BCA
Business Council of Australia

29 January 2026

Committee Secretary
Senate Standing Committee on Education and Employment
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Secretary,

Fair Work Amendment (Right to Work from Home) Bill 2025

The Business Council of Australia (BCA) welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee in relation to the *Fair Work Amendment (Right to Work from Home) Bill 2025* (the Bill).

The BCA represents some of Australia's largest businesses, employing over a million Australians across all sectors of the economy. Our members are committed to providing flexible, modern and inclusive workplaces and already offer a wide range of flexible working arrangements, including working from home where it is practical and appropriate.

While the BCA strongly supports flexible working arrangements, we do not support the Bill. The *Fair Work Act 2009* (FW Act) already provides a robust and adaptable framework for employees to request flexibility, including working from home. On that basis, we believe this Bill is unnecessary and risks unsettling the balance carefully struck under the current system, which provides for both the changing operating structures of the workplace as well as the requirements of business so they can effectively operate, remain competitive and continue to employ people.

Australia is facing a persistent productivity challenge, with growth remaining subdued and structural pressures continuing to weigh on economic performance. In these circumstances, it is important that proposed changes to workplace regulation are carefully calibrated and clearly linked to productivity outcomes. The industrial relations system has undergone significant reform in recent years, and many employers and employees are still adjusting to that expanded regulatory framework. Introducing further changes that prescribe workplace arrangements risks adding complexity and reducing flexibility at a time when businesses need greater capacity to adapt, innovate and support a more productive economy, and should not be done without commensurate changes directed at increasing labour productivity.

By elevating working from home into a distinct statutory category and imposing a narrow refusal test, disconnected to businesses' operational requirements, the Bill would reduce, rather than enhance, genuine flexibility, replacing tailored workplace solutions with a prescriptive, one-size-fits-all approach. In doing so, the Bill also risks undermining critical drivers of business and employee

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success, including productivity, collaboration, supervision, safety, data security and effective training, many of which depend on an appropriate and adaptable level of physical presence in the workplace.

The positions advanced in this submission reflect and build on our submission to the Victorian Government's September 2025 consultation on their proposed working from home legislation[1], which set out similar concerns regarding the risks of prescriptive statutory approaches to workplace flexibility.

We make the following observations, and in attachment 1 we provide commentary on specific clauses in the Bill.

1. Existing FW Act arrangements strike the right balance: Flexible working arrangements have formed part of the NES since 2010. The FW Act already provides employees with a statutory right to request changes to working arrangements, including changes to location of work such as working from home.

   That framework was recently expanded to:

   - broaden eligibility,
   - strengthen employer obligations to genuinely engage with employees,
   - require refusals to be based on reasonable business grounds, and
   - enable disputes to be resolved by the Fair Work Commission (FWC).

   This existing framework appropriately balances:

   - employee access to flexibility;
   - the diversity of roles, industries and business models across the economy; and
   - the operational realities employers must manage, including productivity, customer service, safety, team cohesion and fairness across the workforce.

   The BCA considers that the current NES right to request flexibility already provides a robust, fair and workable mechanism for employees to seek working from home arrangements where appropriate.

2. Productivity and economic considerations: The Explanatory Memorandum (EM) asserts that research by the Productivity Commission (PC) shows flexible work improves retention, reduces absenteeism and enables greater workforce participation, and uses this as part of the policy rationale for introducing a statutory right to request working from home up to two days per week.

   The BCA agrees that flexible work can deliver benefits in the right roles and in the right settings. However, the EM's reliance on the PC as support for a legislated right to work from home risks mischaracterising the thrust of the PC's views.

   The PC Chair has openly questioned[2] the need for government intervention because the labour market had already reached a workable balance on hybrid work, while also warning that fully remote work can harm productivity due to reduced face-to-face interaction.

[1] https://www.bca.com.au/reports-submissions/submissions/submission-on-victorias-working-from-home-legislation/.
[2] Productivity Commission criticises Victorian government's work from home stance | The Australian

More broadly, economy-wide productivity is driven by a complex mix of factors, including investment, management capability, technology adoption, skills, and competition. A statutory default pathway to two days working from home, paired with a narrowed refusal test and expanded scope for disputes, risks increasing compliance costs and regulatory burden without delivering commensurate productivity gains. This directly contradicts the Government's publicly stated objective, including at the recent Economic Reform Roundtable, of reducing red tape and easing regulatory pressures on Australian businesses to lift productivity.

Work-from-home arrangements should therefore continue to be determined at the workplace level, using the existing NES framework, which allows flexibility to be tailored to operational needs and the realities of different roles and industries.

3. Flexibility is best determined at the workplace level: Workplace flexibility works best when it is determined through direct engagement between employers and their workforce, reflecting:

   – the inherent requirements of particular roles;
   – operational needs and customer expectations;
   – team-based work and collaboration;
   – technology and cybersecurity considerations; and
   – fairness between employees performing different kinds of work.

   Our members' experience is that flexible work arrangements are most successful when they are tailored to the specific workplace, rather than imposed through rigid statutory entitlements. A legislated entitlement to work from home for up to two days per week risks:

   – reducing genuine flexibility by creating a default expectation rather than a negotiated outcome;
   – crowding out other forms of flexibility that may better suit individual employees or teams; and
   – increasing workplace conflict and disputation
   – setting expectations for employees which are unrealistic, which can add to undermining a collaborative and positive workplace culture.

