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SUBMISSION TO THE FAIR WORK COMMISSION
Model Terms for Enterprise Agreements and Copied State Instruments

INTRODUCTION

Small Businesses in Australia are the backbone of the economy.

Established in 1979, the Council of Small Business Organisations of Australia (COSBOA) is a member-based not-for-profit organisation exclusively representing the interests of small businesses who employ over 5 million Australians.

The capability, representation, and reach of COSBOA are defined by a mix of nearly 50 national and state-based association members. COSBOA's strength is its capacity to harness its members' views and advance consensus across policy areas common to many. Our member organisations work behind the COSBOA secretariat to assist us with policy development and guide our advocacy - not just for small businesses but also for the benefit of the Australians they employ.

COSBOA seeks to provide the following submission in relation to proposed model terms for enterprise agreements.

1. The Council of Small Business Organisations Australia (COSBOA) submits that the Fair Work Commission must adopt a simple, practical approach when creating model terms for enterprise agreements (EAs). The Commission should reject any proposals that:
 - Extend beyond the parameters established in modern awards
 - Introduce unnecessary administrative burden and obligations
 - Does not reflect operational realities of small businesses.
2. Since 2022, small businesses in Australia have been subject to a large wave of legislative changes in workplace relations that has significantly added regulation, administration and complexity in the employer and employee relationship. The Commission ought to add value to this imposition and factor a minimalist approach when considering model terms. This approach is appropriate both from a legislative and practical perspective. From our position as representatives of small businesses, the current model EA terms are functioning adequately, particularly in consideration of their role in the bargaining system.

EXECUTIVE SUMMARY

COSBOA submits that the Commission should:

1. Maintain the substance of existing model terms from the Fair Work Regulations 2009
2. Make only minimal necessary adjustments to reflect recent legislative changes
3. Ensure any modifications preserve simplicity and practicality especially for small business implementation and operational impact
4. Keep the premise that model terms are minimum standards and should not be used as an opportunity to surreptitiously maximise workplace entitlements and consequent costs for small business.

The Australian workplace relations landscape has undergone a transformative period of significant change since 2022, placing considerable strain on small businesses and their operational capabilities. Responding to multiple legislative reforms, organisations are adapting to extensive modifications in bargaining processes introduced through three major legislative amendments: the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 (Cth), the Fair Work Legislation Amendments (Closing Loopholes) Act 2023 (Cth), and the Fair Work Legislation Amendments (Closing Loopholes No.2) Act 2024 (Cth).

In this context of substantial regulatory change, businesses urgently require a period of stability. Future legislative amendments must be guided by three fundamental principles: consistency, clarity, and simplicity. These principles are essential to prevent further instability and uncertainty in bargaining processes, particularly given that legal complexities and ambiguous workplace instruments frequently contribute to employer-employee disputes.

COSBOA emphasizes the critical importance of maintaining substantial alignment between Enterprise Agreement (EA) model terms and those prescribed by the Regulations. This position reflects a deep understanding of how regulatory changes in workplace relations directly impact business operations through increased compliance requirements, operational costs, and productivity considerations. When unnecessary modifications are implemented, small businesses face not only undue financial burdens but also experience diminished productivity and restricted business growth.

The current framework demonstrates strong alignment between model EA terms prescribed in the regulations and comparable terms in modern awards across content, design, and operational aspects. This alignment serves a crucial purpose - any significant deviation risks undermining collective bargaining processes and could discourage participation in these essential workplace negotiations.

Given these considerations, COSBOA advocates for a cautious and measured approach from the Commission when evaluating potential changes to EA model terms. Substantial departures from the current EA model terms prescribed by the Regulations would impose significant operational and financial burdens on small businesses. Maintaining consistency between these instruments is paramount for fostering stable and effective workplace relations.

This measured approach to regulatory evolution would support the dual objectives of modernising workplace regulation while preserving the stability and clarity necessary for sustainable business operations and growth. The focus should remain on creating an environment that enables businesses to operate efficiently while maintaining appropriate workplace standards and protections.

BROAD FRAMEWORK CONSIDERATIONS

The Commission must consider several factors in developing new model terms. From a small business perspective, key considerations include:

Consistency with Modern Awards

The current model terms align appropriately with comparable modern award provisions while maintaining sufficient flexibility for enterprise-level adaptation. This consistency helps small businesses navigate multiple industrial instruments and should be preserved especially when factoring the large and impactful changes to workplace relations legislation over the past two years.

Best Practice Workplace Relations

We concur with the notion that "best practice" must be demonstrated through evidence rather than assertion. Small businesses require proven, practical approaches rather than theoretical ideals that may work only for large organisations with sophisticated HR systems.

Objects of the Fair Work Act

The Act's objectives include providing a "balanced framework" that is "flexible for businesses" (s.3). For small employers, this means model terms must be:

- Simple to understand and implement
- Practical for businesses without HR expertise
- Cost-effective to administer
- Adaptable to diverse workplace circumstances

SPECIFIC ELEMENTS

Consultation Terms

The existing consultation provisions appropriately balance notification requirements with practical implementation. We support retaining key features that work for small business:

- Triggering consultation only upon "definite decisions" about major change
- Focusing obligations on changes with "significant effects" on employees
- Allowing flexibility in consultation methods
- Not mandating excessive documentation requirements

Small businesses often need to implement change quickly to remain viable. Overly prescriptive consultation requirements could impede necessary operational adjustments while creating disproportionate administrative burdens.

COSBOA does not see any need for any change to the current arrangements.

Flexibility Terms

Current individual flexibility arrangements (IFAs) provisions effectively enable small businesses to accommodate individual employee circumstances while maintaining appropriate safeguards. Key aspects to preserve include:

- Clear specification of matters that may be varied
- Practical requirements for reaching and documenting agreements
- Straightforward better off overall test application
- Reasonable notice periods for termination

These elements provide sufficient structure while remaining workable for small employers without legal expertise.

COSBOA does not see any need for any substantive change to the current arrangements.

Dispute Resolution Terms

COSBOA supports a minimalist approach as the existing dispute resolution framework serves small business needs by:

- Encouraging workplace-level resolution where possible
- Providing clear escalation paths when needed
- Maintaining operations during disputes
- Allowing appropriate Commission involvement where required.

COSBOA does not see any need for any substantive change to the current arrangements.

PRACTICAL IMPLEMENTATION CONSIDERATIONS

Any significant expansion of model terms would disproportionately affect small businesses through:

- Increased documentation requirements
- Additional consultation obligations
- More complex compliance processes
- Greater need for external expertise and consequential cost

Small businesses are already adapting to multiple recent workplace relations changes including:

- Secure Jobs Better Pay Act reforms
- Closing Loopholes Act amendments
- Changes to casual employment
- New right to disconnect provisions which will apply for small business from August 2025.

This context supports maintaining stability in model terms rather than introducing substantial changes requiring further adjustment, training, regulation and complexity.

The Commission should consider the relative cost burden of compliance requirements on small businesses, including:

- Staff time for administration
- External advice expenses
- Training and implementation costs
- Opportunity costs of management attention

TRANSITION AND TIMING

Whilst COSBOA's maintain a strong position that a minimalist approach is most appropriate, should the Commission determine that changes are necessary beyond minimal adjustments, we submit that:

- Extended transition periods should apply for small businesses for at least 12 months
- Clear guidance materials should be provided by the Commission to assist communication and education

CONCLUSION

The current model terms have proven workable for small businesses while protecting employee interests. Major changes would risk creating disproportionate burdens without any clear benefits. COSBOA urges the Commission to maintain the essential features of existing terms while making only necessary updates for legislative consistency.

This approach would support the Commission's obligation to ensure model terms are "broadly consistent" with modern awards while fulfilling the Act's objectives of providing simple, flexible and fair workplace arrangements.

This submission aligns with the legislative intent expressed in the Explanatory Memorandum that model terms should act as a safety net ensuring compliant provisions while not imposing undue regulatory burden.

Concerning State Instruments, COSBOA is unaware of any matter that would require a different approach to be taken by the Full Bench, than the approach outlined in our submission.

COSBOA appreciates the opportunity to provide input on behalf of small business employers and would welcome the chance to elaborate on any aspects of this submission.

Yours sincerely,

Mike Sommerton
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COSBOA