



**Asia-Pacific
Economic Cooperation**

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New Zealand and Cross –Border Dispute Resolution

Submitted by: Victoria University of Wellington



**Workshop on the Use of Modern
Technology for Dispute Resolution and
Electronic Agreement Management
Particularly Online Dispute Resolution
Port Moresby, Papua New Guinea
3-4 March 2018**

Victoria

UNIVERSITY OF WELLINGTON

*Te Whare Wānanga
o te Ūpoko o te Ika a Māui*



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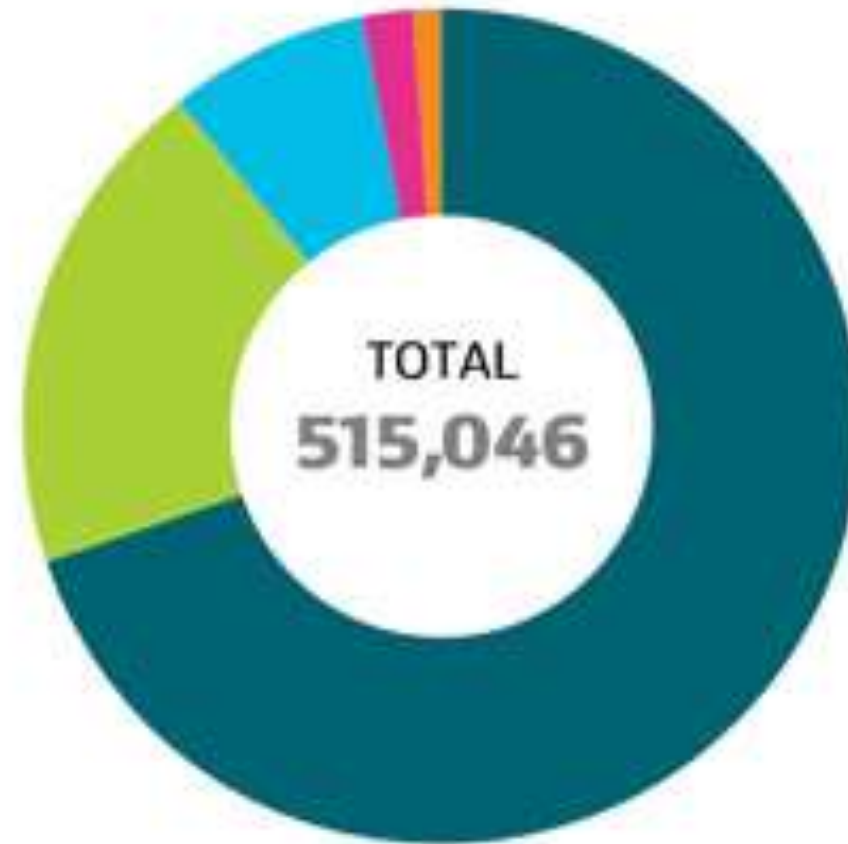
New Zealand & Cross –Border Dispute Resolution

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SME Facts

- 97% of Enterprises have fewer than 20 Employees (499,944 enterprises)
- 96% of Enterprises with fewer than 20 Employees are independent operations not owned by Others

