

FAIR WORK ACT REVIEW

CCIQ supplementary submission to the Fair Work Act Review Panel

2 March 2012

	Page No.
1.0 Executive summary	3
2.0 CCIQ commentary on key issues raised in the Review of the Fair Work Act	4
- Unfair dismissal and adverse action claims	
- Increasing employment costs	
- National employment standards	
- Workplace agreements	
- Industrial action	
- Union right of entry	
- Other issues	
3.0 Conclusion and recommendations	12
Appendix 1: Abbreviations of stakeholders	13
References	14

1.0 EXECUTIVE SUMMARY

- 1.1 The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to provide a supplementary submission to the Review of the Fair Work Act. Queensland businesses are highly supportive of reviewing the Fair Work Act to reduce the negative impacts on their business that have occurred and to enhance their capacity to employ and retain staff, and reintroduce flexibility into the workplace.
- 1.2 Through the reading of submissions on the Review of the Fair Work Act, it is clear that much more needs to be done to deliver a more even playing field between employers and employees. A number of different stakeholders have highlighted the need for substantial improvements to the Fair Work Act that will increase workplace productivity and flexibility, in addition to enhancing the capacity of employers' to employ and retain staff. Stakeholders including the Productivity Commission,¹ the Victorian Government,² industry associations (including CCIQ,³ ACCI,⁴ Ai Group,⁵ Master Builders,⁶ and Business Council of Australia⁷), academics and human resource professionals (ie Australian Human Resources Institute⁸), major businesses (ie Qantas,⁹ BHP Billiton,¹⁰ and Westfield¹¹), and a wide variety of media reports have called for substantial improvements to the Fair Work Act. It is clear that action must be taken when such a wide variety of stakeholders are calling for change.
- 1.3 Prior to the introduction of the Fair Work Act, the Labor Party provided a commitment to "get the balance right by introducing a fairer and more flexible industrial relations system."¹² Considering the feedback received from the Queensland business community by CCIQ and through the analysis of submissions provided by stakeholders to the Review of the Fair Work Act, it is clear that this has not occurred. Of particular concern are the number of businesses who have highlighted that they are employing no or very few employees due to the complexities associated with the Fair Work Act. It is essential that the Fair Work Act delivers on its objectives, particularly to deliver increased flexibility and enhancing productivity in workplaces. It is also essential to deliver improvements to ensure the Fair Work Act promotes and encourages employment throughout Australia, and not the opposite.
- 1.4 There is common criticism regarding the involvement of unions and third parties in workplaces, and the associated impact on employment and productivity outcomes. This is despite falling union membership, with only 13.8% of the private workplace union members in August 2010.¹³ CCIQ remains concerned about the increasing number of recommendations being pushed by unions that appear to try and increase their relevance in today's workplaces. It is essential that any changes made to the Fair Work Act are aimed at meeting the needs of employers and employees, and not the concerns of unions regarding diminishing membership numbers.
- 1.5 Queensland and Australian businesses continue to experience ongoing pressures that are impacting on their viability including a difficult economic climate overseas, increasing business costs, businesses shifting production offshore, the high Australian dollar and so on. It is important that our international competitiveness is maintained to ensure the viability of Australian industries moving forward. Increasing the level of regulatory burden around workplace relations will deliver a more challenging environment for businesses, only further complicating the current situation.
- 1.6 There is a strong call for change; change that improves the flexibility between employers and employees, and focuses on delivering productivity improvements within workplaces. Australia needs a workplace relations system that meets the needs of modern Australian workplaces. It must provide the flexibility that employers and employees need to ensure our businesses remain competitive in a global economy. Increased red tape constraining productivity and the viability of businesses is not in the nation's best interest. Nor are laws that restrict the number of people being employed. Improvements are drastically required. Now is the time to have an honest and rigorous debate about Australia's workplace relations system and make sensible and balanced changes.
- 1.7 CCIQ, as a member of the Australian Chamber of Commerce and Industry (ACCI), provides support for the position and recommendations made by this organisation to the Review. CCIQ's submission is intended to complement ACCI's submission and provide the Queensland business community context.

2.0 CCIQ COMMENTARY ON KEY ISSUES RAISED IN THE REVIEW OF THE FAIR WORK ACT

CCIQ has analysed the majority of submissions provided by organisations and unions to the Review of the Fair Work Act. The below table includes feedback from CCIQ on the issues and recommendations that have been raised by stakeholders and whether CCIQ believes further action is warranted.

