

# Fair Work Commission gets \$1.4 million to expand free legal advice service for unrepresented businesses

MATTHEW ELMAS / Tuesday, February 12, 2019



Kelly O'Dwyer. Source: AAP Image/Mick Tsikas.

The Fair Work Commission (FWC) will get \$1.4 million in extra government funding for a service providing free legal advice about workplace issues to “eligible” small-business owners.

Announced on Monday by Minister for Jobs and Industrial Relations Kelly O'Dwyer, the money will expand the FWC's Workplace Advice Service, which was launched midway through last year.

It provides “eligible” people and small-business owners with free advice on unfair dismissal, general protections and workplace bullying from one of 48 partnered law firms.

The scheme is billed as entirely independent of the FWC, although the commission is responsible for organising appointments for participants or putting them in touch with a partnered law firm.

Appointments can also take place at the FWC's offices and generally go for about an hour, providing advice on whether they have a case or not, and even how to structure their arguments before official action commences.

O'Dwyer said the government wants “Australia's 3.3 million small businesses” to operate with “clarity and certainty regarding their rights and responsibilities under employment law”.

However, far fewer are eligible to use the FWC scheme. Eligibility requirements are relatively strict, requiring parties not to be a member of a union or employer association, not already be represented by a lawyer and have no in-house counsel, IR or human-resources staff.

“This funding will allow the Fair Work Commission to facilitate free legal advice to more small-business operators and employees who simply can't afford to pay for legal services,” O'Dwyer said in a statement.

“Navigating industrial relations laws can be difficult, so providing self-represented employers and employees with targeted assistance helps to reduce some of the complexity.”

Complexity has been a [source of criticism](#) about the existing industrial relations framework for some time, with lawyers and SME advocates complaining many business owners struggle to get their head around the *Fair Work Act*.

Meanwhile, [access to justice has emerged as a key issue for small businesses](#), with an Australian Small and Family Enterprise Ombudsman (ASBFEO) report last year finding civil disputes cost businesses \$130,173 on average.

FWC general manager Bernadette O'Neil said the extra funding was “very welcome”.

“Legal assistance can help to reduce anxiety and confusion, improve access to justice and minimise costs for all involved,” she said in a statement.

The additional funding has been welcomed by Joseph Kelly, principal at Kelly Workplace Lawyers, which is one of the FWC's partner firms.

Kelly says his firm gets a case from the program every one to two weeks, advising business owners and employees where they may, or may not, have a case.

“The time you are saving from commissioners who would otherwise have to conduct a series of conferences ... the matter can be dealt with really quickly if a lawyer comes in and says, ‘listen there's no prospect in this’,” he tells *SmartCompany*.

“Or it could be saying: ‘You have really good prospects, you just aren't structuring your argument right’.”

Kelly says about half the cases that come before his firm lack merit, while the other half “might have more merit than even the clients understand”.