

9 November 2015

Justice Iain JK Ross  
President  
Fair Work Commission  
Level 4, 11 Exhibition Street  
Melbourne VIC 3001  
c/o  
The Associate to his Honour, Justice Ross  
Via email: [chambers.ross.j@fwc.gov.au](mailto:chambers.ross.j@fwc.gov.au)  
cc: [amod@fwc.gov.au](mailto:amod@fwc.gov.au)

Dear President Ross,

**Re: 4 YEARLY REVIEW OF MODERN AWARDS PENALTY RATES – FINAL RETAIL  
SUBMISSION EMPLOYER PARTY  
AM2014/305**

1. CCIQ is Queensland's peak industry organisation for small and medium businesses. We represent over 25,000 businesses on local, state, and federal issues that matter to them.
2. Our guiding focus is to develop and advocate policies that are in the best interests of Queensland businesses, the Queensland economy, and the Queensland community.
3. CCIQ welcomes the opportunity to provide a submission to the Fair Work Commission (the Commission) as part of the 4 yearly review of modern awards being conducted pursuant to section 156 of the *Fair Work Act 2009* (Cth) (the Act).
4. Specifically, CCIQ wishes to provide high-level commentary on the impact of penalty rates on the retail sector in Queensland and requests the Commission view this as CCIQ's *final retail submission* with respect to penalty rates as per the Commission's Revised Directions issued 7 August 2015.

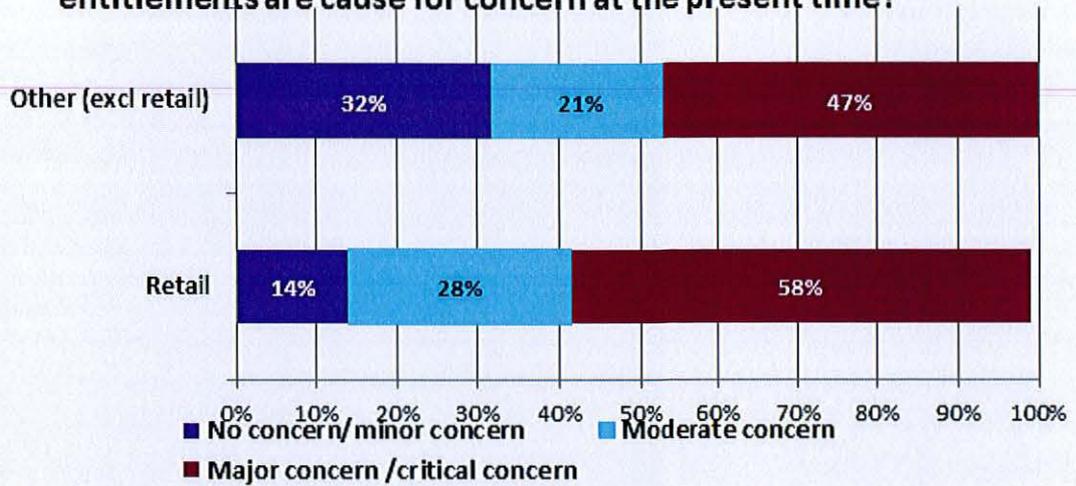
5. The Chamber refers the Commission to our notice of our intention to submit survey evidence in relation to the retail group submitted on 6 July 2015 as per the Commissions directions.
6. CCIQ requests the Commission note that our organisation, in collaboration with other industry associations, surveyed over 1,000 Queensland businesses to assess the impact of the Fair Work laws, including penalty rates provisions, between 11 February and 13 March 2015.
7. Further, in order to inform CCIQ's feedback to the Productivity Commission's draft recommendations for workplace relations reform, CCIQ surveyed over 400 businesses in order to specifically canvass the impact of penalty rates on their business operations.
8. To this end, this submission includes evidence with respect to the impact of penalty rates on the retail sector as per the aforementioned survey results, and outlines survey evidence including information as to the persons surveyed, the subject matter(s) of the survey, the size and type of survey in the methodology section of this submission as per the Commission's request.
9. In addition to each survey, CCIQ hosted an Industry Roundtable to discuss how, and in what ways, the current workplace relations framework impacted on their respective memberships, particularly with respect to the impact of penalty rates on sectors that operate in a 24/7 economy.
10. Further to this, CCIQ hosted several consultative forums across regional Queensland, meeting with small business owners and representatives in the Wide Bay region, the Sunshine Coast, Gold Coast, Cairns and Townsville, in order to document their insight and experiences regarding the current penalty rates regime.
11. The cumulative findings from the two separately conducted Workplace Relations Survey's, the Queensland Industry Roundtable, and extensive small business engagement in the regions identified penalty rates as one of five top issues for Queensland businesses in relation to workplace relations.
12. In addition, businesses told CCIQ that if Sunday penalty rates were merged with Saturday rates, as is tentatively being proposed by the Productivity Commission, businesses would open for longer, increase overall employment hours and employ more staff.
13. CCIQ argues that while some aspects of the workplace relations system require subtle adaptation to contemporary workplaces, other aspects of the framework such as penalty rates need to be more pragmatic in order to effectively deal with emerging economic, social, and demographic trends facing Australia's working landscape.

