

Submission to the House of Representatives Standing Committee Inquiry into the Operation and Adequacy of the National Employment Standards (NES)

Submitted by:

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1. Introduction

I am the owner of a small business based in Western Sydney that supplies cardboard boxes and packaging to small and medium-sized businesses across Sydney. I employ a small team of staff. As a small-business employer responsible for payroll, compliance, and day-to-day operations, I experience directly how the National Employment Standards (NES) operate in practice.

Small businesses collectively employ a significant proportion of Australians,¹ yet their experience can be under-represented in workplace policy discussions. The NES plays a critical role in Australia's workplace relations system, but its effectiveness depends not only on protecting employees, but also on ensuring employment remains sustainable for the small businesses that create jobs.

The pace of workplace reform in recent years has made this balance increasingly important. For small businesses without dedicated HR or compliance teams, the cumulative effect of regulatory change can significantly affect the practical operation of the NES and the sustainability of employment.

This submission provides practical observations on:

- how the NES operates in small business
- the cumulative impact of workplace regulation
- sustainability of employer obligations
- the balance between employer and employee experience

This submission is written from the perspective of a small-business employer who complies with workplace laws, values employees, and is committed to maintaining sustainable employment.

2. Purpose of the NES and the safety-net framework

The National Employment Standards (NES) provide minimum employment entitlements across the workforce and form a central part of Australia's workplace safety-net framework.

However, like all workplace regulation, the NES must remain:

- sustainable
- administratively manageable
- economically realistic

- stable over time

Employment is a two-party relationship, and workplace regulation must ensure both employers and employees remain viable.

The NES operates within a broader framework including awards, enterprise agreements, and flexibility arrangements. For small businesses, the interaction between NES obligations, awards, payroll systems, and cash flow can be as significant as the entitlements themselves.

Maintaining the effectiveness of the NES therefore depends not only on the design of individual entitlements, but on ensuring the broader safety-net framework remains coherent, practical to administer, and sustainable over time.

Although not all issues raised in this submission form part of the NES itself, they influence the broader employment framework within which the NES operates and therefore affect its adequacy in practice.

3. Small-business context

Small-business owners operate under very different conditions from large corporations.

ASBFEO data indicates:

- 55% of small-business owners with 1–19 employees earn less than the average wage²
- 46% of small businesses do not make a profit in a given year³

These figures matter when considering whether additional employment obligations are sustainable.

Unlike larger organisations, small-business owners often:

- operate without HR departments
- manage payroll themselves
- inject personal funds into their business⁴
- work unpaid hours⁴
- carry personal financial risk

Policy settings designed with large-business administrative capacity in mind do not always translate well to small-business environments. This context should be considered when assessing whether the NES remains fit for purpose.

4. The cumulative impact of workplace regulation

Some individual NES entitlements and workplace reforms can already present challenges for small businesses, but the cumulative impact of multiple changes over a short period significantly increases the burden.

Since 2022, small employers have been required to adapt to a range of workplace reforms, including reforms directly and indirectly affecting small business, such as:

- Paid Family and Domestic Violence leave
- Secure Jobs, Better Pay reforms

- Casual employment changes
- Fixed-term contract limits
- Delegates' rights expansion
- Criminalisation of wage theft
- Right to disconnect
- Labour-hire "same job, same pay"
- Superannuation incorporated into the NES framework

Collectively, these changes create:

- compliance pressure
- administrative burden
- financial uncertainty

Small-business owners are spending increasing time on compliance obligations, which reduces time available to run and grow their businesses.⁵ This reflects my own experience.

5. Real-world business experience

Policy discussions often assume businesses operate with stable income and financial reserves. Many small businesses do not.

Small-business revenue can change quickly and unpredictably, while employment obligations remain constant.

Australia recorded the highest number of business insolvencies on record last year,⁶ highlighting the financial volatility many small employers are currently facing.

For example:

A long-term food manufacturing customer of my business entered liquidation last year. To keep his business operating, the owner regularly invested personal funds and often paid employees more than himself. The company had previously purchased around \$30,000 of boxes per year. The owner lost money, employees lost their jobs, and my business lost important revenue.