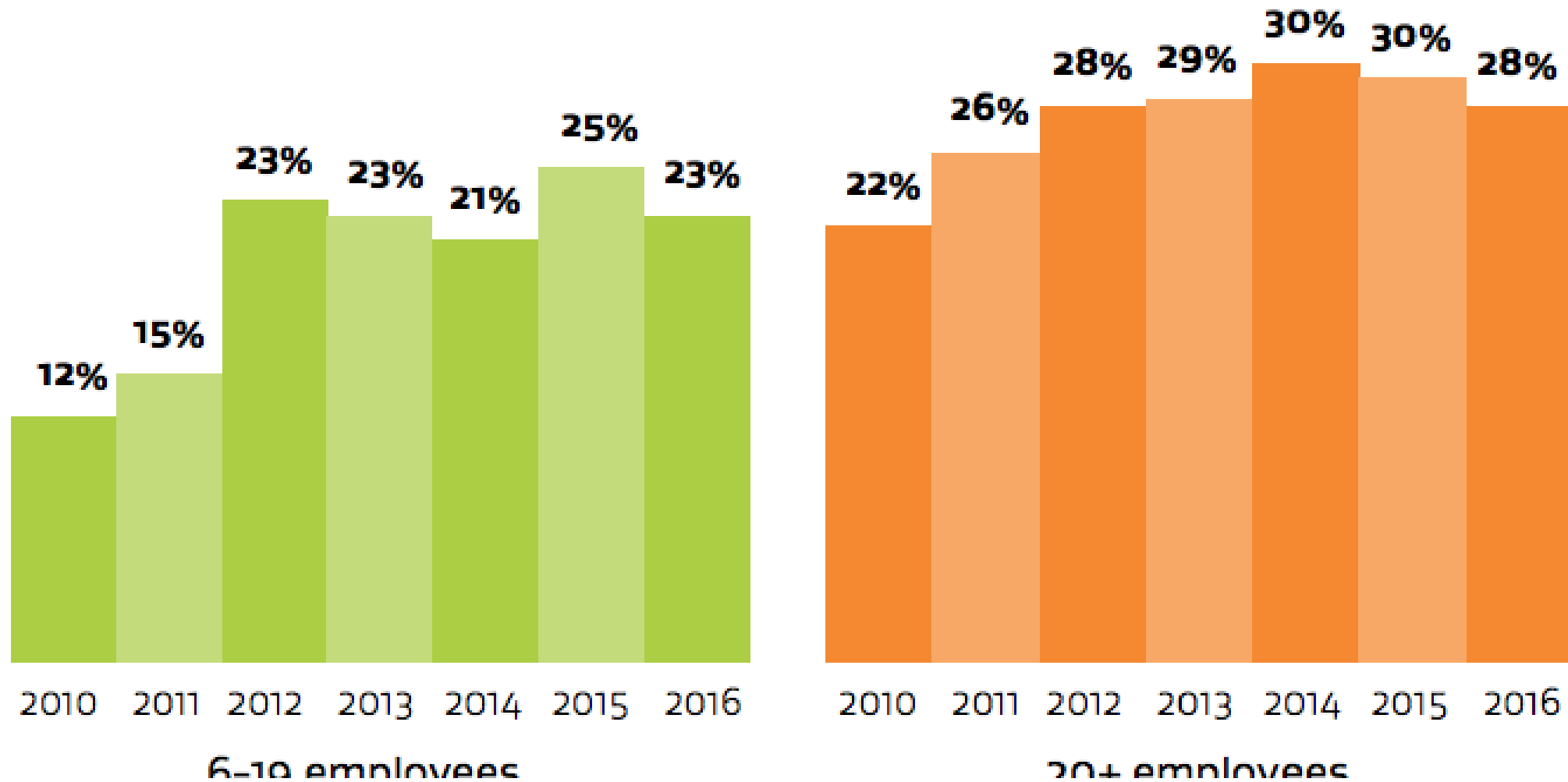
Chart 1: Number of Enterprises by Employee Size Group



