



MTAA SUBMISSION

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

Senate Education and Employment Legislation Committee Inquiry

February 2026

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Introduction

This submission is filed on behalf of the Motor Trades Association of Australia (MTAA) in response to the Senate Education and Employment Legislation Committee Inquiry into the *Fair Work Amendment (Right to Work from Home) Bill 2025* (the Inquiry). MTAA is a strong supporter of measures that, in practice, genuinely deliver the improved workplace flexibility needed to address both the continued acute skill shortages in the automotive industry and Australia's declining productivity. MTAA is therefore grateful for the opportunity to provide feedback to the Inquiry.

MTAA submits from the outset that working arrangements, including flexible working arrangements such as work from home, are matters best determined by genuine agreement at the individual workplace level between employer and employee. Accordingly, rather than introducing additional inflexibility and administrative burden, any legislative reform introduced by the Australian Parliament must be focused on removing barriers that threaten such mutually beneficial arrangements from being agreed.

MTAA believes that it is best able to contribute to this Inquiry by sharing the key insights that have arisen from feedback received from its membership in response to the proposed right to work from home, including the Victorian Government's proposal to introduce a right to work from home two days per week for all Victorian employees¹ and the Australian Greens initial commitment to make the Victorian Government's proposal a reality at the national level through amendment to the Albanese Government's Fair Work Amendment (Protecting Penalty and Overtime Rates) Bill 2025.² Importantly, this feedback shows that:

- > there has been no fundamental shift to working from home in the automotive industry;
- > there are real WHS and other compliance-related concerns that must be addressed prior to further consideration of such legislative reform;
- > there are real fairness and productivity-related concerns that must be addressed prior to further consideration of such legislative reform; and
- > the *Fair Work Act 2009* (the FW Act) already provides a fair and balanced legislative right to request flexible working arrangements, including working from home.

Further, whilst the *Fair Work Amendment (Right to Work from Home) Bill 2025* (the Bill) is consistent in intent to the aforementioned right to work proposals, MTAA's submission also highlights specific concerns with the drafting of the Bill itself. Notably, the Bill, in our view, would result in unfair and unreasonable outcomes in practice for both employers and employees and directly undermine the intent of encouraging the uptake of flexible working arrangements in Australian workplaces.

¹ Media release, Hon Jacinta Allan MP, Premier, Victorian State Government, *Work from Home Works for Families*, 2 August 2025.

² Media release, The Australian Greens, *Greens Join Vic Labor's Push for 2 Day Work from Home: A Productivity Boon*, 20 August 2025.

About the MTAA

As the national automotive industry body, MTAA represents the unified voice of Australia's automotive industry, identifying and monitoring issues across all sectors, advising governments on industry impacts and trends, and actively participating in the development of sound public policy. Our focus encompasses the retail motor trades and the Australian vehicle fleet. We represent over 15,000 businesses ranging from dealers to repairers, tow truck operators to service station businesses and every automotive retail business in between. These organisations make up a critical backbone of the Australian economy, selling, servicing, repairing, refuelling and maintaining Australia's 21.2 million strong motor vehicle fleet. Together, the sector contributes approximately \$39.35 billion to Australia's GDP annually.

MTAA member feedback

1. There has been no fundamental shift to working from home in the automotive industry

MTAA notes that whilst the Explanatory Memorandum (EM) to the Bill suggests that the COVID-19 pandemic has fundamentally changed how work is performed for all Australians — with remote work claimed to now be an essential feature of modern workplaces — this has not occurred in the Australian automotive industry. The Australian automotive industry provides predominantly customer facing products and services delivered in brick-and-mortar premises with significant fixed asset expenditure (e.g. tools, equipment and materials). The nature of the work performed in the automotive industry is fundamentally incompatible with working from home arrangements and, relatedly, the uptake of the practice was not adopted at scale during COVID-19 because large parts of the industry were entitled to continue to operate on-site during the COVID-19 lockdowns in accordance with then applicable public health orders.

More broadly, MTAA notes the recent data from the Australian Bureau of Statistics, which found that the proportion of people with a work from home arrangement has remained relatively stable over recent decades, with the exception of the COVID-19 pandemic period. Notably, excluding white collar managers and professionals, the current figure is around 1 in 5 (i.e. 21 per cent) of the workforce, with the most common arrangement being between one to two days per week.³ These figures constitute evidence directly at odds with the rationale provided by the EM in support of the Bill.

Following the aforementioned proposed introduction of a right to work from home from the Victorian Government and the Australian Greens, an MTAA member survey was conducted in August 2025 to gain a detailed understanding of their views. The survey received over 120 responses and was representative of MTAA members' overwhelmingly small to medium-sized enterprise ('SME') membership. It confirmed MTAA's understanding of the very limited utilisation of working from home arrangements in the automotive industry, with over 86 per cent of respondents not having any employees currently working from home. As survey respondents noted:

³ Australian Bureau of Statistics, *Working Arrangements*, August 2025.