14. To illustrate, the labour market in Australia has most recently seen a sharp rise in youth unemployment and shifts in employment demand, such as reduced market needs for low and medium skilled workers. Other noteworthy shifts in workplace trends include the continual adjustment of notions of the 'traditional workplace', and an expanding aging population. All this is taking place alongside greater reliance on technology and increased global interconnectedness, which is invariably changing the characteristics of traditional service delivery.
15. CCIQ believes that these changes, and others, call for a significant re-think as to how Australia's penalty rates regime can best serve the needs of employers, employees, and the broader economy into the future.
16. Most importantly however, CCIQ encourages the Commission to consider the stark correlation between the rigidities in the current workplace relations system and youth unemployment figures when deliberating on variations to penalty rates with respect to retail sector. At present, Queensland's youth unemployment (14.3 per cent) sits at a rate double that of adults (6.3 per cent).
17. Since the introduction of the Fair Work Act, the rate of inactive young people in the labour market has reached historical highs. Workplace reforms such as increased minimum work engagement periods and ongoing increases in junior rates of pay act as examples of award rate disincentives discouraging businesses from taking on young workers. Most importantly for this submission however, is that penalty rates are making employers cautious of taking on new employees, offering differing employment hours, and/or opening longer hours.
18. This worrying trend demonstrates the need for a national conversation about how to make it easier for business to employ. CCIQ believes this conversation can begin with Australia's national industrial tribunal, the Fair Work Commission, making sensible assessments as to the impact of penalty rates on small businesses across Queensland and indeed nationally.
19. The following submission contains a series of recommendations that reflect the changes Queensland employers have told CCIQ they want to see to the current penalty rates regime as it applies to retail businesses and contemplates the options as presented by the Productivity Commission namely to merge Sunday penalty rates with Saturday rates in the hospitality and retail sectors.

## Penalty rates

20. Many Queensland employers have raised concerns regarding the impact of penalty rates and increased employer obligations surrounding allowances on the competitiveness and profitability of their business. These concerns emanate from businesses that operate seven days a week or outside of the traditional concept of 'normal trading hours' (9am to 5pm Monday to Friday), including the retail, tourism, accommodation, hospitality and agricultural industries. Increased wage costs have resulted in businesses closing for longer periods or reducing employment hours, which have negative flow on effects for employees, communities and the economy.
21. Current Fair Work laws define shifts that attract penalty rates as 'unsocial' and those who work during such hours should be compensated accordingly. This claim is not only false, but makes broad assumptions about the nature of individual lifestyles and choices, whereby particular employees prefer to work during the evening or on weekends. Employees want flexibility too.
22. The policy behind penalty rates represents a failure to recognise the requirements of central industries for workable terms and conditions of employment. The current penalty rates regime inhibits economic growth by providing a disincentive to employers from having longer trading hours or offering staff additional hours.
23. This is of serious concern to businesses facing increased global competition including from online businesses that are accessible by consumers 24 hours a day, seven days a week. The current regime is also impacting on some businesses' ability to trade profitably at times when many consumers now prefer to shop, for example, later in the evenings or on Sundays.
24. CCIQ urges the Commission to utilise these factors as evidence in order to vary penalty rates in awards that cover the retail sector so as to allow for greater flexibility in such industries that operate for seven days a week or outside 'standard' trading hours.
25. With respect to our survey results, the penalty rates and overtime paid under the Fair Work laws continues to adversely impact Queensland businesses, especially those businesses in the retail sector. A significant proportion of businesses in the retail sector (58 per cent) indicated that penalty rates and public holiday entitlements are a major to critical cause for concern at the present time. This compares to less than half for all other sectors, highlighting the undue burden the penalty rates regime places on small businesses in the retail industry.

