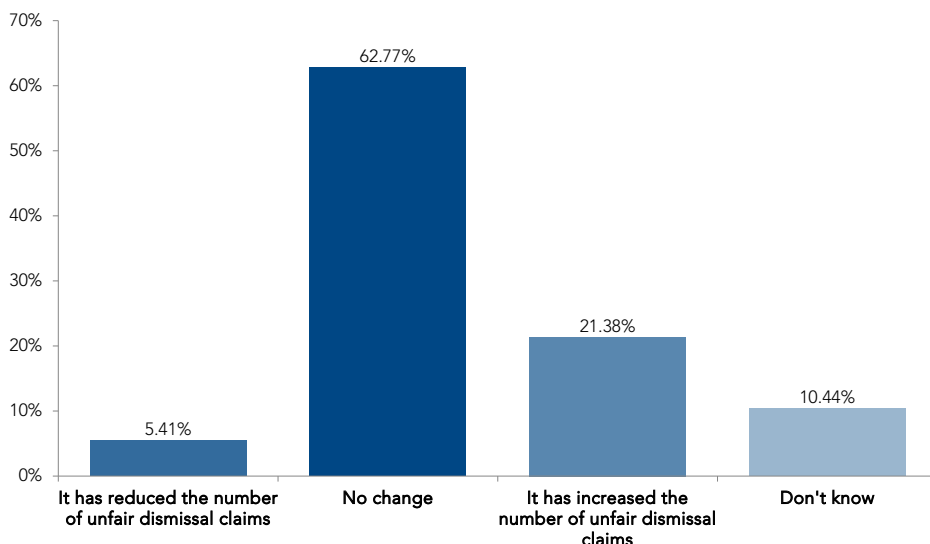
ISSUES WHERE RESPONDENTS APPEAR CONTENT WITH STATUS QUO

Unfair dismissal threshold

Figure 22 indicates that the threshold applied in unfair dismissal laws has had a minimal impact in respondent workplaces, with nearly two thirds of the sample (63%) reporting that nothing has changed as a result. One in five respondents (21%) reported an increase in unfair dismissal claims, 5% reported a reduction in claims and 10% didn't know.

Figure 22. What has changed in your workplace as a result of the current threshold applied in unfair dismissal laws?

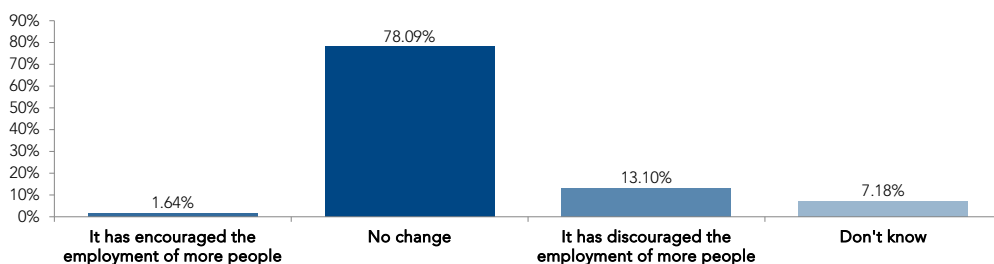
795 respondents



In terms of the impact on employing people, Figure 23 indicates that the threshold applied in unfair dismissal laws has had a slight impact in respondent workplaces, with more than three quarters of the sample (78%) reporting that nothing has changed as a result. A little more than one in ten respondents (13%) reported that it discouraged the employment of more people.

Figure 23. In terms of employing people, what has changed in your workplace as a result of the current threshold applied in unfair dismissal laws?