Another long-standing customer with decades of trading history went into voluntary administration last month owing my business about \$5,700, which is unlikely to be recovered.

Despite losses like these, employers like me must continue to meet payroll obligations and NES-related requirements in full as they fall due.

While employees benefit from structured protections within the employment system, small-business owners often carry these financial risks personally. The employment and regulatory framework does not typically adjust when businesses experience unexpected revenue losses. Employment obligations are fixed. Small-business income is not.

6. Employer experience and sustainability

Small-business owners often operate under conditions very different from those assumed in workplace policy discussions.

It is common for small-business owners to:

- work while sick
- skip leave
- work evenings, weekends and public holidays without pay or penalty rates
- use personal savings to keep the business operating
- earn less than their own employees⁷

These points also reflect my own experience as a small-business owner. In my own business, employees are typically paid more than I am, either in total or on a pro-rata basis. They are paid overtime when working extra hours and receive their full leave entitlements. As the owner, I often defer income and take less leave than I otherwise would, in order to keep the business running.

COSBOA research similarly identifies owners ‘working to support employees’ rather than earning sustainable income themselves.⁸

Unlike employees, small-business owners generally do not experience guaranteed income or full entitlements. Access to leave, income stability, and financial protection often depends on whether the business can afford it at the time.

Small-business owners are frequently discussed in policy terms simply as “employers” or “businesses”, but they are also real people, supporting families, managing financial stress, and carrying responsibility for the livelihoods of others.

If an employer expected employees to work under the conditions listed above, it would likely constitute a breach of workplace law.

Yet these realities are rarely reflected in workplace policy discussions, which often focus primarily on employer non-compliance rather than employer sustainability.

This highlights the often-overlooked issue of small-business employer sustainability.

7. Real-world operation of workplace policy

The following examples illustrate how workplace policy settings interact with the NES in real small-business environments.

Imbalance in workplace expectations

Small-business owners often work outside normal hours to support employees and manage business responsibilities. For example, during our recent Christmas closure period, I was contacted by an employee requesting an advance on wages and responded despite the business being closed. This highlights how the boundaries between working time and personal time are often less clear for small-business owners.

Policy discussion around the *right to disconnect*, however, focuses primarily on protecting employees from employer contact outside working hours. There has also been less attention given to the impact on small businesses when employees undertake personal activities during paid working time, such as private calls, social media use, or managing personal matters while working remotely, an issue that has become more prominent in modern workplaces.

Government support and messaging in this area have largely focused on employees, with little recognition of the practical productivity and management pressures faced by small-business owners.

A similar imbalance exists in the broader policy focus on wage theft. While deliberate underpayment should rightly be addressed, other workplace costs borne by small businesses, including unjustified absenteeism (such as “chucking a sickie”) receive far less policy attention despite their significant financial and operational impact. Research indicates that in many workplaces the cost of unjustified absenteeism is significantly larger than the cost of employer underpayments.⁹ This difference in policy focus contributes to a growing perception among small-business owners that workplace policy settings increasingly emphasise employee protections without equivalent consideration of the sustainability pressures facing employers.

Non-solicitation protections and business goodwill

Small businesses invest significant time and resources building customer relationships, training employees, and establishing trust in local markets. These relationships often represent years of effort and form a core part of a business’s goodwill and value.

In practice, these risks are not theoretical.

For example, my own business uses a local cleaning company operated by a fellow small-business owner I know through our local business chamber. On one occasion, cleaners employed by that company approached me while working at my business premises and offered to take over the cleaning work privately, bypassing their employer. After this occurred, I spoke with the business owner and learned that similar approaches had been made to other clients.

Those employees only had access to customers like me because their employer had invested time and resources into building the client base and trusting staff to represent the business. Client non-solicitation protections in that business’s employment agreements helped safeguard the cleaning company from losing customers it had spent years developing.

Similarly, in my own industry, a delivery driver employed by a competitor developed relationships with customers through their employer’s business and later attempted to supply those same customers privately, without the employer’s knowledge. The driver had not built those relationships independently; they existed because of the employer’s investment in marketing, logistics, and customer service over many years. Situations like this can erode goodwill quickly and undermine the viability of a small business.