**To what extent are penalty rates and public holiday entitlements are cause for concern at the present time?**

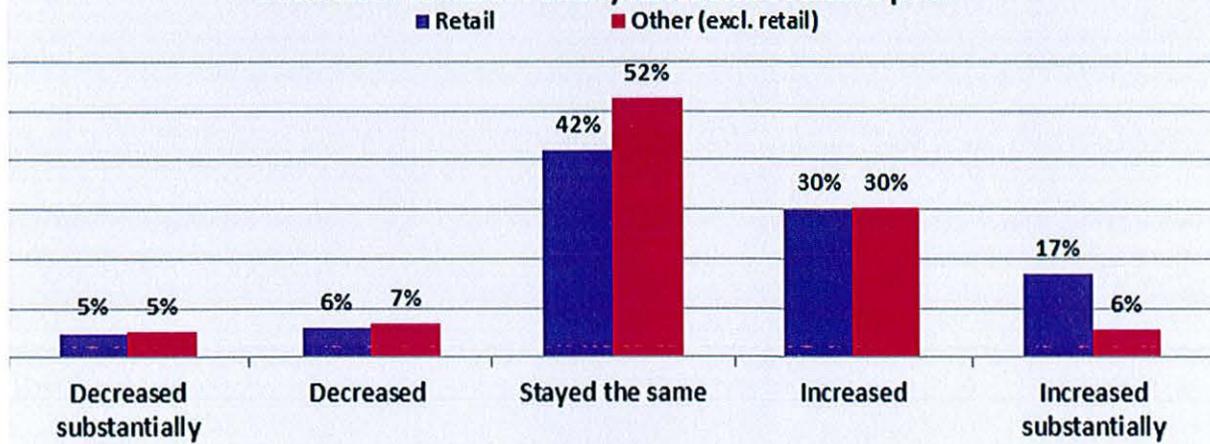


Source: Workplace Relations Survey – February 2015

**Impact on retail businesses**

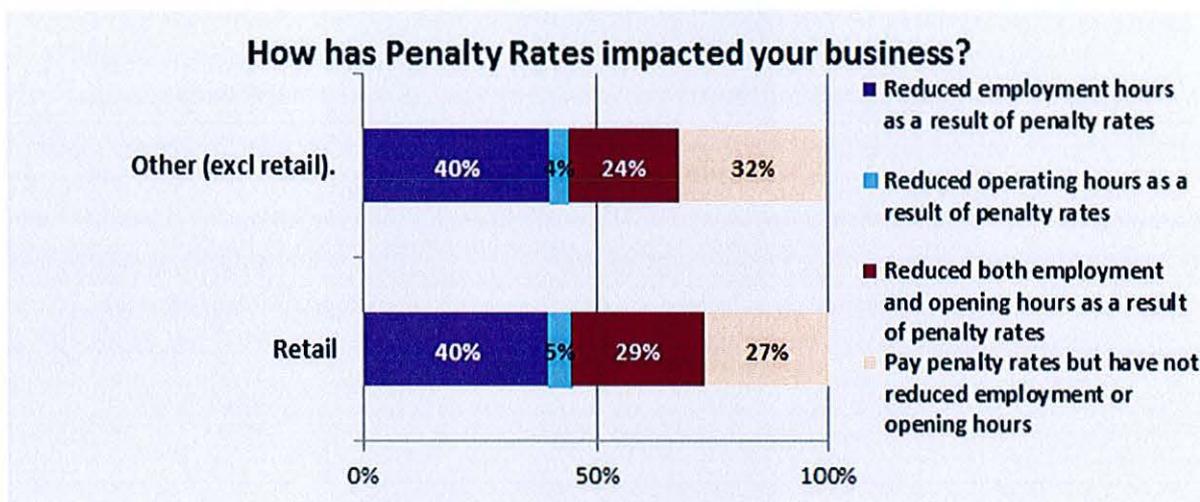
26. The survey results confirm that the impact of penalties and overtime paid is more acute for businesses in the retail sector. In particular, 17 per cent of retail businesses indicated that penalty rates and overtime paid substantially increased as a result of the Fair Work Act and Modern Awards, as against all other industry sectors.

**What impact has the Fair Work Act and Modern Awards had on your business in terms of Penalty Rates and Overtime paid?**



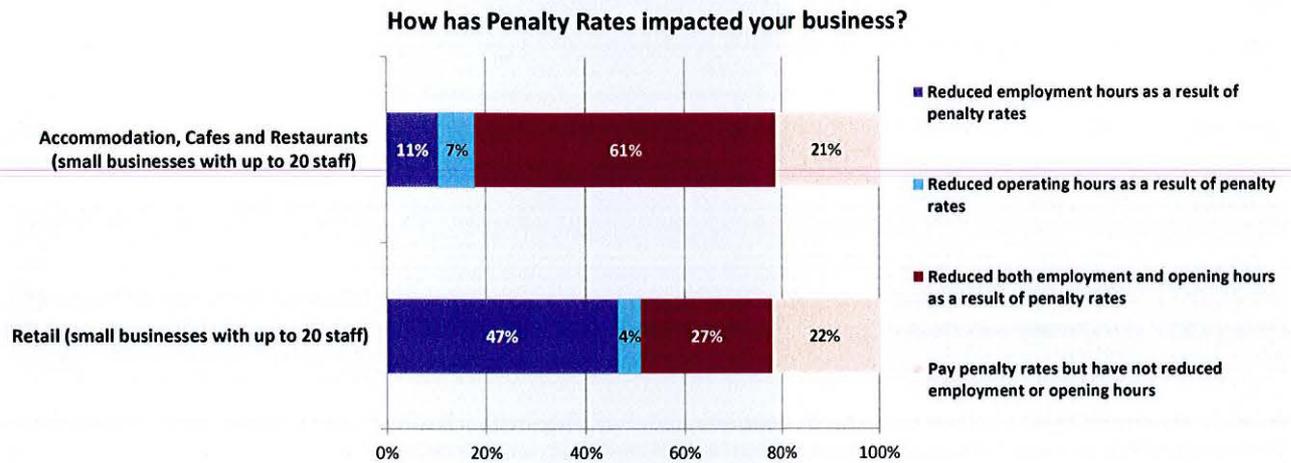
Source: Workplace Relations Survey – February 2015

