



**Submission to the Senate Education and
Employment Legislation Committee's inquiry into
the Fair Work Legislation Amendment
(Secure Jobs, Better Pay) Bill 2022**

10 November 2022

Franchise Council of Australia

Lvl 19/567 Collins St

Melbourne VIC 3000

Ph: (03) 9508 0888

Email: info@franchise.org.au

Introduction

The Franchise Council of Australia (FCA) welcomes the opportunity to provide this submission to the Parliament in relation to the proposed *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022*.

The FCA is the peak industry body for the \$172 billion Australian franchise sector. There are approximately 1,300 franchised networks across Australia, with an estimated 94,000 individual franchised outlets, employing more than 565,000 people.

Importantly, the majority of franchisors, and almost all franchisees are small businesses. So, the FCA represents an estimated 94,000 small businesses.

In Australia today, there is a franchise operating in almost every type of business category.

There is strong evidence in Australia and globally to suggest that franchising remains almost the sole business mechanism that enables small business to compete effectively against larger businesses.

Franchised businesses are market leaders in many industry sectors notwithstanding that they have to compete with large corporations. Automotive retail, bakeries, casual dining, fast food, coffee shops, convenience stores, real estate, tyre retail, bedding, furniture retail, postal services and home services are just a few examples.

The FCA seeks to represent not only small business, but successful small business. As such, we consider that we are ideally placed to provide informed and meaningful input into the review of this proposed legislation.

Consideration of the proposed legislation

Small businesses in Australia face growing global uncertainty.

This fact was highlighted by Treasurer Chalmers in his recent Budget speech when he said that “we now confront the prospect of a third global downturn in a decade and a half.”

In the face of this global uncertainty, small businesses across Australia need responsible economic leadership at a national level to build stability and confidence.

This was also recognised by the Treasurer when he said that “our best defence against uncertainty around the world is responsible economic management here at home.”

Small businesses represent approximately ninety-eight percent of businesses in Australia and they are indisputably the engine of our economy.

These businesses have suffered from two years of COVID-induced disruption. This has not only drained financial resources, it has had a profound impact on the mental health of small business owners.

Regulatory overreach in areas such as industrial relations represent a threat to the confidence and operations of businesses across Australia.

The government’s proposed legislation represents the most significant changes ever introduced to the *Fair Work Act*.

In its current form, this legislation will likely have a widespread and detrimental impact on small businesses, which could result in staff reductions and business closures.

There are some laudable elements within the legislation which the FCA completely supports. These include:

- Amending the *Fair Work Act* to expressly prohibit sexual harassment as per Recommendation 28 of the Respect@Work report
- Introducing gender equity as an objective of the *Fair Work Act* & an objective of the modern Awards system
- Banning job advertisements which advertise below the relevant minimum pay rate
- The introduction of a ‘equal remuneration principle’ for the Fair Work Commission
- The pre-amendment changes to the Better Off Overall Test (BOOT) which would allow for simpler and more flexible enterprise bargaining

The government should actively consider splitting the current legislation so that these elements can be considered and progressed on their own.

Understanding of the legislation and its impacts amongst small businesses is very low.

The FCA conducted a small survey of franchisee businesses this week. Sixty-eight percent of small franchised businesses respondents said that they did not understand the proposed industrial relation changes or know how they might impact their business operations.

Of those who felt that they understood the reforms, fifty-five percent were concerned about the changes in the legislation, particularly the multi-employer bargaining provisions.

These figures demonstrate the small business community's strong degree of concern about the proposed industrial relations changes and reflect the low level of consultation which the government has undertaken ahead of introducing this legislation to the Parliament.

The lack of widespread, meaningful consultation can also be seen by the fact that, to date, the government has already introduced more than 150 amendments to the legislation.

In its current form, the FCA cannot support the following sections of the legislation given their detrimental impact on small businesses and on our economy:

- The proposed widening of the 'single interest' bargaining provisions along with the linked 'common interest' test which would enable expansive multi-employer bargaining
- The abolition of the Registered Organisations Commission & Australian Building and Construction Commission
- The amendment introduced by the government this week which would allow new employees to seek to reapply the BOOT to agreements after their approval

In its current form, a widening of the 'single interest' bargaining provisions would enable employees and union representatives to organise protected industrial action, such as strikes, at multiple workplaces across the country – as long as the businesses share an extremely broad "common interest".

This would have devastating consequences for many businesses, and ultimately undermine the security and sustainability of thousands of jobs.

The FCA welcomes the government's amendment which introduces the requirement that a majority of employees within each workplace need to vote in favour of multi-employer bargaining for an agreement to take place, or for their workplace to participate in industrial action. However, this amendment does not fix other substantial problems with multi-employer bargaining.

Furthermore, the government's amendment which outlines that an employer cannot put a proposed multi-enterprise agreement to a direct vote of their workforce without the relevant unions' written approval makes multi-employer bargaining more unwieldy.

The proposed expansion of multi-employer bargaining lacks sufficient safeguards to ensure that it won't impact sectors or employers that are already capable of bargaining at the enterprise level.

With a broad "common interest" test, it is more likely than not that multi-employer bargaining would evolve into industry-wide bargaining. This is a vestige from a bygone era of industrial relations.

In a modern economy, it makes no sense to lump the employees of one business in with employees at a totally separate business in the same industry.

Furthermore, the FCA has significant concerns about several areas of the legislation and believes that they may have unintended consequences which the government has not appropriately considered. These include:

- Introducing job security as an objective of the *Fair Work Act* & an objective of the modern Awards system
- Prohibiting pay secrecy
- Limiting fixed term contracts
- Expanding the circumstances in which an employee may request flexible work arrangements
- Increasing the monetary cap on the amounts that can be awarded in small claims proceedings under the *Fair Work Act* from \$20,000 to \$100,000
- Expanding the capacity for the Fair Work Commission to arbitrate in bargaining disputes

Given the potential impacts of this legislation on our economy, employers and employees – the Parliamentary process should not be rushed.

The FCA calls on the government to delay the consideration of this legislation by the Parliament and to embark upon a more comprehensive consultation process with the business community.

Failing that, the FCA calls upon the government to increase the small business exemption threshold linked to the multi-employer bargaining regime from '15 or fewer' employees to '100 or fewer' employees.

Small business owners already wear many hats – they are the Chief Financial Officer, Chief Marketing Officer, Head of HR – amongst many others. Setting the threshold at only 15 will expose a multitude of small businesses to a complex and costly process which they are not adequately prepared or equipped to navigate.

The Australian economy faces serious challenges.

Weighing it down with the most significant changes ever introduced to the *Fair Work Act* is the antithesis of responsible economic management and will actively hurt small businesses, jobs and our national recovery efforts.

The FCA appreciates the opportunity to provide this input into this review process.

We would welcome the opportunity to discuss this submission with you in further detail. For further information please contact James Stevens at:

Sincerely,

Mary Aldred
Chief Executive Officer