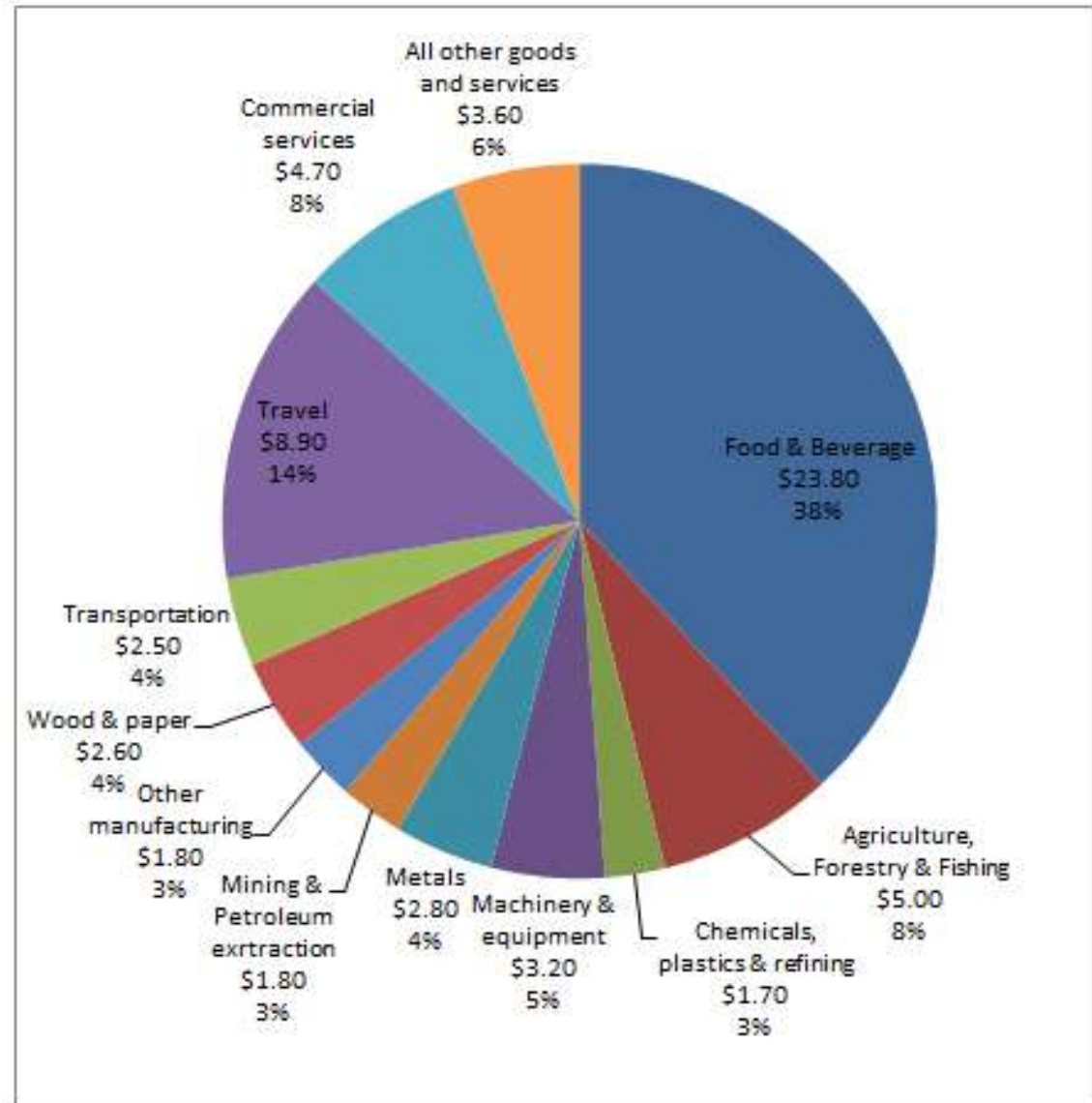
Zero Employees	362,856
1-5 Employees	98,748
6-19 Employees	38,340
20-49 Employee	9,780
50 Or More Employ	5,325

Data source: Statistics New Zealand Business Demography, Feb 2

Chart 13: Percentage of Businesses Exporting



Export according to Sector



Dispute Resolution – possible solutions

- **Litigation**
- **Arbitration**
- **Mediation**
- **ODR**
- **BAT/MAT**

NZ Courts - 2016

- **Small Claims Tribunal:** up to \$15,000
- **District Court**
- **High Court:** The median waiting time to trial for general proceedings cases which were active (waiting time is measured from the date the case was deemed ready for hearing to the future hearing date) was 286 days.
(jurisdiction from \$350,000)

What is Wrong With Litigation?

Factor	Arbitration/BAT	Litigation
Enforceability	generally easier to enforce New York Convention 1958	no single and comprehensive international regime
Confidentiality	<ul style="list-style-type: none"> • default= confidentiality • state parties can modify 	<p>public</p> <p>The benefit of open proceedings is that it generates precedent, to ensure consistent decision making, and allows parties to learn from other's disputes.</p>
Finality	<ul style="list-style-type: none"> • only very narrow opportunities for judicial review • parallel proceedings not possible 	<ul style="list-style-type: none"> • appeal • parallel proceedings possible
Neutrality	independent of both the parties, and the parties home States	Courts are inextricably bound to a state.

Factor	Arbitration/BAT	Litigation
Cost	<ul style="list-style-type: none"> • provides a greater ability to control costs as the procedure can be tailored by the parties 	<ul style="list-style-type: none"> • varies significantly between states • simple dispute with a one day hearing using a medium sized law firm begin at around NZ\$ 20,000. • larger and more complex cases including a week-long hearing with senior barristers may run to over NZ\$ 500,000
Procedure	<ul style="list-style-type: none"> • UNCITRAL rules • tailored to & by the parties 	Courts have fixed procedures which vary between states

Mediation

Litigation	Arbitration	Mediation
Public	Private – confidential (?)	Private -Confidential
Protracted, and settlement often late in the process	Can be protracted, and can lead to late settlement	Ought to occur at an early stage in the dispute leading to a cheaper, quicker settlement
Formalistic: pleadings, disclosure and trial	Formalistic: pleadings, disclosure and trial	Informal procedure: no pleadings, minimum disclosure
Limited to pleaded issues	Limited to arbitral issues	Parties can raise whatever issues they wish to resolve

Mediation

Litigation	Arbitration	Mediation
Exacerbates emotions	Can exacerbate emotions	Allows genuine emotions to be expressed
Expensive for large commercial action	Can be expensive for large commercial disputes	Each party can choose how much it wishes to spend
Loser often pays all the costs	Power to award costs	Each party pays their own costs
Destroys any prospect of future relationships	Not designed to preserve future relationships	Often creates better prospects of future relationships

ODR

Online dispute resolution, or “ODR”, is a “mechanism for resolving disputes through the use of electronic communications and other information and communication technology.”