27. When asked specifically about penalty rates, Queensland businesses in the retail sector indicated that there had been negative impacts in terms of reduced operating hours and reduced employment.
28. The penalty rates system appears to influence employment decisions more so than business decisions about operating hours. Only 5 per cent of businesses in the retail sector chose to reduce operating hours in response to penalty rates. As a consequence, businesses are forced into situations where they have insufficient staff to maintain customer service standards and/or scale to cover fixed operating expenses.



Source: Workplace Relations Survey – February 2015

29. The impacts of the current penalty rates system is further exacerbated when looking more closely at small businesses in the retail sector. The survey results show the majority of small businesses operating in the retail industry (74 per cent) reduced both operating hours and employment hours as a result of penalty rates.



Source: Workplace Relations Survey – February 2015

30. Overall, the survey results confirm that the current system of penalty rates is preventing Queensland businesses in the retail sector from tailoring their staffing arrangements in response to the peak demand periods for their products and services. At the same time, the survey evidence conclusively demonstrates that overall employment hours are reduced to the direct detriment of existing potential employees including Queensland youth.

## Merging Sunday rates with Saturday rates

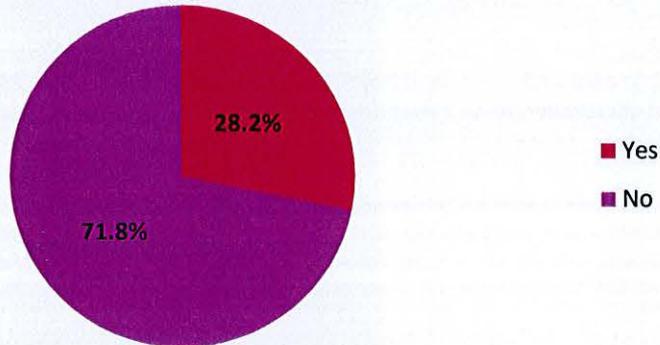
31. In response to the Productivity Commission's draft recommendations with respect to workplace relations reform, CCIQ surveyed over 400 Queensland businesses to assess the adequacy of a number of the proposed recommendations, particularly penalty rates in the retail and hospitality sectors.

32. The findings reinforced the need for a re-think as to the adequacy of current penalty rates provisions in the retail sector, specifically that the current 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.

33. 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.

34. Of the total survey participants, 28 per cent operate in the hospitality, entertainment, retail, restaurants and café industries.

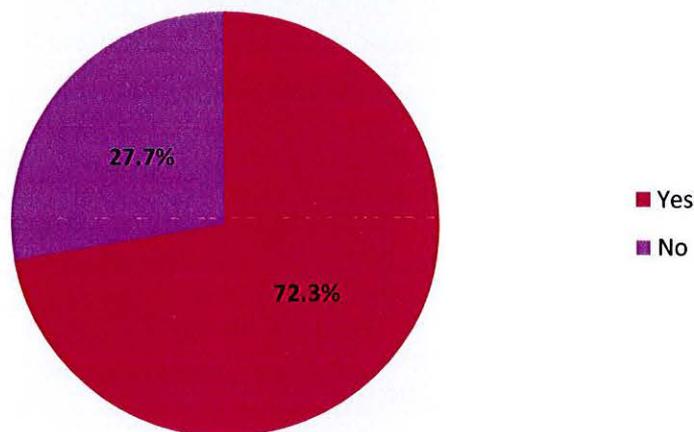
**Does your business operate in the hospitality, entertainment, retail, restaurants and cafe industries?**



Source: CCIQ Workplace Relations Survey September 2015

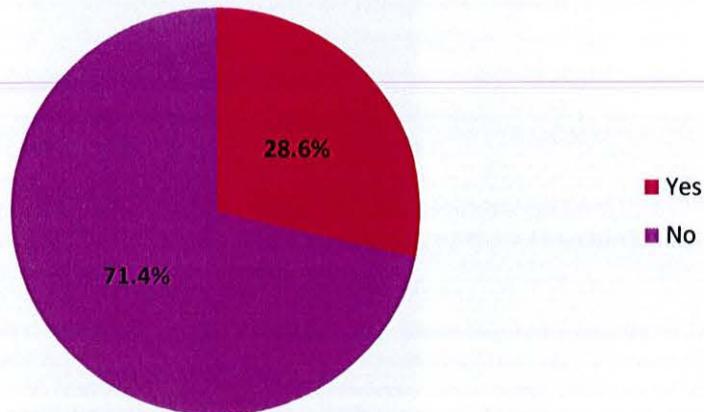
35. Of those businesses surveyed in the hospitality, entertainment, retail, restaurants and café industries, 27 per cent of them do not open on Sundays. When asked if the decision to open on Sundays was due to the level of penalty rates, the response was a resounding yes (71 per cent).
36. The survey 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.

