

26 September 2023

Submission to the Inquiry into the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

To the Committee Secretary, Senate Education and Employment Committee,

As the only independent organisation advocating for entrepreneurial and small business women across Australia, Entrepreneurial & Small Business Women Australia (ESBWA) welcomes the opportunity to make a submission to the inquiry into the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023.

This submission considers the impact of Part 15 and Part 16 of Schedule 1 to the Bill, and how changing the definition of an independent contractor will impact sole traders, micro and small businesses. ESBWA is particularly concerned about on the impact on female-led small businesses, which make up 36% of small businesses in Australia.¹

Introduction

Entrepreneurial & Small Business Women Australia is an advocacy and education platform for women-led small and micro businesses, entrepreneurs and founders in Australia. With a membership base of over twelve thousand female business owners in Australia, ESBWA is the primary advocate for Australia's female business community.

ESBWA is concerned that the changes to the Fair Work Bill will not only impact 1.1 million independent contractors² but will also affect small businesses who contract them.

Key issues

Summary of the key issues

The changes to the definition of employee-like roles impact numerous independent contractors and micro businesses in Australia, with a large proportion of these being women. The changes will prevent women from growing their businesses and building financial independence.

¹ Xero, [Where opportunity lies report](#), April 2022

² Australian Bureau of Statistics (Reference period: August 2022) [Working arrangements](#), ABS Website, accessed 26.09.2023.

The key issues are:

- Independent contractors will lose the flexibility that gig (contract) work offers, impacting their financial security and choices.
- Small businesses that depend on the flexibility of working with independent contractors may encounter burdensome requirements that hinder their growth.

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The Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 doesn't recognise that independent contractors need to have autonomy and choice as micro-business owners.

Many female independent contractors appreciate the flexibility offered by gig or contract work. This flexibility often comes with the benefit of higher pay rates along with greater autonomy over working hours, with many of ESBWA's members highlighting these benefits as reasons for choosing to be independent contractors. However, if businesses are compelled to cover additional costs such as insurance for independent contractors, they'll respond by reducing the contract rates they pay. This will result in women having to work longer hours or take on more contracts to maintain their income levels, potentially eroding the financial advantages that gig work initially provided.

The possibility of independent contractors being able to claim unfair dismissal, even when a service contract is in place, could have a significant impact. Businesses will shift towards hiring larger companies or traditional employees rather than independent contractors. This shift could eliminate the flexibility that contracting offers, particularly for women who value the ability to balance work with other responsibilities.

Many independent contractors, including women, often collaborate with other sole traders on key projects. If additional costs and complexities arise from changes in regulations, such collaborations may become financially prohibitive, impeding the growth of these micro-businesses. This limitation on growth could have detrimental effects on women's financial security, as many rely on such business arrangements to generate income.

These issues highlight the potential unintended consequences of legislative changes that affect independent contractors. While these changes may aim to address certain labour concerns, they also have the potential to impact women's economic independence and the flexibility they value in their work arrangements.

Small businesses that depend on the flexibility of working with independent contractors may encounter burdensome requirements that hinder their growth.

The changes will require small businesses to shoulder additional financial burdens, such as providing insurance coverage or leave loading for their independent contractors, creating a financial strain. In response, some small businesses may opt to transition from contracting roles to hiring employees or only working with proprietary limited companies.

Moreover, small businesses that rely on the flexibility of working with independent contractors will be restricted from growth and subjected to onerous requirements and barriers. This limitation on expansion is particularly detrimental, as many small businesses depend on the agility and cost-effectiveness of the contractor model to take on new projects and meet fluctuating demand. These regulations not only undermine the livelihoods of independent contractors but also hinder the growth potential of the very businesses that provide opportunities to these workers, creating a lose-lose scenario for both employers and independent contractors.

If these amendments become legislation, and small businesses don't have the time or financial resources to review the new legislation to ensure that they comply, an imbalance of power is created whereby small businesses are further disadvantaged in comparison to larger organisations. Without consultation with female business owners, there are risks that this group will be overlooked and disadvantaged as a result.

Conclusion

ESBWA is concerned that the changes to the definition of independent contractors will effectively wipe out the micro-business community and reduce financial security and flexibility for women. We are calling on decision-makers to consider the needs of female independent contractors and small businesses who work with them. The proposed changes must take into account the differing needs of these groups and consider the needs of the small business community.

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