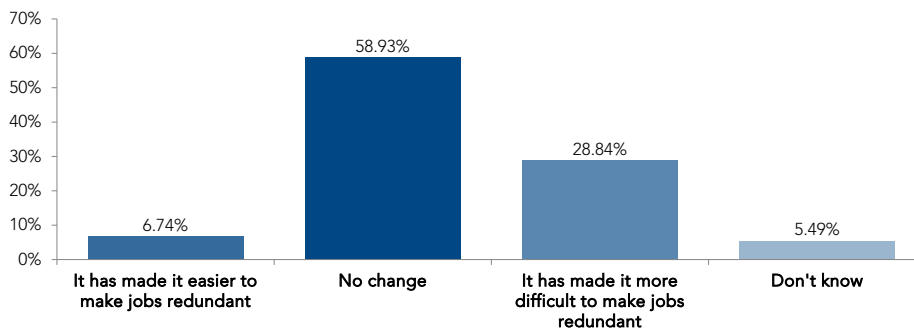
794 respondents



In terms of the making jobs redundant, Figure 24 indicates that the threshold applied in unfair dismissal laws has had an impact in respondent workplaces, with more than a quarter of respondents (29%) reporting that the laws make it more difficult to make jobs redundant. Only 7% reported that the laws make it easier to make jobs redundant, but a considerable majority (59%) reported that nothing has changed with respect to making jobs redundant.

Figure 24. In terms of making jobs redundant, what has changed in your workplace as a result of the current threshold applied in unfair dismissal laws?

801 respondents

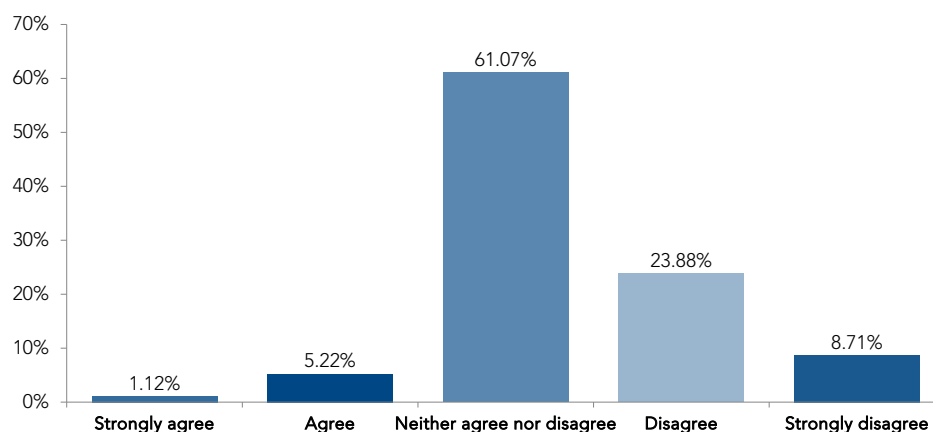


Willingness to employ

Irrespective of the unfair dismissal threshold, Figure 25 indicates whether respondents agreed or disagreed with this statement: 'Operating under the Fair Work Act will increase the organisation's willingness to hire employees over the next three years'. While one in three respondents disagreed (24%) or strongly disagreed (9%) with the statement, a substantial 61% neither agreed nor disagreed with it, and a 6% were in agreement.

Figure 25. How strongly do you agree or disagree with this statement: 'Operating under the Fair Work Act will increase the organisation's willingness to hire employees over the next three years'?

804 respondents

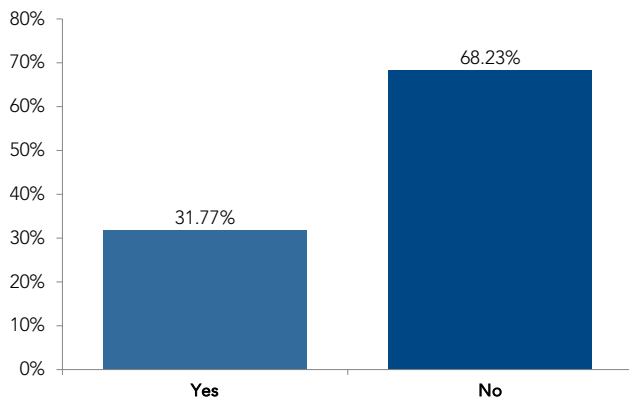


Transfer of business provisions

Figure 26 indicates that less than a third of respondent organisations (32%) have sought or considered 'outsourcing' (or insourcing) part of its operations which involve the transfer of employees from one employer to another.