**Does your business open on Sundays?**



Source: CCIQ Workplace Relations Survey September 2015

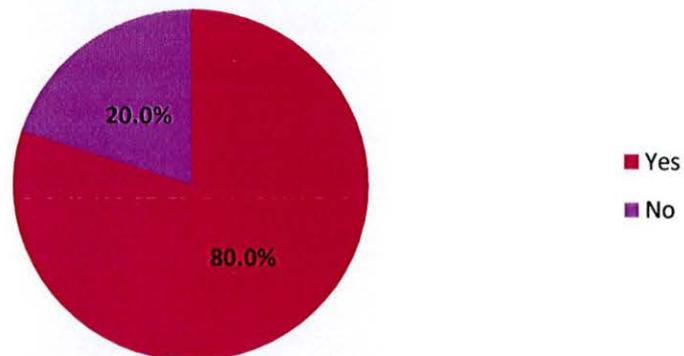
**If your business does not open on Sundays, is this because of the level of penalty rates?**



Source: CCIQ Workplace Relations Survey September 2015

37. 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.
38. 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.

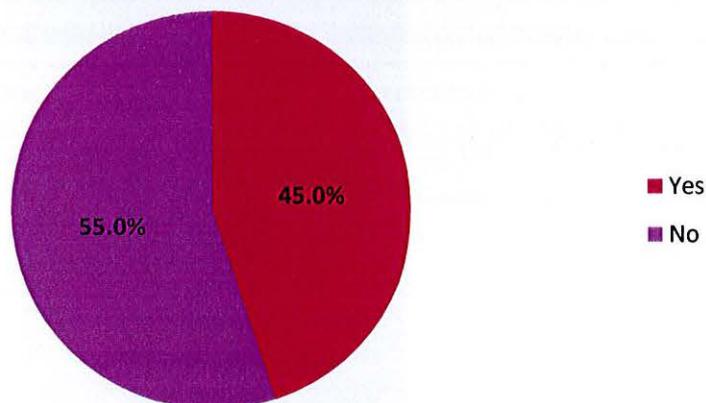
**If your business does NOT currently open on Sundays, and Sunday penalty rates were set at the Saturday rate, would you open on Sundays?**



Source: CCIQ Workplace Relations Survey September 2015

39. 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.
40. 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.

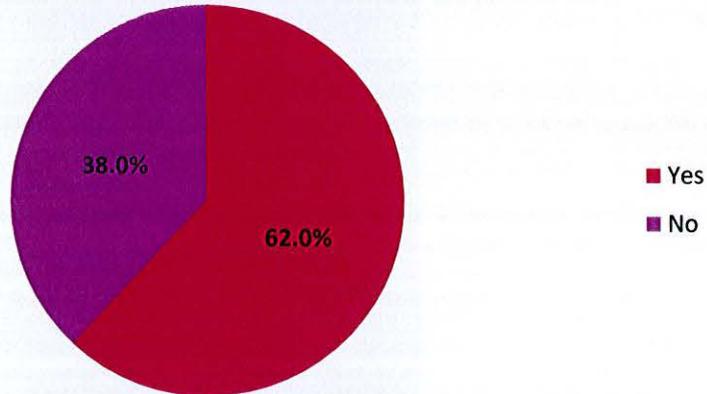
**If your business DOES currently open on Sundays, and Sunday penalty rates were set at the Saturday rate, would you open for longer?**



Source: CCIQ Workplace Relations Survey September 2015

41. 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.

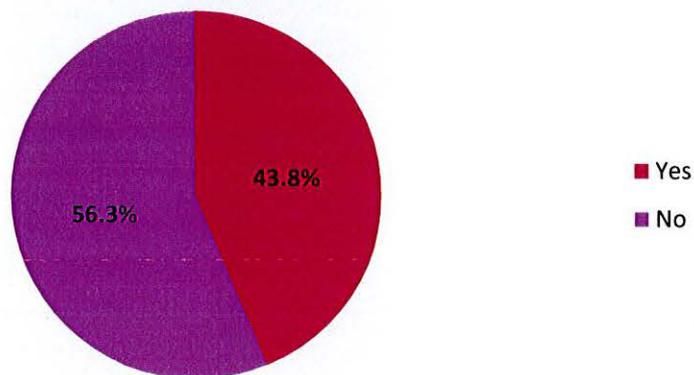
**If your business DOES currently open on Sundays, and Sunday penalty rates were set at the Saturday rate, would you increase your staffing while open?**



Source: CCIQ Workplace Relations Survey September 2015

42. 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.