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
UNFAIR DISMISSAL AND ADVERSE ACTION CLAIMS				
Lack of flexibility and cost implications associated with unfair dismissal legislation on small and medium businesses.	<p>A number of concerns have been raised including:</p> <ul style="list-style-type: none"> The increasing number of claims under the Act; Businesses are settling claims to save time and money (“go away money”), not due to the merits of the claim; The employment of unproductive and unsuitable employees are maintained due to fear of claims; Substantial time and cost spent by businesses, particularly small businesses, to respond to claims; Lack of onus is placed on employees to demonstrate they have reasonable grounds for making the claim; Claims continue to arise despite the following of guidelines (ie Small Business Fair Dismissal Code); Employers lose money even if the claim is dismissed; Reluctance to hire staff due to concerns around potential unfair dismissal claims; Low application fees associated with lodging claims; No penalties or fines for frivolous or vexatious claims; Lack of direction and assistance provided by FWA; Lack of time provided for employers to respond to a claim prior to conciliation; Employees being awarded claims despite FWA acknowledging valid reasons for terminating the employee (due to procedural errors by the employer); ‘No win no fee’ advertising increasing claim numbers; Employers unsure of the procedural requirements around terminating employees; A terminated employee’s personal circumstances (outside the scope of the employment relationship) are taken into account during consideration of claims. 	AAA, ACCI, AFEI, AHA, AiG, AMCAA, AMIC, AMIF, AMMA, ARA, BIG, CAI, CCF, CCIQ, CCIWA, HIA, MBA, MGA, NFF, VECCI, Victorian Government	<p>CCIQ included a detailed section in our original submission on the need to address business concerns regarding the negative impacts of unfair dismissal legislation on businesses. Substantial changes are required to counteract the negative implications that this legislation is having on employment, particularly businesses reluctance to hire permanent staff. CCIQ is strongly supportive of re-implementing an unfair dismissal law exemption for small and medium businesses.</p> <p>If an exemption is not put in place, it is essential that at least greater onus is placed on employees to demonstrate that their dismissal was harsh, unjust or unreasonable. Employers should not be penalised for terminating an employee for a valid reason (small procedural defects should be overlooked if the employer acted in good faith).</p> <p>It is important that a more even balance is returned between employers and employees to reduce the number of “go away” payments. If cases are dismissed, all costs should be payable by the employee (unless in exceptional circumstances). There should also be higher application fees for lodging claims and penalties/fines introduced for claims that are found to be frivolous or vexatious.</p>	✓
Proposals to broaden unfair dismissal legislation	<p>Proposals include:</p> <ul style="list-style-type: none"> Extend the time period to lodge applications (up to 60 days); Reduce the minimum engagement period from 6 months to 3 months; Extend maximum compensation from 26 weeks to 52 weeks. 	ACTU, AFAP, AWU	CCIQ is not supportive of broadening the unfair dismissal legislation (see above) including extending the time period for lodging unfair dismissal claims. Fair Work Australia currently accepts late applications in exceptional circumstances. ¹⁴	✗

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
UNFAIR DISMISSAL AND ADVERSE ACTION CLAIMS CONT...				
Adverse Action / General Protection claims	<p>A number of concerns have been raised including:</p> <ul style="list-style-type: none"> The scope of claims is very broad; Are more attractive as compensation payments are uncapped; Reverse onus of proof on employers to defend adverse action claims rather than employees being required to prove them; Impedes employers in effectively managing their business; Employers are cautious about performance managing employees due to claim concerns, further constraining employers' ability to manage underperforming employees; Are being misused to circumvent unfair dismissal laws or for malicious reasons; The threat of claims being used to restrict employers implementing particular management decisions; Time frame for unlawful dismissal claims (60 days compared to 14 days for unfair dismissal claims); The 6 year time limit for disputes that do not involve termination is too long and needs to be reduced; Lack of powers provided to FWA to deal with frivolous and malicious claims, meaning claims can progress to the Federal Court at considerable expense and time for employers. 	AAA, ACA, AFEI, AHA, AHEIA, AiG, AMIF, AMMA, ANRA, ARA, BCA, BIG, Business SA, CAI, CCF, CCIQ, CCIWA, ConFACT, HIA, MBA, MCA, MGA, NFF, Rio Tinto, VECCI, WA Government	<p>CCIQ is strongly supportive of removing access to adverse action claims due to the broad scope that can be covered by the clause "workplace right". Claims can be made on a broad range of issues such as performance management, handling of pay rise requests or employee complaints, or management decisions surrounding flexible work arrangement requests. These claims are placing further restrictions on businesses to make the management decisions necessary to run successful and sustainable businesses. A more even playing field is required between employers and employees.</p> <p>If these claims are not removed, at the very least, the reverse onus of proof should be removed, requiring the claimant to prove their case. Furthermore, the time frame for submitting claims should be substantially reduced to coincide with the timeframe provided for unfair dismissal claims.</p>	✓
Provide low cost access to the Federal Court for General Protection Claims	Provide assistance to employees making general protection claims in the Federal Court as the formality and expense associated with a determination in the Federal Court is significantly higher than those associated with Fair Work Australia.	QWRO	If an employee or employer is willing to pursue a claim, they should be prepared to pay the costs associated with that claim. It is the responsibility of the parties to the claim to pay the associated costs, not the taxpayer.	x
INCREASING EMPLOYMENT COSTS				
Difficulties and costs associated with the modern awards	<p>Common concerns raised include:</p> <ul style="list-style-type: none"> Difficulties in applying and interpreting the modern awards; Concerns with identifying the applicable modern award/s for a particular workplace; Applying and interpreting the transitional arrangements; Unclear and unworkable clauses; Substantial cost increases from a process that was meant to be cost neutral; Lack of assistance provided by the Fair Work Ombudsman's office in relation to interpreting awards; Not recognising the 24/7 nature of some industries ie tourism; Increasing employer obligations surrounding allowances; Cost increases not being offset by productivity gains. 	ACCI, AFEI, AMIC, AMIF, ARA, CCIQ, CCIWA, NRA, QTIC	CCIQ is strongly supportive of further improvements being made in the area of modern awards to ensure they meet the needs of modern workplaces and the flexibility required by employees and employers. It is also important for staff within the Fair Work Ombudsman's office to be sufficiently qualified to provide the required assistance to employers.	✓

