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## **SUBMISSION TO STANDING COMMITTEE ON EMPLOYMENT, WORKPLACE RELATIONS, SKILLS AND TRAINING**

### **Inquiry into the operation and adequacy of the National Employment Standards**

**Submitted by:** Council of Small Business Organisations Australia (COSBOA)

**Date:** 26 February 2026

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#### **About COSBOA**

1. The Council of Small Business Organisations Australia (COSBOA) is the national peak body for small business in Australia, representing the interests of small businesses across all industry sectors through our member organisations. Small businesses represent 96.6% of all Australian businesses, 43.8% of private sector employment, and 34.7% of private sector value-added to the economy. They are the backbone of the economy, employing approximately 5 million workers and driving innovation and growth in communities across Australia.
2. Regulations that treat small businesses as if they have the same capabilities and resources as large corporations are fundamentally unjust and economically damaging. Our role is to advocate for policies that enable small businesses to start, survive, and thrive while contributing to economic growth, innovation, and community wellbeing.
3. COSBOA operates the Small Business PEAK program, funded through a PET Fund grant arrangement with the Department of Employment and Workplace Relations (DEWR), providing workplace relations guidance and education to small businesses through digital platforms, AI-powered compliance tools, and research and educational resources. This frontline engagement with small business operators across Australia gives COSBOA unique and direct insight into the practical implementation challenges facing small employers under the current industrial relations framework.
4. COSBOA welcomes the opportunity to contribute to the National Employment Standards (NES) Review.

#### **Executive Summary**

5. COSBOA's submission argues that the NES Review, however well-intentioned, is poorly timed and risks compounding ongoing pressure on Australia's small business community. Since 2022, small businesses have been subjected to an unprecedented and



cumulative wave of industrial relations reform that has fundamentally altered the compliance obligations of employing a person in this country. The regulatory burden created by this wave of change is still being absorbed by small business and many continue to be challenged by understanding and resourcing additional regulatory requirements.

6. COSBOA recommends a moratorium on further NES changes and to prioritise consolidation, simplification, and education before any additional obligations are introduced.

### **The Cumulative Impact of Industrial Relations Reform Since 2022**

7. The period from 2022 to the present has seen the most significant and sustained rewriting of Australia's workplace relations framework in a generation. The Secure Jobs, Better Pay Act 2022 and the subsequent Closing Loopholes Acts 2023 and 2024 introduced over 38 substantive amendments to the Fair Work Act 2009. These have included:
  - a) Multi-employer bargaining and supported bargaining streams, fundamentally changing the enterprise agreement landscape
  - b) Expanded union delegate rights and workplace entry provisions
  - c) Right to disconnect provisions creating new obligations around after-hours communication
  - d) Changes to the definition and entitlements of casual employees, including a new conversion pathway
  - e) Same job, same pay provisions affecting labour hire arrangements
  - f) New employee-like provisions for gig economy workers with flow-on implications for definitional clarity
  - g) Enhanced sham contracting penalties affecting small businesses that rely on independent contractor relationships
8. Each of these changes arrived with compliance obligations, new Fair Work Commission jurisdictions, and legal uncertainty that disproportionately affects small businesses who lack human resources departments, employment law teams, or the scale to absorb the cost of advice, system changes, and potential litigation.
9. Layered on top of this are state-based reforms including expanded non-disclosure agreement restrictions, long service leave changes, workers compensation amendments, and proposed work-from-home rights legislation — each requiring small business operators to further adapt their practices.
10. The cumulative effect is not simply additive. Each new obligation interacts with existing ones, creating a complexity multiplier that is extremely challenging for many small businesses cannot to absorb.



11. COSBOA's primary submission is that the strongest contribution this Review can make to workplace relations policy is a clear recommendation against further change at this time. The arguments for stability are compelling.

### **Comprehension and Compliance Cannot Keep Pace With Reform**

12. The 2025 PEAK Benchmark Research Report (*Beyond Compliance: Measuring the Impact of Recent IR Changes on Small Business*, August 2025), surveyed more than 1,053 Australian businesses and found that while awareness of workplace relations changes has risen to 48% as at 2025, understanding remains limited, with many businesses still unsure of how changes apply to them. Critically, awareness of Closing the Loopholes changes remains the lowest of all reform packages at 23%. Ambiguous tests, undefined concepts, and the absence of practical industry-specific guidance are the primary drivers of non-compliance in the small business sector.
13. This shows that small business awareness of, and compliance with, existing workplace relations obligations is incomplete. Importantly, this is not due to bad faith, but due to the pace and complexity of reform. Introducing further NES changes before current obligations are understood and embedded can reasonably be expected to reduce compliance. The policy goal of improving employment standards for workers is best served by ensuring existing standards are properly understood and applied, not by adding new ones.

### **The Regulatory Burden Is Already at a Tipping Point**

14. COSBOA's members regularly report that compliance costs are among their most significant operational burdens. This is not an abstract concern. Businesses are making active decisions about whether to hire additional staff based on the complexity and risk of the employment relationship. Further NES change risks dampening employment growth in the small business sector at a time when the national economy needs it most.

### **There Is No Evidence of Market Failure in the NES That Warrants Urgent Reform**

15. The NES provides a comprehensive and enforceable floor of minimum entitlements covering maximum weekly hours, flexible working requests, parental leave, annual and personal leave, community service leave, long service leave, public holidays, notice of termination, redundancy pay, and the Fair Work Information Statement. If there are specific areas of demonstrated non-compliance or inadequacy, these should be addressed through enforcement and education rather than further legislative expansion.

### **Small Businesses Have Not Had Adequate Time or Support to Adjust**

16. Many of the reforms introduced since 2022 are still being bedded down. The right to disconnect provisions, for example, are less than two years old. The new casual conversion pathway is still being navigated. The implications of recent Federal Court decisions on annualised salary arrangements are still reverberating through the employer



community. To proceed with NES reform before these changes are consolidated would be premature.

#### **COSBOA's Broader Call: A Regulatory Pause and Reform Assessment**

17. This Review is an opportunity to recommend a broader regulatory pause across workplace relations reform affecting small businesses. Before further change is introduced to the NES or the broader Fair Work framework, the government should commission an independent cumulative impact assessment of all workplace relations changes since 2022, specifically measuring:

- a) Compliance cost per small business
- b) Impact on small business employment decisions
- c) Awareness and comprehension rates among small business operators
- d) Enforcement and litigation trends in the small business sector.

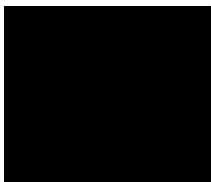
The findings of such an assessment should inform the sequencing and design of any future reform program.

#### **Conclusion**

18. Australia's small businesses are not opposed to fair and reasonable minimum employment standards. COSBOA and its members understand and support the role of the NES in protecting workers and establishing a clear baseline for employment relationships. What small businesses cannot sustain is an unrelenting pace of change that outstrips their capacity to understand, resource, and comply.

19. The NES Review presents an important opportunity — not to add further obligations, but to pause, consolidate, and ensure that the standards already legislated are working as intended. COSBOA urges the Government to take that opportunity seriously.

**Yours sincerely,**



**Skye Cappuccio**

Chief Executive Officer

Council of Small Business Organisations Australia (COSBOA)