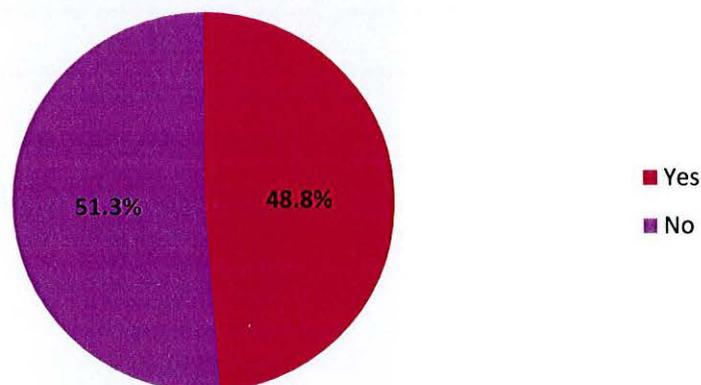
**If your business DOES currently open on Sundays, and Sunday penalty rates were set at the Saturday rate, would you change your mix of staff more towards permanent staff?**



Source: CCIQ Workplace Relations Survey September 2015

43. 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.
44. 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.
45. 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.

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

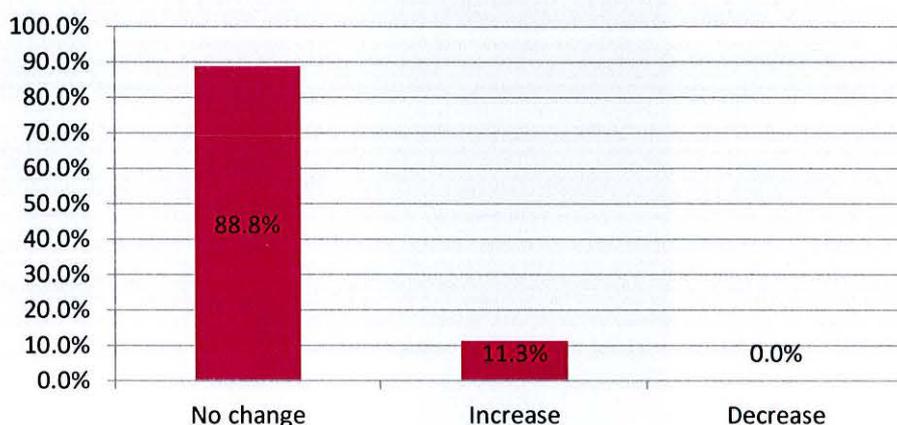


Source: CCIQ Workplace Relations Survey September 2015

46. 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.
47. 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.

48. 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.

**If your business DOES currently open on Sundays, and Sunday penalty rates were set at the Saturday rate, would you change your opening hours on other days of the week?**



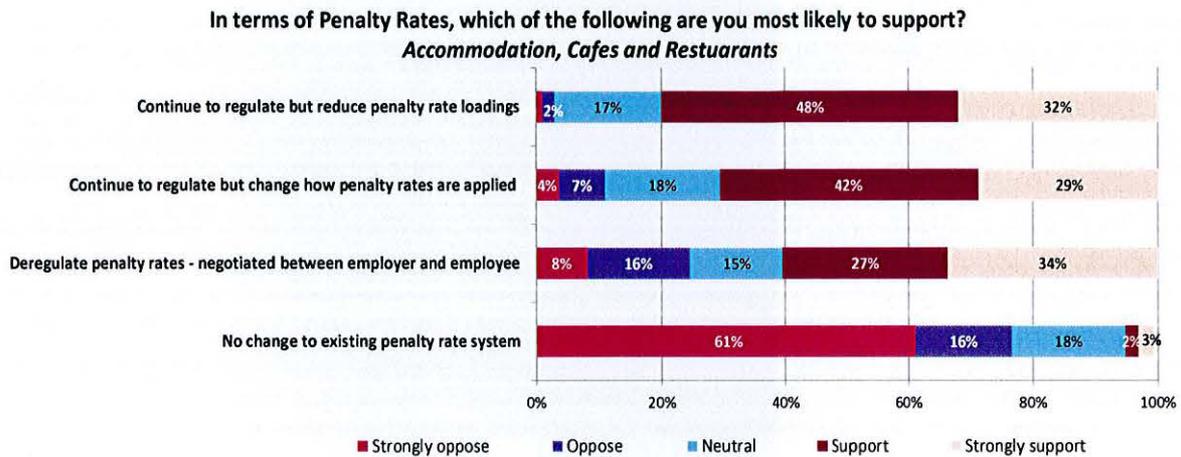
Source: CCIQ Workplace Relations Survey September 2015

49. 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 worse, 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.

