



8 November 2021

Committee Secretary
House of Representatives Standing Committee on Employment, Education and Training
PO Box 6021
Parliament House
CANBERRA ACT 2600

via email: ee.reps@aph.gov.au

Dear Sir/Madam

Inquiry into the Fair Work Commission Annual Report 2019-20

We welcome the opportunity to submit to the Committee's *Inquiry into the Fair Work Commission's Annual Report 2019-20*. The impact of COVID-19 and the subsequent government policy responses created a complex and uncertain environment for small business employers and employees to navigate. The nature of this environment undoubtedly added to the workload of the Fair Work Commission (FWC) as can be seen in the last quarter growth in case load demonstrated in the report.

We recognise the challenges faced by all in adapting to the impacts of COVID-19 and provide the following comments for the Committee.

- 1. Clarity and timing of information provided by the Fair Work Ombudsman (FWO).** The impacts of COVID-19 and subsequent policy responses resulted in several changes to business' obligations and rights, in particular possible exercise of stand-down provisions, requirements to allow for staff self-isolation and quarantine requirements, and the introduction of JobKeeper.

The FWO is a critical information source for small business operators who do not have the resources of their larger counterparts and it is essential that the FWO provide clear and definitive information to small business owners and their employees regarding changes in employment obligations and rights. Clarity and certainty in advice will reduce confusion and inadvertent wrongdoing, both of which lead to an increase in the FWC's case load.

For example, in the wake of the January 2020 bushfires, we heard from many small businesses on the south coast of NSW who were confused about stand down provisions for staff, particularly where their business was not physically damaged, but no customers were able to enter the area due to road blocks and public safety requirements, leading to the businesses being effectively unable to operate. At the time, the FWO's guidance was general in nature, and encouraged small business owners to seek their own advice in relation to stand down provisions, which caused additional stress for these business owners.

Where possible government should work with the FWO in advance of policy change, or in the wake of a disaster to ensure that relevant information that can be relied upon is updated and available from the time public announcements are made or as soon as possible afterwards.

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This level of coordination will assist small business owners to confidently communicate changes to their staff.

2. **Engagement with small businesses regarding practicality of announcements.** In the early stages of the COVID-19 pandemic response businesses such as hairdressing salons and beauty parlours were not required to close, but many chose to due to an inability to ensure appropriate social distancing, lack of available cleaning supplies, and a concern that remaining open would leave their staff at risk of infection. These 'at will' closures caused significant confusion for business owners and employees and led to a number of FWC claims.

We understand that the period leading up to the initial lockdowns was extremely challenging for all stakeholders, including government agencies, however sectoral confusion and resulting employer/employee disputes could have been ameliorated somewhat by closer industry consultation.

3. **Impact of compliance activity on small business.** We are aware that the FWC is unable to dismiss a complaint without contacting the employer to confirm the facts in dispute, however the process of engaging with the FWC can be burdensome for small businesses and place significant additional burden and stress on the small businesses. Consideration should be given to understanding the commercial realities of small business and family enterprise navigating the complex and dynamic environment associated with COVID-19 and natural disasters.

4. **Proactive and targeted support for small business.** We acknowledge the existing initiatives supporting small business including the Small Business Helpline and Employer Advisory Service, however further support is required to assist small business operators. We recommend the FWC consider factors including lack of previous offences and the time a business has been operating when undertaking compliance activity.

The FWC could, for example, consider that where an unintentional error is made by a newly operational small business, that business be provided with targeted education and guidance rather than be subject to punitive measures. Despite best intentions, small businesses do not have the resources of their larger counterparts to manage complex and changing regulatory environments and as such, initial compliance activity should focus on education.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Cameron Dyson-Smith on 02 5114 6105 or at Cameron.Dyson-Smith@asbfeo.gov.au.



The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman