



NATIONAL EMPLOYMENT STANDARDS INQUIRY

Media, Entertainment & Arts Alliance

March 2026

ABOUT MEAA

The Media, Entertainment & Arts Alliance (**MEAA**) is the largest and most established union and industry advocate for workers in the creative and media industries, with a history going back more than 110 years. Our members include people working in television, radio, theatre, film, entertainment venues, sporting stadia, journalists, actors, dancers, cartoonists, photographers, musicians, orchestral and opera performers as well as people working in public relations, advertising, book publishing and website production – in fact, everyone who works in the industries that inform or entertain.

ACKNOWLEDGEMENT OF COUNTRY

MEAA acknowledges the traditional custodians and cultures of the lands and seas on which we live and work. We pay our respects to all First Nations Peoples, Elders and Ancestors. We acknowledge that sovereignty was never ceded and stand in solidarity towards a shared future.

INTRODUCTION

MEAA welcomes the opportunity to make this submission to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training Inquiry into the Operation and Adequacy of the National Employment Standards (**NES**).

MEAA endorses the submission of the Australian Council of Trade Unions (**ACTU**) and makes the following supplementary remarks.

Many creative and media workers are engaged as independent contractors rather than employees. Consequently, they are denied the protection of a minimum safety net provided by the NES.

This remains a fundamental weakness of the NES, limiting its protections to workers based on their employment status. We are encouraged by the passage of the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* which empowers the Fair Work Commission (**FWC**) to set minimum standards for some "employee-like" workers, but note the limited scope of these reforms and submit these should be expanded to apply to independent contractors in the creative and media industries.

For the purposes of this submission, we are particularly concerned with what we consider a shortcoming of the NES in relation to the ability to enforce payment of superannuation.

SUPERANNUATION AND THE NES

The *Fair Work Legislation Amendment (Protecting Worker Entitlements)* reforms included the payment of superannuation within the NES by inserting Part 2-2 Division 10A into the *Fair Work Act (the Act)*. This addition to the NES empowers unions to bring actions to recover unpaid super, either via conciliation and arbitration clauses established in Modern Awards and Enterprise Agreements, or via court enforcement actions concerning a breach of s 44 of the Act.

However, per s 42 of the Act, this entitlement/obligation only applies in the context of "national system" employee/employer relationships. Independent contractors are not afforded the benefit of this entitlement.

This creates an enforcement shortcoming of relevance to MEAA's membership. Section 12 of the *Superannuation Guarantee (Administration) Act 1992* establishes an expanded definition of employee, such that employers are obliged to pay independent contractors superannuation where (relevantly):

- a person works under a contract that is wholly or principally for the labour of the person;

- a person is paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills (or provide services in connection with those activities); or
- a person is paid to perform services in, or in connection with, the making of any film, tape or disc or of any television or radio broadcast.

(See further *JMC Pty Ltd v Commissioner of Taxation*¹ as to how the expanded definition of employee has been applied.)

Neither these workers in an individual capacity, nor MEAA as a union, can pursue employer failures to meet those superannuation obligations. Instead, any enforcement action remains at the discretion of the ATO.

Despite these workers having an entitlement to superannuation, there does not exist a practical and reliable avenue to enforce these rights.

Non-payment of superannuation by producers and other commissioners of creative work is common in the creative and media workers. For example, a MEAA survey of more than 300 musicians in November 2025 found 59% gigs failed to pay superannuation². A 2024 survey by Theatre Network Australia found that 27% of independent contractor respondents (working across various art forms including musical theatre, dance and comedy) were “rarely” or “never” paid super.³

For many of these workers, the right to paid superannuation is an entirely theoretical one and will remain so without a mechanism to realise these rights.

Legislative reform to ensure that independent contractors (who are otherwise entitled to the benefit of the superannuation guarantee), and their unions, are able to pursue enforcement actions and raise FWC disputes is needed to remedy this situation.

A further reform of this kind would support the policy objectives of the recent reforms to the Act, and the Act’s new (ca) objective of “ensuring a safety net of fair and relevant minimum terms and conditions for regulated workers through enforceable minimum standards orders and related measures”.

¹ [2022] FCA 750

² MEAA (2025) *Musicians Australia 2025 Survey Report*, <https://www.meaa.org/download/musicians-202425-survey-repor44>

³ Theatre Network Australia (2024) *This Is How We Do It 2024*, https://tna.org.au/wp-content/uploads/2024/10/2024-THIS-IS-HOW-WE-DO-IT_FINAL.pdf

CONCLUSION

MEAA submits that the experiences of creative and media workers engaged as independent contractors demonstrates a “gap” in the effectiveness of the NES and we ask the Committee to take these views into account as it considers whether the NES is fit for purpose, having regard to the changing nature of work.