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
INCREASING EMPLOYMENT COSTS CONT...				
Impact of penalty rates on the competitiveness and viability of businesses	<p>Concerns raised include:</p> <ul style="list-style-type: none"> Increased wage rates associated with working on weekends, public holidays etc are not profitable for businesses in particular industries ie tourism, hospitality, and retail; Failure to recognise the 24/7 nature of key industries; Businesses are reducing their trading hours because it is unprofitable to operate during specific times when employment costs are substantially higher; Staff numbers in some businesses have decreased due to reduced trading hours; Inflexibility for those workers who would prefer to work weekends, public holidays due to family or other commitments; The current system does not take into consideration long standing arrangements that have been in place in some industries, ie retail. 	AAA, ACCI, ANRA, ATEC, CCIQ, MGA, PGA, QTIC	CCIQ is concerned about the impact of penalty rates, particularly for those businesses that operate 7 days a week. There are serious concerns regarding the impact on the competitiveness of these businesses, in addition to the implications for employees/communities when these businesses are forced to close over weekends/ public holidays. CCIQ rejects the claims of the unions (ie ACTU) that shifts that attract penalty rates are “unsocial shifts” and therefore must be compensated as such – this fails to take into consideration modern lifestyles where particular employees prefer to work week nights or weekends to fit into their busy schedules or to provide them the flexibility they require to meet family commitments. ¹⁵ Action is required during the review of modern awards to enhance the competitiveness of industries that operate 7 days a week.	✓
Minimum wage setting mechanism	<p>Issues raised include:</p> <ul style="list-style-type: none"> There is a need for specific consideration to be given to trading conditions in particular sectors; Key economic considerations do not appear to be taken into account during minimum wage setting deliberations; Lack of transition between the time the minimum wage decision announcement is made and the time in which employers are required to implement the increase. 	ACCI, AFEI, AiG, ANRA, CCIWA, HIA	CCIQ is supportive of changes being made in relation to how the minimum wage is set and implemented every year. On many occasions, FWA’s decision in relation to increases to the minimum wage fails to reflect the conditions being experienced within the economy or the difficulties faced by businesses. ¹⁶ CCIQ is supportive of minimum wage increases that have positive impacts on employment. Businesses should also be provided with a longer transition period for implementing changes.	✓
Increase to superannuation from 9% to 12% by 2019/20	Increases to superannuation must be offset by the Minimum Wage Panel as part of the annual wage review.	ACCI, AHA, BCA, Business SA, CCIQ	CCIQ remains strongly opposed to increasing the superannuation guarantee levy. However, in the event that the proposal passes Parliament, it is essential that the superannuation increases are offset by annual increases to the minimum wage.	✓
NATIONAL EMPLOYMENT STANDARDS				
Payment of annual leave on termination	Discrepancies currently exist between the NES and some modern award provisions regarding the payment of leave loadings for employees who are paid out for annual leave on termination of their employment. The Fair Work Ombudsman has taken the view that annual leave loading is payable on termination, a view not consistent with long standing industrial practices in many industries. Claims are being made by terminated employees for outstanding annual leave loading.	ACCI, AFEI, AiG, AMIC, AMIF, AMMA, ANRA, BIG, Business SA, CCIWA, ConFACT, NFF, NRA, NSWBC, PIAA, WA Government	A resolution is required to this issue to provide increased certainty for employers. CCIQ is supportive of the position that unless otherwise stated, annual leave loading is not payable on termination.	✓