50. 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.

## Reform options

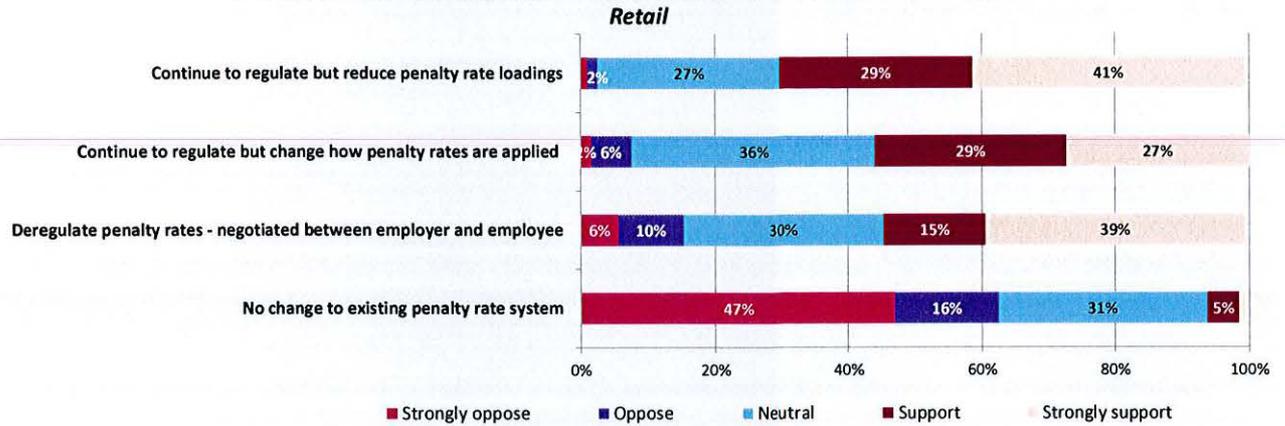
51. There is a strong desire for reform, with only 6 per cent of retail businesses indicating support for retaining the current penalty rates system when surveyed.
52. The majority of Queensland businesses in the retail sector would support or strongly support (70 per cent) the continued regulation of penalty rates but with reduced loadings. Reducing penalty rate loadings can be easily implemented and would create an incentive for businesses to increase employment hours.



Source: Workplace Relations Survey – February 2015

53. Changing how penalty rates are applied is supported by 56 per cent of businesses in the retail sector.
54. When asked about deregulating penalty rates, a significant proportion of retail businesses (54 per cent) indicated support for negotiated arrangements between employer and employee. The result does not imply that penalty rates should be removed altogether. On the contrary, feedback from businesses responding to the survey points to general acceptance of penalty rates as a legitimate labour cost.
55. The support for allowing greater flexibility in the application of penalty rates reflects the desire amongst Queensland businesses for alternative approaches that involve specific arrangements for each industry and tailored to the scope of work under each award.

**In terms of Penalty Rates, which of the following are you most likely to support?**



Source: Workplace Relations Survey – February 2015

56. As Queensland’s peak industry organisation for small and medium business, CCIQ is well placed to speak about the impact of penalty rates and increased employer obligations surrounding allowances on the competitiveness and profitability of their business. Small and medium businesses in the retail sector are major employers in Queensland and Australia, and the factors that influence decisions about whether to retain existing employees and create additional employment opportunities should be carefully taken into account by the Commission.

57. In its assessment of the awards relevant to the retail sector, CCIQ urges the Commission to take a sensible approach to how penalty rates are applied so small and medium businesses can continue to thrive and employ.

58. Based on the evidence contained herein, CCIQ believes that a practical approach to penalty rates, which reflects the contemporary 24/7 nature of our economy, would best serve the needs of small business, their employees, and the nation’s economy.

**Recommendations:** Increasing the scope in the current system to allow for greater flexibility with respect to the operation of penalty rates in the retail sector, particularly for those businesses that operate seven days per week or outside ‘standard’ trading hours.