An ODR process requires a system for generating, sending, receiving, storing, exchanging or otherwise processing communications in a manner that ensures data security, ie an ODR platform.

UNCITRAL Technical Notes on ODR

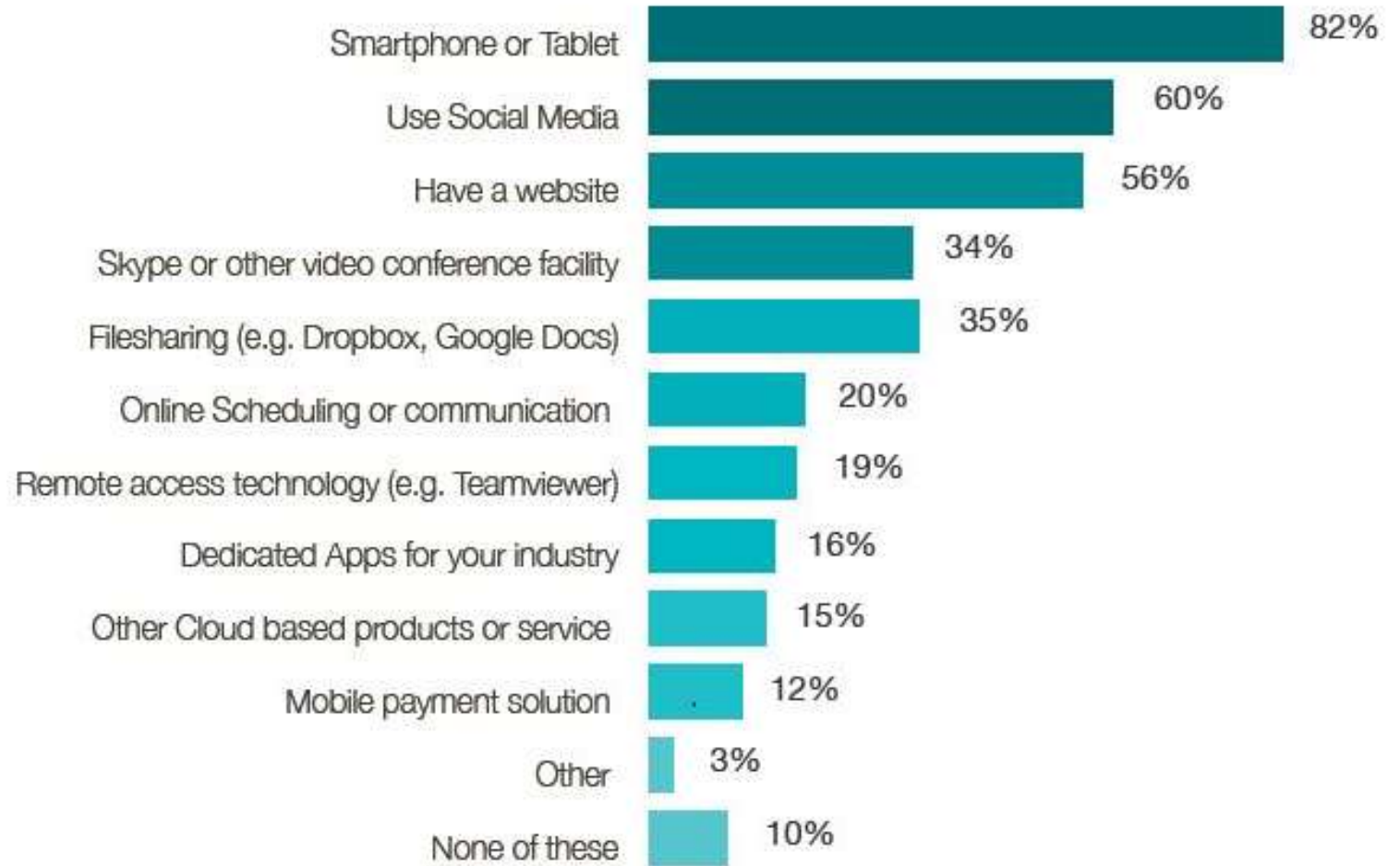
http://www.uncitral.org/pdf/english/texts/odr/V1700382_English_Technical_Notes_on_ODR.pdf