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
NATIONAL EMPLOYMENT STANDARDS CONT...				
Increasing the maximum period for averaging hours	Support is provided to allow businesses to average hours over a longer period of time (ie 52 weeks).	AAA, ACCI, AFEI, AMIC, CCIQ, HIA, MBA	Queensland businesses have provided support for increasing the maximum averaging period to take into consideration the high and low periods, particularly within small and medium enterprises.	✓
Employers to provide employees with a Certificate of Employment upon termination	Certificate could be used by employees to verify claims of previous employment and experience to prospective employers and allows employees to create an employment history record.	QWRO	CCIQ views this recommendation as unnecessary and would only add an additional layer of red tape. This would be particularly burdensome to those businesses in industries with high staff turnovers. CCIQ believes employees should keep track of their own employment history. Most prospective employers would be keen to contact former employers to obtain information on potential employees making the certificate redundant.	X
Establish a maximum time allowable to make payment of monies owed upon termination of employment	The Act to stipulate a time period within which payment must be made to an employee whose employment has been terminated either through dismissal or resignation.	QWRO	Considering a number of modern awards specifically deal with this issue, this issue will be raised during the review of modern awards if seen to be of concern to relevant stakeholders.	X
Public holidays	Concerns regarding additional public holidays awarded by State Governments when a holiday falls on a weekend and the associated cost impacts for businesses that operate 7 days a week. Inconsistencies are also experienced between jurisdictions.	ACCI, AiG, ANRA, CAI, CCIQ, CCIWA	CCIQ has previously raised concerns regarding the additional cost burden for businesses operating seven days a week who are required to pay penalty rates for both the actual and substitute public holidays. ¹⁷ CCIQ believes that every business/employee in Queensland should be entitled to the same number of public holiday entitlements to ensure a consistent approach across the state and an even playing field for all businesses. CCIQ is also supportive of achieving national consistency in relation to public holidays in order to ensure minimal disruptions to Queensland businesses, particularly those who operate across borders.	✓
Return to Work Guarantee following parental leave	Employers should be obliged to retain the role of employees who return from maternity leave to allow them to return to the same role upon recommencement.	AWU	CCIQ rejects this recommendation. Employers are required to hold a position for an employee for up to 24 months during an employees' parental leave. ¹⁸ It is unreasonable to expect that in all circumstances, an employee would be able to return to their exact position following such a long period of leave.	X
Need for increased obligations around casual workers	Similar obligations to permanent employees should be provided by employers to casual workers, such as the application of redundancy pay.	ACTU, AWU	CCIQ rejects this recommendation. Casual workers are paid substantially higher pay rates than permanent employees to compensate them for entitlements that they do not receive. ¹⁹ Furthermore, the majority of casual employees prefer this type of employment due to the flexibilities it provides them.	X

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
WORKPLACE AGREEMENTS				
Current workplace agreements' system not meeting the needs of modern workplaces	<p>Key issues raised include:</p> <ul style="list-style-type: none"> • Greater flexibility is required to allow employers and employees to make arrangements that best suit their needs; • The Better Off Overall Test (BOOT) does not allow employers and employees the flexibility they are seeking (ie trade-offs between financial and non-financial benefits); • The BOOT can mean that an agreement will not proceed if a single employee can demonstrate that they would not be better off under the agreement; • Employees can cancel an individual flexibility agreement (IFA) at any time with 28 days' notice; • Employers fear using IFA's due to claim concerns if an employee changes their mind/cancels the agreement; • Questions around what clauses can actually be negotiated between employers and employees in IFAs; • Substantial time and complexity as well as a lack of consistency associated with approving agreements; • Unions only approving agreements that limit the use of IFAs. 	AAA, ACCI, AHA, AiG, AMMA, ANF, ANRA, BCA, Business SA, CAI, CCIQ, CCIWA, MBA, MGA, NFF, NRA, QTIC, VECCI, Victorian Government	CCIQ is strongly supportive of allowing employers and employees to engage in improved flexibility arrangements that suit both parties as this would prove beneficial to the organisation and potentially increase the employment opportunities available within the community. This is also important to increasing employers' ability to meet the flexibility requests of employees in relation to family commitments. Greater balance is required between the needs of employers and employees. CCIQ rejects the claims of the ACTU that individual agreements are only used by employers to get employees to "work whenever, wherever and however the employer desired at a flat hourly rate." ²⁰	✓
Increased union involvement in the development of workplace agreements is restricting flexibility and workplace productivity.	<p>Issues raised include:</p> <ul style="list-style-type: none"> • Unions pressuring employers to include restrictive and unproductive provisions in agreements such as increased access rights for unions; • Issues outside of the employment relationship are being pushed to be included in enterprise agreements; • Unions generally refuse to sign agreements unless the employer agrees to all union clauses; • Increased emphasis on wage increases unsupported by productivity improvements; • Union involvement despite only a small number of members; • Union opposition to agreements despite majority support provided by employees within that workplace; • Lack of consideration of the economic circumstances and challenges faced by businesses. 	ACA, AFEI, AiG, AMCAA, AMMA, AMIC, Business SA, CCIQ, CCIWA, MCA, NECA, Qantas, VECCI, Victorian Government	CCIQ is strongly supportive of restricting the involvement of unions and other third parties in the development of workplace agreements. Clauses relating to issues that are outside matters pertaining to the employment relationship should be excluded from these negotiations. There must be scope in the system that allows employers to negotiate with their employees regarding flexibility and productivity, and in addition require productivity offsets for benefits provided to employees.	✓
Broaden the issues that can be negotiated by unions in workplace agreements	There is a push to broaden the issues to be negotiated by unions in workplace agreements including ensuring the employer does not outsource their jobs to contractors/labour hire workers, does not send jobs overseas, continues to invest in Australia, is a responsible corporate citizen, provides certain benefits to workers, provides better unfair dismissal rights and provides better access to union officials in the workplace.	ACTU	CCIQ is strongly opposed to broadening the scope of agreement negotiations. The scope of negotiations should only be broad enough to cover matters pertaining to the employment relationship between the employer and employees. Furthermore, workplace agreements should contain no additional entry rights for union officials than those contained in the Act.	✗

