



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

31 March 2021

Senator Tony Sheldon  
Chair  
Senate Select Committee on Job Security  
Department of the Senate

*via email: [jobsecurity.sen@aph.gov.au](mailto:jobsecurity.sen@aph.gov.au)*

Dear Chair

### **Job security**

Thank you for the opportunity to contribute to this important discussion. Job and economic security is a legitimate aspiration and right of employees and small business owners alike. Improving clarity around workplace relations arrangements and responsibilities is crucial for improving job security and economic opportunities for all people working in small business.

Given this, the Committee should consider the following to help small business thrive and continue providing job security for millions of Australians.

#### **Modern awards and regulatory technology**

That some of Australia's largest companies, with devoted payroll teams, accidentally underpay their staff speaks to the complexity of the modern award system.<sup>1</sup> Issues of complexity are only compounded for small businesses who lack the resources of their large counterparts. Regulatory technology (regtech) can address this complexity without wholesale legislative change.

The Fair Work Commission should create an outcome-focused, accreditation process to be administered by the Fair Work Ombudsman, for regtech products that helps small businesses comply with their obligations under modern awards. The process could be administered as often as necessary to accredited regtech products to ensure ongoing compliance. Where an accredited regtech product is used correctly and an accidental underpayment is found to have occurred, the small business would make good on the underpayment but be given safe harbour from further penalties.

This would give both small businesses and their employees confidence that workplace relations obligations and pay conditions are being met and avenues for aligning employee and workplace objectives are being implemented in a sure-footed way and in accordance with the law.

#### **Additional hours agreements**

The recent application to vary the *General Retail Industry Award 2020* by Master Grocers Australia and the Shop, Distributive and Allied Employees Association, allowing part-time retail workers and their employers to agree to increased hours at their ordinary rate of pay (plus relevant penalty rates) is an economic win-win for employees and the small business community.<sup>2</sup> If approved, small business employers can work with their part-time employees to offer additional hours. My Office notes there was a similar provision contained in the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Bill 2021*.

<sup>1</sup> <https://www.reuters.com/article/us-australia-wages-factbox-idUSKBN20D0FM>

<sup>2</sup> <https://www.fwc.gov.au/documents/sites/award-flexibility-hospitality-retail/applications/am20217-application-revised-280221.pdf>

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Extending additional hours agreements to all modern awards would significantly improve the employment opportunities for and financial security of small businesses' part-time employees. This in turn, helps to further build employer-employee co-operation and trust.

### **On-demand economy**

Giving legal clarity to the status of those who engage in work through the on-demand economy as either employees or independent contractors is of critical importance in discussions of the on-demand economy. When clarity exists, all parties can understand and work through their rights and responsibilities.

Beyond the issue of legal status, there is a need for more effective internal dispute resolution processes within the on-demand economy. Our assistance team regularly deals with disputes between platforms and their small business 'partners'. The most common dispute type centres on a small business partner being issued with a temporary or permanent ban from the platform for a breach of guidelines or conditions. The small business' frustration is compounded by:

- A lack of transparency around reasons for a ban; and
- A lack of right to appeal or effective dispute resolution services.

These employees and/or small businesses would benefit greatly from more structured and accessible dispute resolution service and avenues of communication with the relevant platforms to quickly resolve their issues. This would allow them to get back to work quicker, or entirely avoid unnecessary interruptions to work.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mr Eamon Sloane on 02 6213 7451 or at [eamon.sloane@asbfeo.gov.au](mailto:eamon.sloane@asbfeo.gov.au).

Yours sincerely



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