Figure 26. Has your organisation sought or considered 'outsourcing' (or insourcing) part of its operations which involve the transfer of employees from one employer to another?

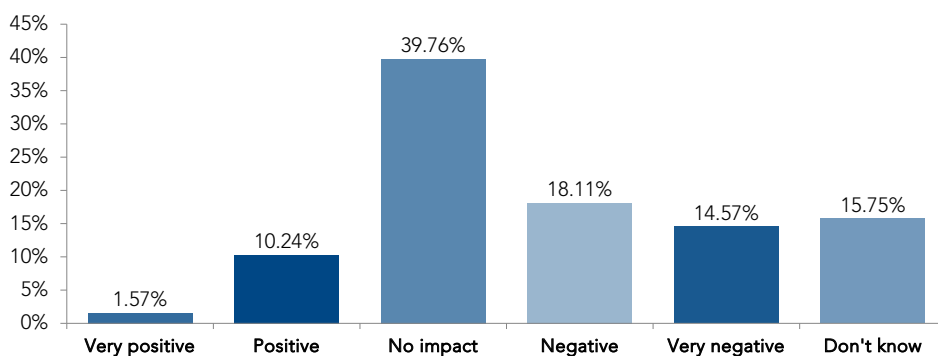
809 respondents



Of the 254 respondents whose organisations have experienced involvement in the transfer of business provisions of the Fair Work Act, Figure 27 shows that 40% reported no impact. A third of respondents reported that the impact was negative (18%) or very negative (15%), and 12% reported the impact to be positive (10%) or very positive (2%).

Figure 27. What impact has the transfer of business provisions of the Fair Work Act had on your organisation?

254 respondents



With respect to Figure 27, the respondents who had experience of transfer of business provisions, were invited to share their thoughts. These are a sample of responses:

Positive

"Those who will be offered a position by the private provider transfer on terms and conditions no less favourable overall. This is security and assurance to the transferees until the replacement Agreement is in place. Those who do not have a role in the new private provider are protected by their local Agreement and the FW Act."

"Allows for fair transfer of employee work and places a value on human knowledge and contribution"

"It reduces the potential for redundancy in periods of downturn and maintains a skilled labour force"

"Reduced labour costs"

"Ability to place resources where they are required to ensure business continuity"

"Made it very easy to transfer the employees without fear of loss of entitlements"

"Allowed employees to have confidence in their entitlements and contract clauses from one business to another."

Negative

"Makes it very difficult for an organisation to start with a fresh slate if acquiring a business"

"Created some apprehension and restrictions on the receiving business"

"The provisions are complex and confusing, and we have generally found that the 2 employers concerned (ourselves and the other party) have different views about what constitutes a transfer of business"

"Ended up having to pay redundancy to a number of staff as terms of transfer were too onerous on the new employer"

"It makes it difficult to determine which employees should be retained in the workplace and puts undue emphasis and cost on the employer to implement a formal recruitment process"

"People do not want to buy my business as they have to take on the conditions of my existing workforce which are higher than my competitors"

"We are looking at acquiring a section of business from a major client which would involve transfer of business and a number of their employees who are on a particularly generous union EBA that will not expire until 2018. Knowing that bargaining for the replacement agreement in 2018 will involve up to 4 unions is making us reconsider the whole package"

"The administration of these provisions have stopped new agreements that suit new investments in the competitive global economy"