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
INDUSTRIAL ACTION				
Increasing industrial action and the impacts on businesses	Key issues raised include: <ul style="list-style-type: none"> Lack of time provided for employers to respond to employee claim action; Negative impact on business when industrial action is called, but then withdrawn at the last minute; Long processes that are time consuming and expensive; Industrial action taken on matters that employers can not viability meet or are related to non-employment matters; Increasing protected action ballots sought by unions; Significant cost of industrial action borne by industry, customers and the community; Employers are susceptible to industrial action even in circumstances where bargaining has not commenced. 	AHEIA, AiG, AMIC, CCIQ, NFF, Qantas, Victorian Government	CCIQ is supportive of changes to the Fair Work Act that reduce the negative impacts of industrial action on businesses, workers and the economy. Industrial action should not be permitted on matters that fall outside of the employment relationship. Furthermore, industrial action should not be permitted in circumstances where bargaining has not commenced, particularly in workplaces that are harmonious and productive. CCIQ is strongly opposed to any changes that increase the ability of unions and workers to take industrial action.	✓
The Fair Work Act should be strengthened to require employer response action to be a reasonable and proportionate response to employee response action	For example, requiring employers to give 3 working days' notice of employer response action.	AIPA, ASU, NUW	CCIQ believes further restrictions must not be placed on employers in relation to how they handle industrial and associated action. Businesses will not make decisions that are deemed unnecessary unless it is seen as essential to do so to maintain the viability or reputation of the business. Employers should be free to make the management decisions necessary to ensure the sustainability of their business. Employer response action should always be available in response to employee response action.	X
Strengthening Protected Industrial Action	Issues raised include: <ul style="list-style-type: none"> Removing the requirement for a compulsory secret ballot; Reduce the requirements around the suspending or terminating of industrial action. 	ACTU, NUW	CCIQ is not supportive of removing the requirement for a compulsory secret ballot in relation to whether Protected Industrial Action should be undertaken. It should be the call of the workers, not the bargaining representatives on whether action is required. Majority support of employees is necessary before determining that action should be taken. Furthermore, CCIQ is not supportive of lifting requirements around suspending or terminating industrial action that can result in significant harm to the business, customers/suppliers or the economy (ie removing the power of the Minister to terminate such action).	X