European Commission – ODR

<https://ec.europa.eu/consumers/odr/main/?event=main.home2.show>

SME Usage of Technology

SME Usage of Technology



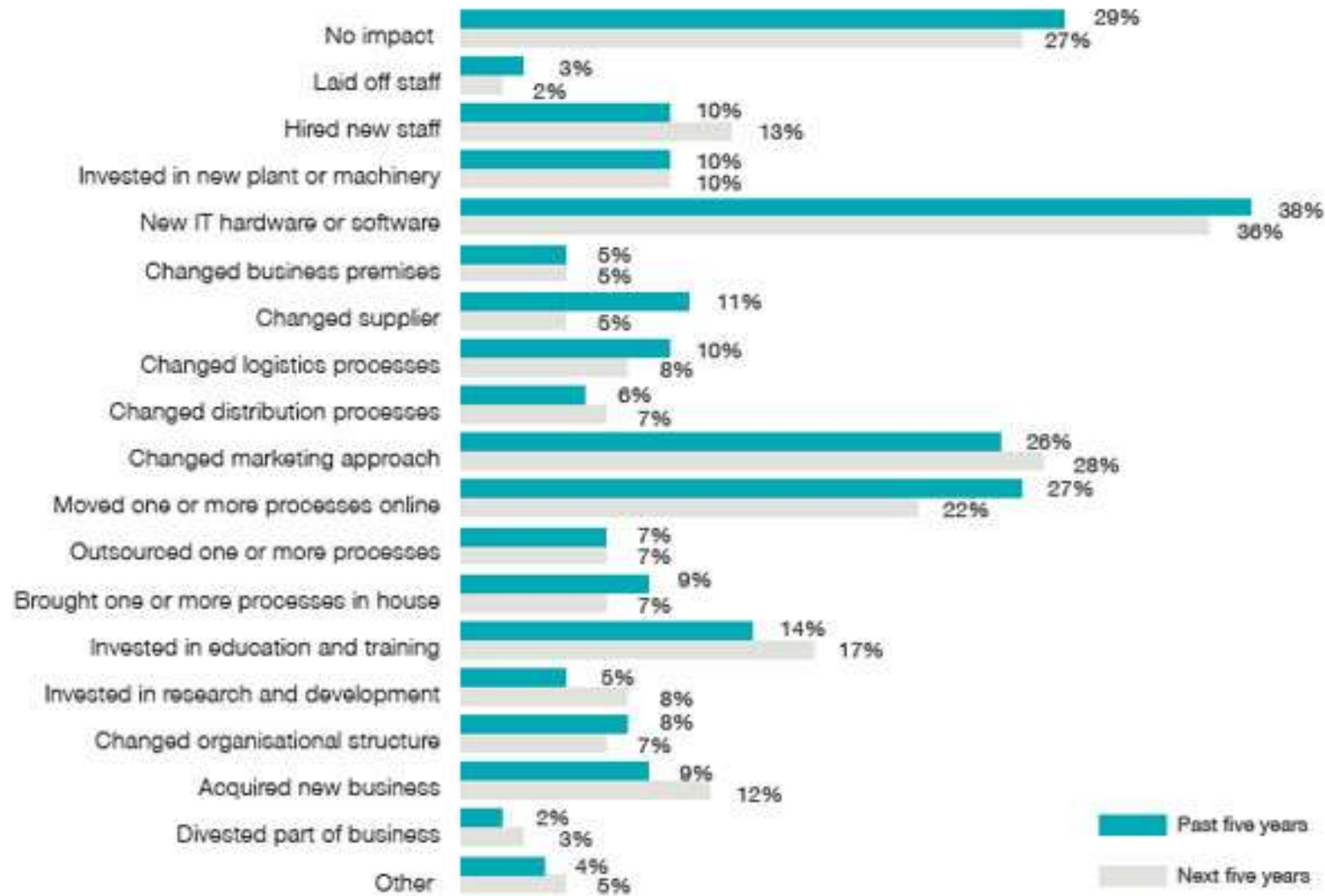
Q. Which of the following does your business have or use?

Q. Does your business have a website?

Q. And which of the following social media, if any, do you use for your business?

Base: Total sample 2015 (n=1190)

Impact of Technology over the last/next 5 years



ODR in New Zealand

- Not a huge usage of technology by SMEs
- CODR= first provider of full online dispute resolution services

Bi/Multilateral Arbitration Treaty Regime

- Avoids the pitfalls of litigation
- Offers all the advantages of litigation
- Flexible to incorporate mediation option
- Flexible to incorporate ODR