

16 October 2026

Ms Natasha Platts
A/g Assistant Secretary
Construction Policy and Reform Branch
Department of Employment and Workplace Relations
50 Marcus Clarke Street
Canberra ACT 2601

via email: WR.Building@dewr.gov.au

Dear Ms Natash Platts,

Potential Commonwealth standards for the construction industry

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to make a submission to the Department of Employment and Workplace Relations' consultation on potential Commonwealth standards for the construction industry.

The ASBFEO supports a construction industry that is productive, has high levels of workforce capability and safety, and where lawful conduct of all participants is the norm. We note that the Commonwealth has the capacity to influence practices in the industry through its role as a significant procurer of construction services and as a regulator.

However, we are concerned that the introduction of Commonwealth construction standards could duplicate existing regulation in the sector, increasing compliance costs and distort operating conditions across public and private construction. Standards should only be considered where there is a demonstrated gap in current regulatory frameworks, where standards would be proportionate and an effective mechanism to address the policy objective and where its benefits would outweigh the associated costs, including the compliance burden imposed on small construction businesses.

The operating realities of small construction businesses

Small businesses are central to the construction industry and its supply chains. Around 98.5% of construction firms employ fewer than 20 employees, and 91% employ fewer than five.¹ They also form a critical part of industry supply chains with large construction organisations purchasing 43.3% of their total procurement by value from small businesses.²

Small construction businesses typically operate with limited administrative capacity. Unlike larger firms who have dedicated human resources, legal, procurement or compliance personnel, small business owners often have the responsibility of managing workforce obligations, tender requirements, regulatory compliance and business administration, alongside project delivery. Regulatory requirements that require a high degree of organisational maturity, formal management structures or specialist compliance capability, will be difficult for small construction businesses to implement in practice.

¹ Committee for Economic Development of Australia (CEDA), *Size matters: why construction productivity is so weak*, CEDA, 2025, accessed 2 October 2026, p 8

² Payment Times Reporting Regulator (PTRR), *Regulators Update*, Australian Government, PTRR, January 2026, p 55, accessed 8 October 2026

These challenges are exacerbated by the operating realities of the construction industry. Small construction businesses typically operate on a project-to-project basis, resulting in fluctuating workloads and cash flow. This is particularly the case in residential construction where work is often short term and workforce mobility is high.³ Subcontracting arrangements therefore provide essential flexibility, enabling small businesses to contract workers for specific projects where maintaining a permanent workforce is not commercially viable.

Small construction businesses must manage these operational realities against a backdrop of significant commercial pressures facing the construction sector. For example:

- in 2023–24, construction companies accounted for 27% of all companies entering external administration, the highest proportion of any industry⁴
- their heavy dependence on vocational and workplace-based training, including apprenticeships and traineeships, which can leave the industry particularly exposed to skills shortages and workforce capability constraints.⁵

Existing regulatory frameworks

Currently, the construction industry is governed by regulatory frameworks that address many of the issues identified in the consultation paper. This includes Commonwealth procurement and supplier conduct requirements, workplace relations, Commonwealth, state and territory work health and safety laws, competition, consumer, corporate and taxation laws, the Australian Government Work Health and Safety Accreditation Scheme, the *Workplace Gender Equality Act 2012*, the *Modern Slavery Act 2018*, and the Payment Times Reporting Schemes.

For construction projects that receive Commonwealth funding, suppliers are subject to the Commonwealth Supplier Code of Conduct which applies to Commonwealth suppliers and their subcontractors. In practice, compliance obligations are frequently passed through supply chains via contractual requirements, due diligence processes and monitoring arrangements. As a result, small construction businesses are already subject to significant regulatory and reporting requirements as a condition of participating in Commonwealth-funded projects.

Together, these regulatory frameworks establish obligations relating to ethical conduct, due diligence, workplace safety, payment practices, human rights, modern slavery risk management and responsible supply-chain management. Many of these obligations impose substantial compliance requirements and include audit and enforcement mechanisms with civil penalties and, in some circumstances, criminal sanctions. This raises the question of whether the issues identified in the discussion paper reflect challenges with implementing and enforcing existing obligations, rather than gaps in the current regulatory frameworks.

The following examples highlight where existing regulation covers some of the issues identified, and questions whether a Commonwealth standard would be effective in addressing the policy objective.

³ Build Skills Australia (BSA), *Residential Construction Mobility Study*, BSA, 1 July 2026, p 15, accessed 6 October 2026.

⁴ Australian Securities and Investments Commission (ASIC), *Annual ASIC insolvency data reveals increase in companies failing*, ASIC website, July 2024, accessed 6 October 2026.

⁵ Department of Employment and Workplace Relations (DEWS), *About the construction industry*, DEWS website, Australian Government, accessed 6 October 2026; National Centre for Vocational Education Research (NCVER), *Apprentices and trainees 2026: March quarter*, NCVER, 2026, accessed 6 October 2026.