These examples illustrate why targeted post-employment protections exist: to safeguard legitimate business interests such as client relationships, confidential information, and investment in employee development. When properly drafted, such clauses are typically limited in scope and already subject to legal reasonableness tests.

As the Government considers reforms to post-employment restraint clauses, including possible limits on non-solicitation provisions, careful policy design will be needed to avoid unintended consequences, particularly where changes may weaken targeted client non-solicitation protections and other legitimate safeguards that support workforce stability and business goodwill. At the same time, a blanket ban on non-compete clauses may remove a tool some small businesses rely on to protect the value they have built, where more targeted regulation of misuse may be sufficient. Without appropriate safeguards, businesses may become more reluctant to invest in staff training, share client relationships, or expand their operations.

Policy in this area must balance employee mobility with the legitimate need for small businesses to protect customer relationships, business value, and long-term employment sustainability.

Junior employment opportunities

Junior pay rates enable small businesses to hire and train young workers.

A few years ago, I was hiring a junior casual for my warehouse. My final two candidates were:

- an 18-year-old university student, fresh out of school with limited experience
- a 23-year-old with previous warehouse experience

I employed the 18-year-old primarily because junior rates made it financially viable to invest in training and absorb the lower initial productivity associated with a first job.

Without junior rates, I would have hired the more experienced candidate.

Three years later, that employee is now on full casual adult wages and established in the role. That opportunity would likely not have existed if full adult wages had applied from day one.

Experiences like this highlight how junior pay structures can support youth employment by recognising that younger workers are often still developing workplace skills, confidence, and experience. Small businesses frequently invest significant time and supervision in helping young employees transition into the workforce.

With youth unemployment consistently higher than the general unemployment rate,¹⁰ even small increases in entry-level employment costs can reduce opportunities for young workers.

In this context, junior rates are not about undervaluing young people, but about enabling businesses to provide training, supervision, and employment pathways that help younger workers develop into capable employees over time.

This example illustrates the connection between workplace policy settings and employer sustainability. Small businesses must balance providing employment opportunities with maintaining financially sustainable operations. Policy changes that increase entry-level employment costs may unintentionally reduce opportunities for young workers by limiting the ability of small employers to invest in training and development.

8. Employment sustainability

Small businesses cannot absorb unlimited cost increases.

The sustainability of small-business employment is therefore central to assessing whether the NES safety net remains effective in practice.

If employment costs become unsustainable, businesses may:

- reduce hiring
- limit trading hours
- delay expansion
- close entirely

These outcomes reduce employment opportunities.

The National Employment Standards were designed to provide a stable and consistent safety net of minimum entitlements across the workforce. The effectiveness of the NES depends not only on the strength of individual entitlements, but also on maintaining a framework that remains sustainable and administratively manageable for employers, particularly small businesses.

Recent workplace policy discussions have included proposals that would increase employment costs or employer obligations, such as expanding paid leave entitlements (including reproductive leave), introducing mandatory heat-related leave for outdoor work, and substantial above-inflation wage increases for low-paid workers.

While individual proposals may be motivated by legitimate concerns, policy discussions often give limited attention to how additional obligations would be funded in small-business environments. Public debate frequently focuses on large corporations with significant profits, yet approximately 97% of Australian businesses are small businesses, many operating with tight margins and limited financial buffers.

Unlike large companies, small businesses don't usually have spare funds, big cash reserves, or the ability to easily raise prices to cover higher employment costs. In many cases, small-business owners earn less than their own employees and have less financial security.

For many small businesses, the priority is not introducing additional minimum entitlements but ensuring that the existing safety-net framework remains practical, coherent, and sustainable. Continued expansion of minimum employment obligations, without careful consideration of funding and implementation, risks reducing employment opportunities, particularly in entry-level roles.

A workplace system must protect employees without undermining employer viability. Maintaining a stable and sustainable NES framework will help preserve employment opportunities while continuing to provide a strong safety net for workers.