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
UNION RIGHT OF ENTRY				
Concerns surrounding union access to workplaces	<p>Issues include:</p> <ul style="list-style-type: none"> • Unions entering workplaces without providing details on the reason, therefore not allowing employers to resolve the matter quickly and limit the impact on productivity; • Unions accessing workplaces where they have no members; • Workplace agreements containing additional access rights for unions above those included in the Fair Work Act; • Selling “membership” to employees while in the workplace; • Competition between unions for members; • Employers not being aware of union officials in the workplace until after discussions with employees have taken place; • Frequent visits by union officials disrupting workplaces; • Unions have been found to authorise third parties to conduct discussions in workplaces on their behalf; • Unions requesting access to a workplace where there has been no request by union members. 	ACCI, AFEI, AMCAA, AMIC, AMMA, ANRA, CCIQ, CCIWA, HIA, MCA, NECA	<p>CCIQ is supportive of increased obligations and requirements surrounding the access of union officials to workplaces including:</p> <ul style="list-style-type: none"> • Unions being required to explicitly outline their reasons for entering the workplace to employers prior to entry; • Unions to receive acknowledgement of the visit from employers prior to entering the workplace; • Unions only being permitted to enter a workplace where they have members and where one of those members has requested the visit. • Restricting the number of visits that officials can make to a workplace to hold discussions. 	✓
Increasing the access of unions within the workplace	<p>Claims that employers restrict the access of unions within their workplaces and hamper their activities. This includes staggering worker breaks so there isn't a common break, making meeting rooms inconvenient or restricting access to company email systems. Support was provided for the Act to stipulate that employers must take reasonable steps to facilitate meetings between workers and unions officials in a place that is proximate and private. Furthermore, the Act should also outline the activities that union delegates are empowered to undertake in the workplace.</p>	ACTU	<p>CCIQ is strongly opposed to further increasing the access of unions to workplaces and placing further constraints on businesses in dealing with union entry requests. For example, it is unreasonable for the vast majority of businesses to have employees take breaks at the same time, as this would result in the shut down of the business during those times.</p>	X
OTHER ISSUES				
Enhancing compliance and associated powers of inspectors and authorised industrial officers	<p>Proposals include:</p> <ul style="list-style-type: none"> • Increase the ability of Fair Work Inspectors to conduct random compliance audits of safety net contractual entitlements; • Permit accredited union representatives to inspect time and wages' records for members/potential members during working hours without the need to be invited by a member/potential member to do so. 	QWRO	<p>The assumption that any restrictions on random workplace or industry audits will result in an increased temptation by employers to underpay their employees is unfounded. The vast majority of employers do the right thing by their employees as they continue to be faced with ongoing labour and skill shortages. In fact 64% of businesses indicated in a recent CCIQ survey that they pay their employees more than the applicable modern award.²¹ Queensland businesses also do not support providing union inspectors with increased access to their workplaces, particularly to inspect records of non union members.</p>	X

Overview of Issue/Recommendation	Additional information on Issue/Recommendation	Relevant Stakeholders*	CCIQ Position	Action required
OTHER ISSUES CONT...				
Engagement with Fair Work Australia and the Fair Work Ombudsman	Many businesses continue to raise concerns regarding the inconsistent and inaccurate advice/feedback provided by FWA and the FWO. More support is required to ensure timely and accurate advice can be provided when required.	ACCI, ANF, CCIQ, CCIWA, NFF	CCIQ is strongly supportive of increasing the accessibility and useability of FWA and the FWO by employers who engage with the service. These bodies should be able to provide accurate and reliable advice and feedback to employers that results in reduced negative impacts on businesses and employment.	✓
Restricting the wholly-owned foreign subsidiaries of Australian businesses and extending coverage to include foreign-based workers.	The FWA should deal with Australian employers who transfer their business to a wholly-owned foreign subsidiary to avoid the operation of enterprise agreements with its employees in Australia. Furthermore, the Act should be extended to cover foreign –based employees when in Australia.	ACTU, AIPA	CCIQ is strongly opposed to placing further restrictions on employers on how they choose to run their business to be successful and profitable. If businesses are in fact transferring their business to wholly-owned subsidiaries to avoid the Australian workplace relations system, this is a sign that improvements must be made to the system, not an indication that further restrictions are required on employers. This will only result in businesses closing their doors and employing no staff, therefore increasing unemployment. Extending coverage to include foreign-based employees would have implications for any person in Australia for business purposes and is therefore not supported by CCIQ as this will only discourage foreign-based employees and companies doing business in Australia.	X
Definition of small business	The definition of small business in the FWA covers businesses with 15 employees or less. This definition is not consistent with other government policies and agencies (ie taxation) and should be extended to 20 employees.	AHA, MBA, MGA, QTIC	CCIQ is supportive of implementing a standard definition for small business across all government policy areas.	✓
Changes to Fair Work Ombudsman	Proposals include: <ul style="list-style-type: none"> • Greater penalties for underpayment of wages; • Reduce the resources devoted towards investigating whether unions and workers have taken industrial action contrary to the Act; • Pursuing unpaid superannuation. 	ACTU	CCIQ is not supportive of these proposals to increase the powers of the Fair Work Ombudsman.	X
Enhancing the role of unions	The case was put forward that the Act needs to be strengthened to accommodate the important role of unions within the workplace to ensure an increasing number of employees could enforce their workplace rights.	ACTU	CCIQ is strongly opposed to further increasing the role and access of unions within workplaces.	X

* Abbreviations of Stakeholders included in Appendix 1

3.0 CONCLUSION AND RECOMMENDATIONS

3.1 Further to the original submission provided by CCIQ to the Review of the Fair Work Act, CCIQ is supportive of implementing the following recommendations:

