



Attorney-General  
Minister for the Arts, Creative Industries and  
Cultural Events  
Minister for Building Quality Improvement  
Minister for Business and Regulatory Services  
Minister for Seniors and Veterans  
Member for Ginninderra

Mrs Giulia Jones MLA  
Chair  
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)  
ACT Legislative Assembly  
CANBERRA ACT 2601

Dear Mrs Jones

I refer to the Committee's comments on the Courts (Fair Work and Work Safety) Legislation Amendment Bill 2019 (**Bill**).

The Committee has noted that parties to a fair work small claim can be represented by officials of industrial associations and that there is no similar provision in fair work general claims. The Committee has advised that this distinction may limit the right to equality before the law as protected by section 8 of the *Human Rights Act 2004 (HRA)*. Further, and noting the requirement to enact legislation consistent with the Commonwealth *Fair Work Act 2009 (FW Act)*, the Committee has advised that any justification for the distinction in who can represent a party to a fair work claim in the Magistrates Court should therefore be based, at least in part, on the difference between fair work small claims and fair work general claims and the appropriateness of taking a different approach depending on which type of claim is being considered.

I consider that any potential engagement of section 8 of the HRA is reasonable and demonstrably justified in a free and democratic society. The definition of fair work small claim refers to section 548 of the FW Act and regulation 4.01 of the *Fair Work Regulations 2009 (Cwlth)*, which make provision for certain proceedings to be dealt with as small claims proceedings. The small claims procedure has distinct features, including that the claim be under \$20,000, be for an amount described in section 548(1A), and not be seeking pecuniary penalty orders. The Court is also not bound by the rules of evidence and may act in an informal manner. Parties may only be represented by lawyers with the leave of the Court, and the procedure also allows for representation by officers of industrial associations, with leave of the Court. Under the FW Act, an applicant who wishes to have their application heard under the small claim procedure must elect to do so: the procedure does not apply automatically.

---

### ACT Legislative Assembly

London Circuit, Canberra ACT 2601, Australia    GPO Box 1020, Canberra ACT 2601, Australia  
Phone +61 2 6205 2615    Email [ramsay@act.gov.au](mailto:ramsay@act.gov.au)



@Gordon\_R\_Ramsay



Gordon Ramsay MLA



Noting the key features of a fair work small claim, it is appropriate for parties to have the option of being represented by an officer of an industrial association in the small claims jurisdiction. In contrast, the legal formality and potential monetary implications of a fair work general claim mean that it could be inappropriate for a non-lawyer to represent a party to those proceedings.

Thank you for the Committee's comments on and attention to these important legislative reforms.

Yours sincerely

Gordon Ramsay MLA  
Attorney-General