In this context, maintaining the sustainability of the NES framework may require reviewing how recent obligations are funded and implemented, particularly where they create structural financial pressure for small employers.

9. Practical policy options to support NES sustainability

Recent expansions to employer obligations have increased pressure on small businesses. Before further changes are considered, there should be a review of recent changes to ensure the NES framework remains practical, balanced, and sustainable.

Where obligations relate to broader social policy or create structural cash-flow pressures, alternative funding approaches should be considered.

Shared funding of social-policy entitlements

Paid Family and Domestic Violence leave addresses a serious social issue that extends beyond the workplace.

However, the financial burden of this entitlement currently sits entirely with employers, including small businesses with limited financial capacity. This places responsibility for funding a societal issue on individual businesses rather than the community more broadly.

Alternative approaches could include:

- direct government funding of the entitlement
- a shared-contribution model across the community, similar in concept to Medicare

This would ensure employees remain supported while recognising that domestic violence is a societal issue rather than a business-specific responsibility.

Cash-flow impacts of payday superannuation

The introduction of payday superannuation will create significant cash-flow pressure for small businesses, particularly those operating with customer credit terms.

In many industries, businesses will need to pay superannuation more frequently and earlier in their cash-flow cycle, often before receiving payment from customers. This shifts additional financial risk onto employers even where the business is otherwise viable.

An alternative approach could have been to strengthen employee protection through existing safety-net mechanisms, such as extending Fair Entitlements Guarantee (FEG) coverage to unpaid superannuation in insolvency situations.

At a minimum, government-supported low- or no-interest loan facilities could assist small businesses in managing the cash-flow impact of payday superannuation.

Supporting business viability ultimately protects employment and employee entitlements.

10. Consultation and evidence from small business

In addition to the policy issues outlined above, there is also an opportunity to improve how small-business experience informs workplace policy development.

There appears to be limited direct consultation with small-business operators regarding how the National Employment Standards operate in practice.

Formal submission processes are valuable but may not always capture real-world small-business experience. This is often because:

- small-business owners have limited time to participate in formal consultations
- participation rates from small employers are typically low
- consultation frequently relies on representative bodies rather than direct employer input

More proactive engagement with small-business employers would help ensure workplace policy reflects how the NES operates in practice across small workplaces.

Inquiry processes such as this one would benefit from additional outreach methods that actively seek small-business input, rather than relying primarily on written submissions.

11. Recommendations

This submission recommends that the Committee:

- Recognise the cumulative impact of recent workplace regulation on small business
- Consider whether the NES remains sustainable for small-business employers

- Allow time for recent workplace reforms to settle and be reviewed in practice, rather than introducing additional employer obligations
- Consider alternative ways of funding social-policy entitlements such as Paid Family and Domestic Violence leave
- Identify practical solutions to manage the cash-flow impact of payday superannuation on small businesses
- Examine whether the Fair Entitlements Guarantee (FEG) could cover unpaid superannuation in insolvency situations
- Increase direct engagement with small-business employers
- Prioritise simplicity, stability, and practicality in the NES framework

12. Conclusion

The National Employment Standards form a central part of Australia's workplace relations system.

However, the long-term effectiveness of the NES depends on ensuring that employment remains sustainable for the small businesses that create jobs across the economy.

Small-business owners are not just numbers in economic data. They are real people who are:

- major employers
- financially exposed
- administratively stretched
- personally invested in their businesses

The Committee has an opportunity through this inquiry to ensure the National Employment Standards operate in a way that remains practical, stable, and sustainable for small-business employers.

A workplace relations system that recognises both employee protection and employer sustainability will produce stronger and more durable employment outcomes.

Sustainable small-business employment is not separate from employee protection; it is what makes those protections possible.

Ensuring the NES remains practical, stable, and sustainable for small businesses will help maintain employment opportunities for the communities those businesses serve.