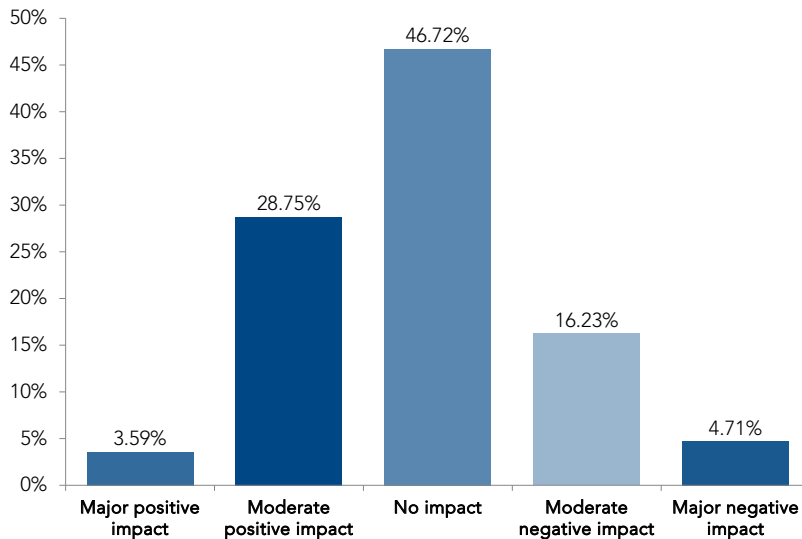
"The provisions are overly complex requiring legal advice more often than not. The major issue is the transfer of industrial instrument. The new employer should be able to introduce their own instrument without the legacy of industrial instruments transferring with staff. When merging 6 or so similar organisations with transferable instruments that are all different becomes a nightmare."

Impact of bullying provisions

Figure 28 indicates the respondent answers to a question about the impact of the bullying provisions introduced into the Fair Work Act. Nearly half the respondent sample (47%) reported no impact, while a third of the sample reported moderate positive impact (29%) or major positive impact (4%). Around one in five respondents found the impact moderately negative (16%) or very negative (5%).

Figure 28. What has been the impact in your organisation of the bullying provisions introduced into the Fair Work Act?

807 respondents



A FINAL WORD

Survey respondents were invited finally to state in their own words what main outcomes they would like to see from the Productivity Commission Inquiry. This is a sample of responses:

"A better more flexible efficient system that meets the competitive needs of the nation, but also delivers minimum standards to workers in a more efficient and less bureaucratic way."

"A 'swing' back away from union power and workers' rights to a balance between employer and employee rights and obligations. The system has been skewed away from employers' rights and productivity and all in favour of workers and unions hence killing business opportunities and employment opportunities."

"A more modern, flexible IR framework less targeted towards the union perspective and those of employees such that it allows businesses to operate more flexibly. Penalty rates really need to go to allow small businesses to operate on the weekends and public holidays. The right of entry provisions need to be overhauled to stop their abuse by unions, particularly in the public sector."

"I'd like to see evidence presented (of which a great deal exists) that finally puts an end to the furphy that reducing minimum wages or cutting penalty rates will solve business' 'problems'. Better management will solve business' problems. I'd also like to see an end to lazy blaming of the legislation for poor workplace relations - workplace relations don't rely on law, they rely on people knowing their jobs, working together, and behaving respectfully."

"A recommendation to build a small business industrial relations system, cutting out the need for excessive regulation and third party involvement"

"A system which holds unions to account. A system which views people as an asset and investment rather than a liability (business perspective) and/or victims (union perspective). A system which is easier for organisations to navigate in good faith."

"What I don't want to see is a return to Work Choices as it took the reform of the industrial landscape a step too far. I would like some clarity around bullying, and some around union involvement."

"Researched evidence of the relationship, if any, between wage increases and employment, including whether lower wages provides overall economic benefit."

"I would like to see employers directly negotiating with employees. The majority of the Australian workforces choose not to join unions, yet the Fair Work system forces them into our workplaces."

"Fair and reasonable processes and access to information, advice and resources."

"A fair and balanced report that does not represent the particular political ideology of any one political party. A report that seeks to entrench the principles of fairness into the employee / employer relationship."

"A significant freeing up of the industrial scene in Australia by legislation that is more balanced and sets only a safety net of conditions."

CONCLUSION AND FURTHER CONTACT

In setting out the findings of this survey, we are providing the Productivity Commission with a sample of perspectives from professionals in business whose job is either partly, largely or totally to operate within the legal framework that is the Fair Work Act.

We make no recommendations in light of these expert findings, but commend them to the Commission and trust they assist in its deliberations.

AHRI is willing to participate in any hearings that the Commission may hold to speak to this submission.

If the Commission wishes to contact AHRI further about this submission, please do so in the first instance through Paul Begley, the National Manager, Government and Media Relations,

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