Payment practices

The ASBFEO regularly hears complaints from small businesses experiencing payment disputes and difficulties obtaining payment from larger contractors, with almost half of our construction assistance cases relating to payment disputes. Recent Payment Times Reporting data shows that only 64.8% of small business invoices are paid on time, while a 2025 joint industry survey by Master Electricians Australia found that 60% of respondents had experienced unpaid amounts due to construction company insolvencies (with 44% reporting that retention monies formed at least part of the amount owed).⁶ Such outcomes can have serious consequences for small businesses operating on narrow margins and managing fluctuating cash flows.

However, the prevalence of payment disputes across the construction industry suggests this issue extends beyond Commonwealth-funded projects and reflect broader commercial practices operating throughout the sector. While the Commonwealth can influence payment behaviour on projects it funds directly, its ability to address industry-wide payment practices through a Commonwealth standard is inherently limited because many of the underlying drivers of payment disputes extend beyond Commonwealth-funded projects.

Commonwealth-funded construction projects are already subject to the Commonwealth Supplier Code of Conduct. This Code requires suppliers to demonstrate ethical behaviour, integrity, and business practices underpinning the Australian Public Service. This includes maximum payment time commitments and timely payments in their engagement of subcontractors. Failure to adhere to the Code may result in remedial action and/or termination in accordance with contractual provisions.⁷

Workforce diversity

Workforce diversity remains an important challenge for the construction industry. Research has identified a range of factors contributing to the underrepresentation of women in construction, including limited exposure to construction careers, barriers to entry, workplace culture, and difficulties attracting and retaining women in some occupations. It also found that many of these factors originate outside the direct control of individual small businesses and reflect broader educational, cultural and labour market influences.⁸

The ASBFEO has heard that Commonwealth procurement is requesting more information from bidders on workforce diversity. However, for many small construction businesses, particularly those operating in regional areas, workforce composition is driven by the availability of suitably skilled workers in local labour markets. This suggests that many of the underlying causes of workforce under-representation are structural and operate beyond the influence of individual construction projects or businesses. As a result, it is unclear whether a Commonwealth Standard would be effective in addressing barriers identified in the research.

⁶ Payment Times Reporting Regulator, *Regulator's Update*, Payment Times Reporting Scheme, Australian Government, January 2026 and Master Electricians Australia (MEA), *Security of Payment Industry Survey*, MEA, July 2026, accessed 7 October 2026

⁷ Department of Finance (Finance), *Commonwealth Supplier Code of Conduct*, Finance, June 2024, accessed 7 October 2026

⁸ Building Commission NSW, *Women in Construction report*, NSW Government, Building Commission NSW, January 2024, accessed 8 October 2026

Workplace Health and Safety

Tier 1 construction companies participating in Commonwealth-funded construction projects above a prescribed threshold are required to comply with the *Australian Government Building and Construction Work Health and Safety Accreditation Scheme*. To obtain and maintain accreditation, head contractors on these projects must demonstrate compliance with prescribed safety criteria and undergo audits by the Federal Safety Commissioner. Subcontractors working on accredited projects may also be required to provide safety documentation and evidence of compliance to the accredited builder for review.

These requirements sit alongside broader work health and safety (WHS) laws, meaning that many small construction businesses must already comply with multiple WHS obligations. Research has found that small businesses can face challenges navigating and implementing multiple WHS compliance obligations given their limited administrative resources and the complexity of regulation. For example, Jeffries et al found that small construction businesses often experience difficulties implementing formal WHS management systems and keeping pace with regulatory requirements and changes.⁹

Taken together, it is not clear there is a regulatory gap in relation to WHS, nor that introducing new obligations through a Commonwealth standard would be effective in addressing compliance and safety performance. The experience of small construction businesses suggests that the challenge arises from the practical difficulties associated with navigating and implementing multiple requirements, with improvements in safety and compliance more likely to be achieved through practical guidance, education and training.

As these examples demonstrate, small construction businesses are already grappling with regulations that cover many of the issues identified in the discussion paper and that challenges are often driven by broader market conditions, workforce dynamics, and administrative capacity constraints that can impact compliance. It is also worth noting that, while the discussion paper indicates the standards are not intended to replicate Queensland's former Best Practice Industry Conditions, their experience highlights how the targeting of government procurement can create distortions between public and private construction and increase the cost of projects.

Any consideration of introducing Commonwealth standards should only be made where there are clear gaps in regulation, where standards would be a proportionate and effective response to address the policy objective, and where they would provide a clear net benefit.

If you require any further information, please do not hesitate to contact the Policy and Advocacy team via email at advocacy@asbfeo.gov.au.

Yours sincerely



Lynda McAlary-Smith

Australian Small Business and Family Enterprise Ombudsman

⁹ Jeffries, Marcus A/Prof.; Newaz, Tanvi Dr; Ginigaddara, Buddhini Dr.; Egbelakin, Temitope Prof.; Sunindijo, Riza Yosia A/Prof.; and Tang, Liyaning Maggie Dr, 'Identifying barriers & enablers to improve WHS outcomes in Australian small construction businesses' CIB Conferences, vol. 1, chapter 1, 19 May 2025, accessed 11 August 2026.