- **Unfair dismissal claims:** An unfair dismissal law exemption should be re-implemented for small and medium businesses. Furthermore, a more even playing field needs to be achieved between employers and employees through initiatives including placing a greater onus on employees to demonstrate that their dismissal was harsh, unjust or unreasonable; not penalising employers for terminating an employee for a valid reason; costs for dismissed cases to be awarded to employees; increasing the lodgement fee for unfair dismissal claims and deterring frivolous or vexatious claims through the implementation of penalties/fines.
- **Adverse action claims:** Access to adverse action claims should be removed from the Fair Work Act. If these claims are not removed, at the very least a more even playing field must be achieved between employers and employees by requiring employees to prove their case and by substantially reducing the time frames provided for making claims.
- **Modern awards:** Further improvements are required in the modern awards to ensure they meet the needs of modern workplaces and the flexibility required by employers and employees. In particular, action is required to reduce the burden of overtime and weekend penalty rates for industries trading 7 days a week.
- **Minimum wage setting mechanism:** Changes should be made to the minimum wage setting mechanism within the Fair Work Act to ensure minimum wage increases have positive impacts on employment and that businesses are provided with a longer transition period for implementing changes. Any increases to the superannuation guarantee levy should be offset by annual increases to the minimum wage.
- **National employment standards:** Increase the flexibility of businesses in applying the NES to their workplace in a way that delivers mutually beneficial outcomes for both employers and employees. Action is required in relation to clearly defining the requirements around the payment of annual leave on termination, increasing the maximum period for averaging hours, and reducing the additional cost burdens being placed on businesses who operate 7 days a week who are required to pay penalty rates for both the actual and substitute public holidays when a public holiday falls on a weekend.
- **Workplace agreements:** Increased scope is needed in the Fair Work Act to allow employers and employees to negotiate workplace or individual agreements that best suit their needs.
- **Involvement of unions:** CCIQ is strongly supportive of restricting the involvement of unions in the workplace. This includes restricting clauses that can be negotiated in workplace agreements to only those that relate to the employment relationship between the employer and employees, restricting industrial action to those matters that pertain to the employment relationship and increasing the obligations of unions officials in entering workplaces (ie required to explicitly outline reasons for entering the workplace, only being permitted to enter a workplace where they have members and where one of those members has requested the visit).
- **Engagement with Fair Work Australia and the Fair Work Ombudsman:** Increased accessibility and useability of FWA and the FWO by employers is essential to ensure accurate and reliable advice can be obtained by employers who engage these services.

3.2 Overall, it is essential that the Fair Work Act is simplified to reduce its negative impacts on businesses, subsequently encouraging them to employ and retain staff. The Fair Work Act must deliver a more even playing field between employers and employees, in addition to increasing workplace productivity and flexibility.

APPENDIX 1: ABBREVIATIONS OF STAKEHOLDERS

AAA	Accommodation Association of Australia
ACA	Australian Constructors Association
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AFAP	Australian Federation of Air Pilots
AFEI	Australian Federation of Employers and Industries
AHA	Australian Hotels Association
AHEIA	Australian Higher Education Industrial Association
AiG	Australian Industry Group
AIPA	Australian and International Pilots Association
AMCAA	Airconditioning and Mechanical Contractors Association of Australia
AMIC	Australian Meat Industry Council
AMMA	Australian Mines and Metals Association
AMIF	Australian Motor Industry Federation
ANF	Australian Newsagents Federation
ANRA	Australian National Retailers Association
ARA	Australian Retailers Association
ASU	Australian Services Union
ATEC	Australian Tourism Export Council
AWU	Australian Workers' Union
BCA	Business Council of Australia
BIG	Baking Industry Group Ltd
CAI	Clubs Australia Industrial
CCF	Civil Contractors Federation
CCIQ	Chamber of Commerce and Industry Queensland
CCIWA	Chamber of Commerce and Industry Western Australia
ConfACT	Confederation of ACT Industry
HIA	Housing Industry Association
MBA	Master Builders Australia
MCA	Minerals Council of Australia
MGA	Master Grocers Australia
NECA	National Electrical and Communications Association
NFF	National Farmers' Federation
NRA	National Retailers Association
NSWBC	New South Wales Business Chamber
NUW	National Union of Workers
PGA	Pharmacy Guild of Australia
PIAA	Printing Industries Association of Australia
QTIC	Queensland Tourism Industry Council
QWRO	Queensland Workplace Rights Ombudsman
VECCI	Victorian Employers Chamber of Commerce and Industry