4. Equity impacts across the workforce: Many roles simply cannot be performed remotely, including large parts of the manufacturing, construction, retail, transport, care, education, hospitality, emergency services and resources sectors.

   The Bill risks deepening the divide between:

   – office-based employees who may benefit from a statutory work from home entitlement; and
   – frontline, customer-facing and site-based workers who have no such option.

   This creates concerns about:

   – perceived inequity and morale;
   – organisational cohesion; and
   – fairness in how flexibility is distributed across different segments of the workforce.

5. Increased regulatory burden and disputation: The Bill would add further complexity to an already highly regulated workplace relations system. This runs counter to the Government's commitment to seek to reduce the administrative and red tape burden on businesses. By introducing a separate and more stringent test for WFH Requests, the Bill is likely to:
   - increase legal uncertainty for employers and employees;
   - encourage disputes to be escalated to the Fair Work Commission; and
   - divert time and resources away from productive workplace engagement.

Conclusion

The BCA continues to support flexible working arrangements and recognises the important role working from home plays in many modern workplaces. It has been one of the major positive benefits of the uptake of new technologies and the changes forced during the COVID-19 pandemic. However, the FW Act already addresses this change by providing a comprehensive, balanced and adaptable framework for employees to request flexibility and for employers to consider those requests fairly. The proposed Bill unnecessary and risks undermining workplace-level flexibility; increasing regulatory burden and disputation; exacerbating inequity across the workforce; and reducing, rather than enhancing, productivity.

For these reasons, the BCA urges the Committee to recommend that the Bill not be passed.

Yours sincerely

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Attachment 1: Commentary on specific clauses in the proposed Bill.

- Item 2 – Repeal and replacement of subsections 65(1), (1A) and (1B). The proposed Bill removes the existing eligibility requirements for the right to request flexible working arrangements relating to individual traits such as care responsibilities, disability and age-related circumstances, and extends the right universally. The removal of this contextual framework risks transforming the right to request into a right for all employees, particularly when combined with the more restrictive refusal grounds for work from home requests. The BCA does not consider that this change is necessary, noting that no compelling case has been made that the existing right to request flexible working arrangements for eligible employees is not operating effectively.
- Item 5 – New paragraph 65A(3)(d). The proposed Bill replaces the established "reasonable business grounds" basis for employers to decline flexibility requests where there are reasonable business grounds to do so in relation to requests to work from home up to 2 days per week (WFH Requests). Under the Bill, employers will only be able to decline work WFH Requests if "*the change in working arrangements would make the performance of the inherent requirements of the employee's employment duties impractical or impossible*". This is a much narrower standard, lifting the bar for considering requests from what is reasonable to needing to accommodate all that is not impracticable or impossible, and would require a business to consider "reasonable adjustments" before refusing a work from home request. This will create uncertainty and increases legal risk, particularly given the lack of guidance on what adjustments would be reasonable in different workplaces. Expressions such as "inherent requirements" and "reasonable adjustments" are borrowed directly from disability discrimination law, where they have clear definitions and existing bodies of case law and guidance to inform the interpretation and application of these expressions. They have no comparable definition or context here and represent a significant departure from the existing National Employment Standards (NES). The inclusion of these expressions is particularly inappropriate where the Bill proposes to expand the right to request flexible working arrangements to employees at large, rather than those who have protected traits, as is required for anti-discrimination law.
- Item 7 – New subsections 65A(4). The creation of a distinct category of "work from home up to 2 days request" embeds a specific form of flexibility in legislation, elevating it above other flexible arrangements. The basis for elevating WFH Requests above the other types of flexibility an eligible employee might need is not explained.
- Items 13 to 16 – Expanded FWC powers (section 65C). The Bill expands the FWC's role by empowering it to determine whether an employer's refusal of a WFH Request meets the statutory test and to make binding determinations, in addition to its existing powers in relation to other types of flexible work requests. If the Bill were made into law, the number of employees eligible to make such applications would also be significantly increased. This increases the likelihood of disputes being escalated to third-party intervention in matters

better resolved at the workplace level and risks inconsistent outcomes across cases and industries.

The expanded jurisdiction is also likely to increase the Commission's already burdensome workload, placing increased pressure on its resources and lengthening dispute resolution timeframes. The Commission's backlog of existing claims has been well documented, with Fair Work Commission president Justice Adam Hatcher having recently stated that the existing claims workload for the Commission *"is unsustainable within our current operational, performance and funding structure"*[3].

– Other:

  - The Bill does not specify how the entitlement of "up to 2 days" applies to part-time employees. This creates uncertainty, as both potential approaches carry complications. Providing a standard 2-day entitlement for all employees, regardless of hours worked, could result in part-time employees performing all or most of their work away from the employer's premises. Alternatively, adopting a pro-rata approach would be complex to administer and could lead to entitlements expressed as a proportion of working hours, rather than as clearly defined days.
  - The legislation doesn't recognise some of the complexities with the existing Award structure. Some Awards prescribe work as being performed at a specific premises. Where such work can, in practice, be performed from home, this raises questions as to whether the Award continues to apply in the same way and how employers would ensure compliance with Award obligations and relevant policies, including break requirements, workplace health and safety, and potential impacts on other employees.

[3] Fair Work Commission president Adam Hatcher warns of unsustainable unlawful dismissal claim workload

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