BCA
Business Council of Australia

23 September 2025

Department of Premier and Cabinet

Via online upload: https://engage.vic.gov.au/project/wfh/survey/6044#sub-nav

Dear Department,

Consultation on working from home legislation

The Business Council of Australia (BCA) advocates for an economically strong nation in the best interests of all Australians. Our members include many of Australia's largest employers, employing over 250,000 Victorians. While we have long supported flexible working practices, and our members already offer a vast array of flexible working arrangements to their employees, we are concerned about the Victorian Government's proposal to legislate an entitlement to work two days a week from home. We consider that if this proposal becomes law, it risks:

- driving investment from Victoria;
- stifling Victorian and national businesses, large and small, by introducing duplicative red tape (noting workplace flexibility is already dealt with in Commonwealth law);
- undermining the true workplace flexibility sought by workers based on their individual circumstances by applying a 'one size fits all' approach; and
- increasing the divide between office and frontline workers.

In addition, we consider that Victoria lacks jurisdiction to legislate a right to work from home due to the referral of its industrial relations powers to the Commonwealth.

On this basis, the proposal should not proceed.

The Victorian economy

Victoria's economy is currently facing significant headwinds. As of August 2025, the State has experienced the highest unemployment rate in Australia for 15 of the past 17 months, and Victoria's unemployment rate has exceeded the national average for most of the past four years.[1] Victoria also experienced a 1.2 per cent fall in gross state product per capita in 2023-24 – the second-weakest result among the states and territories.[2] Victoria's multifactor productivity growth was the third

[1] Australian Bureau of Statistics (August 2025), Labour Force, Australia, ABS Website, accessed 18 September 2025.
[2] Australian Bureau of Statistics (November 2024), Australian National Accounts: State Accounts, ABS Website, accessed 4 September 2025.

T 03 8664 2664
E reception@bca.com.au
www.bca.com.au
GPO Box 1472
Melbourne VIC 3001

slowest in Australia over the past decade, and underemployment remains a persistent issue, with Victoria having the third-highest rate in the country of people seeking more hours.[3]

It is imperative, therefore, that Victoria does more to create jobs and generate investment in the State. In this context, legislating a right to work two days per week from home risks driving investment and jobs from Victoria to other states. Businesses, especially those operating across multiple jurisdictions, may find alternative locations more appealing if Victoria imposes rigid workplace mandates.

True flexibility for workers?

Flexibility should be negotiated between employers and employees, reflecting specific workplace dynamics, operational needs, job design, team structures, access to technology, and employee well-being. These arrangements are carefully managed to ensure the needs of individuals, fairness between colleagues, and organisational imperatives are balanced. Top-down statutory imposition undermines this agility, risks micromanagement and unnecessary government involvement, and overrides the many trust-based arrangements currently functioning effectively. If this two-day per week proposal is legislated, it risks becoming a default option for workers that may impact other arrangements.

The Victorian Government will be aware that the right to request flexible working arrangements under the Commonwealth *Fair Work Act 2009* (Cth) (**FW Act**) was recently expanded in 2022. The right has formed part of the National Employment Standards since 2010. It provides a statutory right to employees, including those in Victoria, to request the flexible working arrangements they need, including but not limited to working from home. This accommodates personal circumstances ranging from pregnancy, carers' responsibilities, disability, employees over 55 years old, and employees experiencing or assisting relatives who experience the scourge of family and domestic violence.[4] Requests may only be denied following genuine attempts at agreement and on reasonable business grounds.[5] Decisions can be challenged via the Fair Work Commission.[6]

Our members' workforces already leverage workplace flexibility across a range of flexible and hybrid working arrangements. We know over a third of the workforce *usually* work from home, a greater percentage than those employees who report working overtime. In addition, over a quarter of employees report having a flexible hours agreement[7]. Workers may work from various remote locations, over compressed or shortened workweeks, or on family-friendly rosters. Some workers work 9-5, Monday to Friday, while others work shifts in 24/7 operations. Other workers may access the arrangements that best suit their needs by choosing not to work full-time. Part-time, casual, and gig-work are all working arrangements that appeal to different cohorts of our workforce at different stages and for differing reasons. Our members support the continuation of these current arrangements.

[3] Australian Bureau of Statistics (January 2025), Estimates of Industry Multifactor Productivity, ABS Website, accessed 4 September 2025.
[4] FW Act, s 65.
[5] FW Act, s 65A.
[6] FW Act, s 65B.
[7] Australian Bureau of Statistics (August 2024), Working arrangements, ABS Website, accessed 2 September 2025.

Many jobs cannot be done from home

The proposed policy could create an arbitrary distinction that risks harming morale, organisational cohesion, and economic fairness. There are many jobs, particularly where face-to-face services are performed, that must be done at the workplace. Other sectors include manufacturing, nursing, emergency services, retail, transport, school teaching, construction and other trades. These jobs often receive remuneration that factors in the circumstances of their roles, including via allowances tied to working conditions or workplace roles, loadings, and the like.

This legislation could advantage office-based professionals, who may benefit from legislated flexibility, while offering little for front-line, service, and essential workers, who cannot perform their jobs remotely.

Regulatory burden

Introducing new legislation would add to the regulatory burden, contrary to the Federal Government's commitment to reduce regulation, simplify business processes, and boost productivity.

There is no persuasive evidence that a statutory right to work two days from home improves productivity or economic outcomes, particularly outside sectors where remote work is practical.

Jurisdictional issues

Victoria referred its workplace relations powers to the Commonwealth in 1996[8], and again in 2009 under the *Fair Work (Commonwealth Powers) Act 2009* (Vic) (**FWCP Act**). The 2009 referral expressly referred powers to the Commonwealth to make laws relating to the terms and conditions of employment for employees, including employment standards. Further, the FW Act applies to the exclusion of all State industrial laws, including State Acts that have as one of their main purposes regulating workplace relations or providing for the making or enforcement of agreements, including individual agreements determining terms and conditions of employment.[9]

While some issues, such as occupational health and safety, and the Victorian *Equal Opportunity Act 2010* are excluded from that referral, it is unclear how the proposal would not be considered a term and condition of employment. This is why it is currently covered in the National Employment Standards as detailed above.

The proposal also raises complex questions about how such a law, if enacted, would interact with modern awards and enterprise agreements that also contain terms regarding how and where work should be performed and compensated, as well as workplace flexibility.

In short, if enacted, the legal basis for such provisions would remain subject to question and, therefore, add additional uncertainty to the Victorian regulatory environment. In turn, this would render decisions to invest in Victoria even less likely to be taken.

Conclusion

Flexibility in working arrangements has become an important part of a modern workplace. The workplace relations system has already evolved to meet the needs of both workers and employers, and enshrined this in the National Employment Standards, which cover Victorian workers. Reverting to a one-size-fits-all approach to workplace relations undermines the flexibility and cooperation that

---

[8] *Commonwealth Powers (industrial Relations) Act 1996* (Vic).
[9] FW Act, s 26.

are essential at the workplace level. Implementing rigid mandates risks driving investment away from Victoria, further exacerbating existing economic challenges.

We urge the Victorian Government to withdraw this proposal and, instead, focus on measures that will increase the likelihood of attracting investment.

Yours sincerely

Bran Black
Chief Executive
Business Council of Australia