REFERENCES

- ¹ Productivity Commission (2011) *Economic Structure and Performance of the Australian Retail Industry*. Available: www.pc.gov.au/projects/inquiry/retail-industry/report
- ² Victorian State Government (2012) *Submission of the Victorian Government to the Fair Work Act Review*, Available: www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/VictorianGovernment.pdf
- ³ CCIQ (17/02/12) *Chamber of Commerce and Industry Queensland Argues for Workplace Relations Overhaul (media release)*, Available: www.cciq.com.au/news/chamber-of-commerce-and-industry-queensland-argues-for-workplace-relations-overhaul/
- ⁴ ACCI (17/02/12) *Fair Work Changes Needed (media release)*, Available: www.acci.asn.au/Research-and-Publications/Media-Centre/Media-Releases-and-Transcripts/Workplace/Changes-Needed
- ⁵ Australian Industry Group (21/02/12) *Ai Group's proposals to make the Fair Work Act work better (media release)*, Available: www.aigroup.com.au/portal/site/aig/template.MAXIMIZE/mediacentre/releases/?javax.portlet.tpst=576c3f2a4adc0f512aec2f100141a0a0_ws_MX&javax.portlet.prp_576c3f2a4adc0f512aec2f100141a0a0=index%3D3%26docName%3DAi%2BGroup%2527s%2BProposals%2BTto%2BMake%2BThe%2BFair%2BWork%2BAct%2BWork%2BBetter%26viewID%3Dcontent%26folderPath%3D%252FLIVE_CONTENT%252FMedia%2BReleases%252F2012%252FFebruary%252F&javax.portlet.begCacheTok=com.vignette.cachetoken&javax.portlet.endCacheTok=com.vignette.cachetoken
- ⁶ Master Builders Australia (9/02/12) *Master Builders seek 46 changes to the Fair Work Act*, Available: www.masterbuilders.com.au/NewsArticles/master-builders-seeks-46-changes-to-fair-work-act
- ⁷ Business Council of Australia (17/02/12) *Fair Work System must help Australia compete and prosper*, Available: www.bca.com.au/Content/101937.aspx
- ⁸ Australian Human Resources Institute (2012) *The Fair Work Act: Its Impact Within Australian Workplaces: Research Report: January 2012*, Available: www.ahri.com.au/scripts/cgiip.exe/WService=AHRI-LIVE/ccms.r
- ⁹ Qantas (2012) *Qantas Group Submission to the Review of the Fair Work Act*, Available: www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/Qantas.pdf
- ¹⁰ The Australian (2/11/11) *Business to fight union Fair Work "wishlist"*, Available: www.theaustralian.com.au/business/in-depth/business-to-fight-union-fair-work-wishlist/story-fnaskcqt-1226183057663
- ¹¹ Ibid
- ¹² ALP (2007) *Forward with Fairness: Policy Implementation Plan*. Available: www.newtradeshall.com/ContentFiles/NewTradesHall/Documents/Forward%20with%20Fairness.pdf
- ¹³ Australia Bureau of Statistics (2011) *Employee Earnings, Benefits and Trade Union Membership: 6310.0*. Available: [www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/2C82C74337486472CA25788700131F58/\\$File/63100_aug%202010.pdf](http://www.ausstats.abs.gov.au/ausstats/subscriber.nsf/0/2C82C74337486472CA25788700131F58/$File/63100_aug%202010.pdf)
- ¹⁴ Fair Work Australia (2012) *How to make an unfair dismissal application*. Available: www.fwa.gov.au/index.cfm?pagename=dismissalsclaim
- ¹⁵ ACTU (2012) *Submission to the Post Implementation Review of the Fair Work Act 2009*. P. 36. Available: www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/AustralianCouncilofTradeUnions.pdf
- ¹⁶ CCIQ (3/06/11) *Queensland businesses continue to be kicked while they are down (media release)*. Available: www.cciq.com.au/news/queensland-businesses-continue-to-be-kicked-while-they-are-down/
- ¹⁷ CCIQ (30/11/11) *Queensland businesses let down by all parties on public holidays (media release)*. Available: www.cciq.com.au/news/queensland-business-let-down-by-all-parties-on-public-holidays/
- ¹⁸ Fair Work Ombudsman (2011) *Parental leave and related entitlements and the National Employment Standards*. Available: www.fairwork.gov.au/factsheets/FWO-Fact-sheet-Parental-leave-and-related-entitlements-and-the-NES.pdf
- ¹⁹ Fair Work Ombudsman (2011) *Casual employee entitlements*. Available: www.fairwork.gov.au/industries/cleaning/classifications-and-categories/Pages/Casual-employee-entitlements.aspx
- ²⁰ ACTU (2012) *Submission to the Post Implementation Review of the Fair Work Act 2009*. P. 38. Available: www.deewr.gov.au/WorkplaceRelations/Policies/FairWorkActReview/Documents/AustralianCouncilofTradeUnions.pdf
- ²¹ Chamber of Commerce and Industry Queensland (2012) *Review of the Fair Work Act and Minimum Wage Survey (conducted 23 January – 17 February 2012)*.