13. References

¹ **Australian Government Treasury (2025)**, *Release of Australia's first National Small Business Strategy*, Media Release, 3 February 2025, noting that small businesses employ around 5 million Australians, approximately 42 per cent of the private-sector workforce, and contribute roughly one-third of GDP. <https://ministers.treasury.gov.au/ministers/julie-collins-2024/media-releases/release-australias-first-national-small-business>

² **Australian Small Business and Family Enterprise Ombudsman (ASBFEO) (2024)**, *Small Business Matters*, p.14, reporting that three-quarters of self-employed small-business owners, and 55% of small-business owners with 1–19 employees, earn less than the average full-time adult wage.

https://www.asbfeo.gov.au/sites/default/files/2024-02/Small%20Business%20Matters_February%202024.pdf

³ **Australian Small Business and Family Enterprise Ombudsman**, “*Quarterly Report*” 1 July to 30 September 2024, p.1, Paragraph 5, reporting that 46% of small businesses did not make a profit in the recent reporting year. <https://www.asbfeo.gov.au/sites/default/files/2024-11/ASBFEO%20Quarterly%20Report%20-%20Q3%202024.pdf?utm>

<https://www.asbfeo.gov.au/sites/default/files/2024-11/ASBFEO%20Quarterly%20Report%20-%20Q3%202024.pdf?utm>

⁴ **COSBOA Small Business Perspectives Report 2025**, Key Findings, p.6, 60% of owners could not pay themselves at least occasionally in the past year; one-quarter used personal savings to keep their business operating. <https://www.commbank.com.au/content/dam/caas/newsroom/docs/cosboa-small-business-perspectives-report.pdf>

⁵ **COSBOA Small Business Perspectives Report 2025**, Key Findings, p.6, many small-business owners spend more than six hours per week on compliance tasks, leaving minimal capacity for innovation or growth. <https://www.commbank.com.au/content/dam/caas/newsroom/docs/cosboa-small-business-perspectives-report.pdf>

⁶ **Australian Financial Security Authority (AFSA)**, *State of the Personal Insolvency System 2024–25*, “Personal insolvency snapshot” section, citing ASIC corporate insolvency statistics. The report notes that ASIC recorded 14,722 corporate insolvencies in 2024–25, the highest level since records began in 1999–2000. <https://www.afsa.gov.au/about-us/statistics-and-insights/system-insights/state-personal-insolvency-system>

⁷ **Kenji Sato**, “Most businesses make zero profit, ombudsman’s report finds, as owners blame red tape,” *ABC News*, 3 August 2023, reporting ASBFEO data that many small-business owners earn less than their employees. <https://www.abc.net.au/news/2023-08-03/small-business-owners-make-less-than-their-workers-ombudsman-say/102680268?future=true&>

⁸ **COSBOA Small Business Perspectives Report 2025**, pp.14–16, survey respondents describe “long hours for little pay” and feeling they are “working for everyone else in the business rather than themselves,” and “paying employees and suppliers but there is nothing left for me and my family.” <https://www.commbank.com.au/content/dam/caas/newsroom/docs/cosboa-small-business-perspectives-report.pdf>

⁹ **Busy at work**, “*Are you chucking it? The top industries for sickies in Australia*”, 2024, Paragraph 1. Only 52% genuinely sick, Cost \$44B. <https://www.busyatwork.com.au/chucking-top-industries-sickies-australia/#:~:text=The%20average%20Aussie%20worker%20takes,in%20excess%20of%20%2444%20billion>

Fair Work Ombudsman, “*FWO recovers half a billion dollars for workers*”, 1 Aug 2023, Paragraph 1 <https://www.fairwork.gov.au/newsroom/media-releases/2023-media-releases/august-2023/20230801-pir-2023-media-release>

7 News, “*Australian workers missed out on \$5.1b in unpaid superannuation, SMC analysis reveals*”, 30 Aug, 2024, Paragraph 2. \$5.1 billion <https://7news.com.au/news/australian-workers-missed-out-on-51b-in-unpaid-superannuation-smc-analysis-reveals-c-15868476>

¹⁰ **Australian Bureau of Statistics**, “*Labour Force, Australia*”, Unemployment, April 2024. Key data: Unemployment rate = 4.4%; Youth (15–24 years) unemployment rate = 9.8% [Labour Force, Australia, October 2025 | Australian Bureau of Statistics](https://www.abs.gov.au/australian-bureau-of-statistics)