



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

27 February 2026

Dr Carina Garland MP  
Committee Chair  
Standing Committee on Employment,  
Workplace Relations, Skills and Training  
PO Box 6021  
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CANBERRA ACT 2600

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Dear Dr Garland

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

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to provide a submission to the inquiry into the operation and adequacy of the National Employment Standards (NES).

Small businesses are the engine room of the Australian economy. They employ approximately 5 million Australians, representing 42% of the private-sector workforce, and contribute around one-third —\$590 billion annually— of Australia's GDP.<sup>1</sup> This contribution, while still significant, has declined since 2006 when small businesses contributed 40% of GDP and employed 53% of private sector workers.<sup>2</sup> The number of small employing businesses —with 1-4 employees— decreased 5.3% between 2021-22 and 2024-25, from 727,457 to 688,870.<sup>3</sup>

Australian small business productivity has also fallen in recent years, declining 9% from a peak of \$110.40 per hour in November 2022 to \$100.30 per hour in late 2023.<sup>4</sup> A recent global study found that Australian small businesses are only around half as productive as large firms, and that lifting small business productivity and narrowing the gap with larger businesses could lift national productivity and boost GDP by up to 5%.<sup>5</sup>

While the causes of low and declining productivity of Australia's small businesses are varied and complex, there is little doubt that growth in the number and complexity of regulations impacting small business is a key contributor. According to the Australian Institute of Company Directors, the

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<sup>1</sup> Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Number of Small Business in Australia*, ASBFEO, Australian Government, August 2025.

<sup>2</sup> ASBFEO, *Energising Enterprise - 14 Steps to boost Australia's small and family businesses*, ASBFEO, Australian Government, August 2024.

<sup>3</sup> ASBFEO, *Number of Small Business in Australia*, ASBFEO, Australian Government, August 2025.

<sup>4</sup> Xero Small Business insights, *Special Report Part 1 - Small business productivity: Trends, implications and strategies*, Xero, April 2024 (revised July 2024).

<sup>5</sup> Madgavkar A, Piccitto M, White O, Ramirez M J, Mischke J and Chockalingam K, *A microscope on small businesses: Spotting opportunities to boost productivity*, May 2024, McKinsey Global Institute, Exhibit 5, p 14 and Exhibit 6, p 15.



cost of complying with Commonwealth regulations has grown to \$160 billion, nearly 6% of GDP, up from \$65 billion (4.2% of GDP) in 2013.<sup>6</sup>

### **Workplace relations regulation and the distinctive nature of small businesses**

Most small business employers operate on a small or micro scale with limited resources and capabilities, and typically lack dedicated HR or legal capability. Owners and managers must interpret employment standards, administer leave entitlements, manage flexible work requests and maintain records, while simultaneously running day-to-day operations. Where regulatory obligations are unclear, duplicated across instruments, or subject to frequent change, compliance costs escalate and confidence to hire, invest and grow can be constrained.

The *Fair Work Act 2009* sets out the regulatory framework for managing the relationship between a productive economy and fair treatment of the workers. The NES are a critical pillar of that framework, setting minimum standards of treatment for Australian workers. While the NES provide essential baseline protections for employees, small and family businesses experience a disproportionate compliance burden due to the complex interaction between NES provisions, modern awards and associated guidance materials. This complexity increases the risk of inadvertent non-compliance and diverts limited time and resources away from productive business activity, workforce participation and growth.

Any inquiry into the operation of the NES should therefore recognise the distinctive nature of small businesses and their role in driving employment, productivity and economic participation, and, consistent with the objects of the *Fair Work Act 2009*, ‘acknowledge the special circumstances of small and medium-sized businesses’.<sup>7</sup> The following examples illustrate where these special circumstances have been acknowledged with regard to workplace relations regulation.

#### **Fair Work Ombudsman – lack of in-house HR and higher compliance costs**

The Fair Work Ombudsman’s 2025 Review of the *Fair Work Act 2009* definition of ‘small business employer’ (the Review) states that, compared to larger businesses, small businesses:

- have limited time and in-house support dedicated to human resources, payroll and regulatory compliance
- are more likely to require external advice to understand and meet Fair Work Act obligations, resulting in proportionally higher compliance costs.

#### **ASBFE0 submission – complexity causing inadvertent non-compliance**

In our submission to the Fair Work Ombudsman Review we noted:

- Australia’s workplace rules are ‘complex, onerous and difficult for small businesses to navigate’
- increasing legislative change has resulted in unintentional non-compliance, despite best efforts by small business employers.

The submission emphasises that having access to specialised HR or legal resources should not be a prerequisite to operating a compliant business.

<sup>6</sup> Mandala Partners, *\$160bn and counting: The cost of Commonwealth regulatory complexity*, Australian Institute of Company Directors, November 2025.

<sup>7</sup> Section 3(g), *Fair Work Act 2009(Cth)*.



### **Fair Work Ombudsman – policy rationale for differential treatment**

The Fair Work Ombudsman Review recognises that differential treatment of small business employers under the *Fair Work Act 2009* exists specifically because:

- small businesses face greater difficulty responding to regulatory change
- compliance systems designed for larger employers do not reflect small business operational realities.

This acknowledgement underpins long-standing exemptions and delayed commencements for small businesses and validates the need for a ‘think small first’ or ‘small business first’ approach.

### **Mandala Partners / AICD – owner time diverted from growth**

The Australian Institute of Company Directors report, *\$160 billion and counting: The cost of Commonwealth regulatory complexity*, found:

- time spent by business owners and directors on compliance has more than doubled over the past decade
- for small businesses, this compliance labour is absorbed by owners themselves, diverting time away from hiring, investment and growth.

While not limited to employment law, the report identifies workplace relations as a major contributor to cumulative regulatory complexity.

## **Reducing regulatory complexity**

In making recommendations for improving the operation of the NES, the ASBFEO encourages the Committee to account for the distinctive nature of small business and the challenges they face in complying with Australia’s highly complex workplace relations regulations. The Committee should focus on the ways in which policies and regulations are developed, the education and guidance provided to support compliance, and how the broader business community transacts with small businesses.

Moreover, the ASBFEO recommends that the Committee’s findings and any subsequent reform agenda prioritise practical measures that reduce regulatory complexity while preserving core employee protections. The ASBFEO recommends the Government:

- Embed a ‘think small business first’ mindset in any reform to the NES, one that involves early and genuine stakeholder consultation to inform policy development and regulatory design and includes explicit assessment of impacts on micro and small employers.
- Simplify and clarify NES provisions where practical—particularly in relation to leave entitlements, flexible work requests and record-keeping—to reduce inadvertent non-compliance.
- Improve alignment between the NES, modern awards and guidance materials, reducing duplication and interpretive complexity.
- Limit the pace of change to employment standards, providing greater certainty and allowing small businesses adequate time to adapt.



- Adopt a systematic approach of positive educational partnership which recognises the need for small business owners to keep abreast of and respond to increasing regulatory complexity.

If you would like to discuss any of the issues raised in this submission or require further information, or clarification, please contact ASBFEO via email at [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman