

27 January 2022

Justice Iain Ross AO
President
Fair Work Commission
Level 2 17/21 University Ave
CANBERRA ACT 2601

via email: consultation@fwc.gov.au

Dear President

The Future of Online Proceedings

Thank you for the opportunity to provide feedback on the *Future of online proceedings*, we strongly support the ongoing use of online proceedings by the Fair Work Commission (the Commission). Small and family business owners, their networks, and their employees require effective, timely, and affordable access to dispute resolution services. The use of online proceedings throughout the pandemic has been a beneficial change facilitating more timely and affordable resolution of disputes. As such, we provide the following comments.

Online proceedings as the default

The Commission should continue to hold proceedings online as the default, providing an alternative arrangement if deemed necessary for exceptional circumstances. The use of online proceedings by the Commission has received overwhelming support from several industry bodies within the small business sector given the significant reduction in financial and time burden on parties generated.

Support for small business

We acknowledge existing supports for small businesses in dispute including the Small Business Helpline and Employer Advisory Service. Further support is required to assist small business operators particularly when navigating online proceedings. We recommend the introduction of a small business division within the Commission and suggest the use of a 'case manager' style of service when dealing with small business disputes.

Feedback from the small business sector has highlighted the efficacy of a case manager in improving the experience for small businesses and their employees when negotiating an Enterprise Agreement, whereas the support provided for unfair-dismissal and general protections disputes was notably less consistent.

The Commission should provide clear guidance for parties involved in an online hearing

We recommend the Commission work with industry to ensure adequate guidance is provided to small businesses and their employees in dispute, with emphasis on the value of appropriate preparation for a hearing. By removing the formality of holding hearings outside the business premises it is easy for overextended small business operators to move straight from regular operations to the hearing without an appropriate transition or opportunity to prepare.

Furthermore, the Commission should ensure it provides all parties with guidance and support specific to the technology used for online hearings, including an opportunity to test technology prior to the hearing. While the rapid shift to online proceedings during the pandemic was a necessary and welcome change, not all citizens and business owners were equipped to take advantage of the digital transformation.¹ It is critical the Commission understand and to the extent possible, address the challenges associated with participating in an online hearing, experienced by those small business operators who may have minimal digital literacy or limited access to reliable technology or connections.

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.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Billson', written in a cursive style.

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

¹ Arthur Moses, *In the age of digital justice, no one should be left behind*, The Australian, 20 January 2022