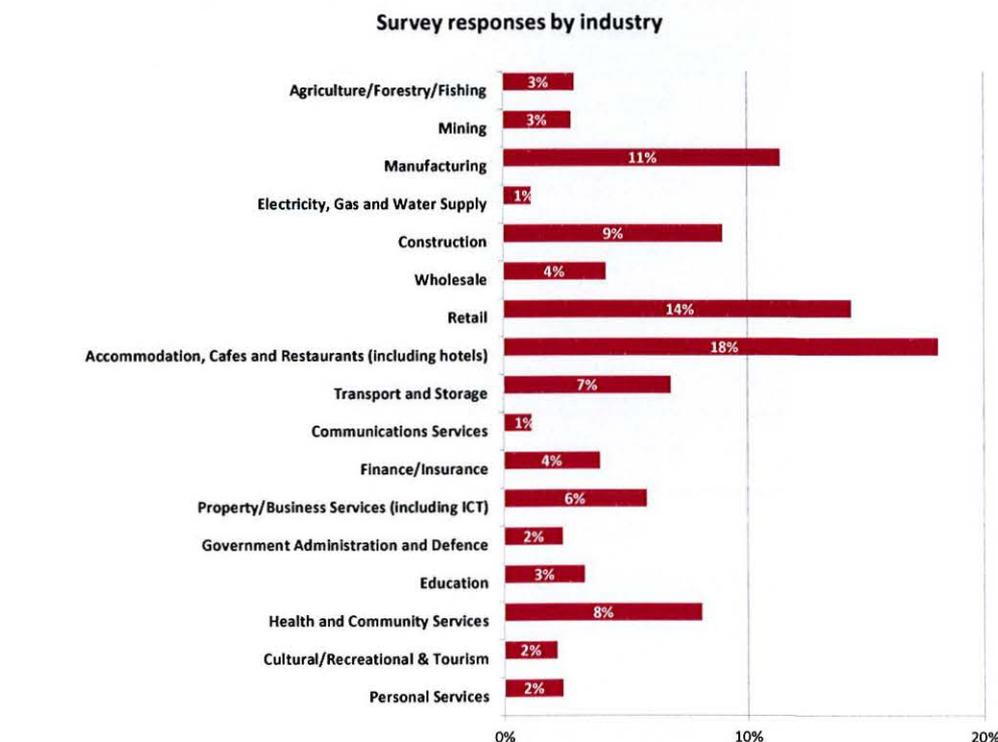
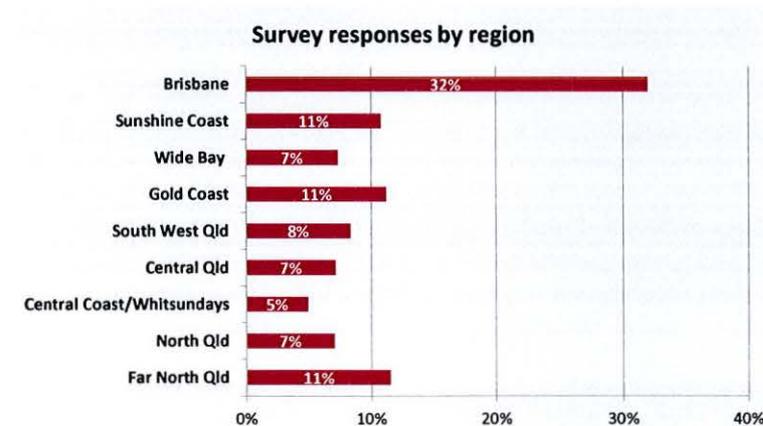
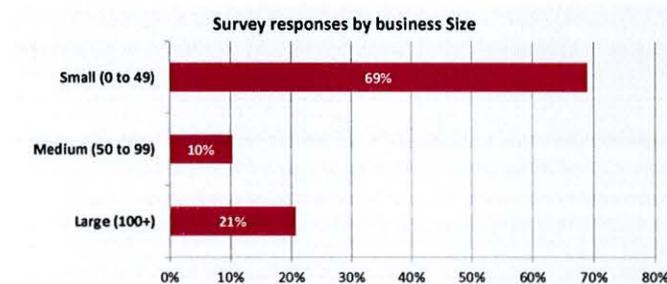
Sincerely,

Nick Behrens

**Director – Advocacy and Workplace Relations**

## Survey Method 1: Workplace Relations Survey – February 2015

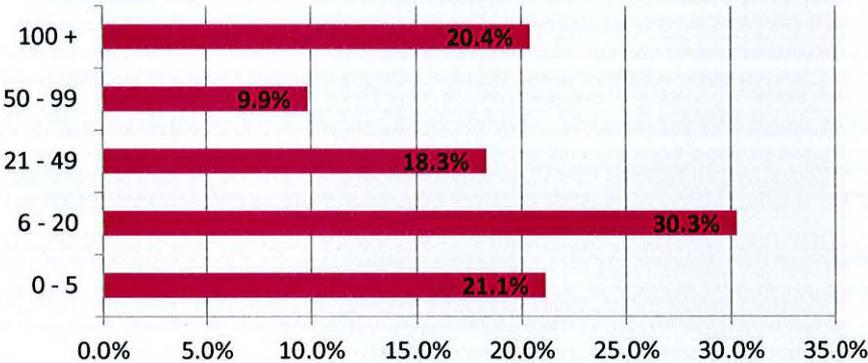
The analysis undertaken by CCIQ in the preparation of this report is based on 1,038 survey responses from Queensland businesses among the following memberships. The survey was conducted between 11 February and 3 March 2015 to inform our feedback and participation in the Productivity Commission’s inquiry into workplace relations.



## Survey Method 2: Workplace Relations Survey - September 2015

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?