"We have not experienced a large-scale shift towards working from home. Even during the COVID we continued operating relatively unchanged, since we are classified as an essential business."

"We only catered for working from home during covid, and only for admin/computer work purposes. It couldn't be used for salespersons in retail selling of used motor vehicles. Our productivity for persons working from home at that time was definitely less"

The ill-suitedness of the proposed introduction of a right to work from home to the automotive industry was further illustrated by the finding that whilst over 78 per cent of survey respondents reported that they were extremely concerned, this figure actually increased to 88 per cent for those who currently had at least one employee working from home.

MTAA therefore rejects the apparent underlying premise of the Bill that working arrangements applying to SMEs operating in blue-collar industries are broadly analogous to those applying in large, white-collar enterprises. Small businesses are not 'little big businesses', nor are automotive workers analogous to office workers. Such fundamental and qualitative differences cannot be accommodated through the proposed legislative approach. As survey respondents noted:

"The government needs to look at all sectors of trade - not just office workers that are able to work from home."

"We are not office workers, it would be illegal for our team to work from home."

MTAA also rejects any inference that businesses that do not operate exclusively in a white-collar office environment and/or do not have employees working from home are excluded from the concept of the modern Australian workplace.⁴ Such a notion is ill-informed, dismissive of the sophisticated nature of contemporary automotive workplaces, divisive and serves only to diminish the ongoing contribution that MTAA-represented businesses and their employees make to the Australian economy and road safety every day.

Survey respondents were particularly strong on this point, with many viewing the proposed introduction of a right to work from home as seeking to deliberately alienate traditional blue-collar, working-class industries:

"It is an insult to every hard working person who could not even contemplate the ludicrous idea of working from anywhere but their workplace."

"They are plotting the office white collar and blue collar workers [against each other]"

⁴ Ibid.

2. *WHS and other compliance-related concerns must be addressed*

The proposed introduction of a right to work from home introduces a number of regulatory compliance concerns for employers in the automotive industry — including, but not limited to, those relating to WHS, workers compensation, environment and privacy.

WHS concerns

From a WHS perspective, survey respondents raised a number of legitimate concerns relating to the increased risk of physical and psychological injury when employees are working from home. Relevantly, the duty⁵ of an employer to provide and maintain a safe working environment can be significantly compromised where an employee is working from home. Working from home arrangements raise similar concerns in relation to an employer’s ability to monitor the health of employees and conditions at the workplace⁶ as well as the ability to ensure employees are meeting their complementary WHS duties.⁷

Survey respondents were particularly concerned by the adverse impact working from home arrangements would have on their ability as employers to adequately control the working environment and supervise employees in the performance of their work:

“Safety. Employers have less control/oversight over work that is being done and working conditions; we are already at unreasonable risk of being held liable for staff injuries and/or professional misjudgements and WFH would make it worse.”

“As a small business this is an added risk [of injury], I would need to ensure the work environment is safe for the member, I can control this in my workplace but not in someone’s home...”

“ It is virtually impossible for a business to ensure a safe workplace at home; there are also risks with employees working by themselves and unsupervised.”

“... any WorkSafe situation that arises whilst they work from home. It’s loss of control of the workplace but responsibility for it.”

Notably, these concerns extended to computer-based roles, such as bookkeeping, where technology-based solutions are currently available to assist employers. MTAA further notes in this regard that under recommendations made by recent state government inquiries, such as the Victorian Inquiry into Workplace Surveillance,⁸ potential future legislative amendments at the state, territory and/or Commonwealth level may make such oversight even more difficult for employers to achieve in practice.

⁵ See for example, *Occupational Health and Safety Act 2004 (Vic)* s 20.

⁶ *Ibid.*, s 22.

⁷ *Ibid.*, s 25.

⁸ Legislative Assembly Economy and Infrastructure Committee, Parliament of Victoria, *Inquiry into Workplace Surveillance*, May 2025.

Building on psychosocial hazard-related concerns, survey respondents also highlighted the likely impact of the proposed introduction of a right to work from home on mental health and the community more broadly:

"I don't believe working from home is good for the person or the business. You don't have the one-on-one conversations with customers or work colleagues when you isolate yourself working from home."

"It is definitely not for the motorcar industry and I do not like having any staff member isolated and not being amongst the team, bouncing ideas off each other and helping each other"

"Community, it is not good for the community that people are isolated. business cannot get going again until people learn to interact with each other again."

Workers compensation

The impact of these WHS-related concerns in relation to workers compensation — which is viewed as structurally ill-suited to effectively manage claims arising from working from home arrangements, as well as psychological injury claims more generally — has also been raised by members. Survey respondents noted that:

"It also has high risk of WorkCover as we cannot control the home environment safety or standard of someone working from their home."

"What changes will be made to Workcover to enable working from home?"

"...it would mean an extra costs and burden financially and leave the employer vulnerable to workcover claims should the worker get injured at home..."

MTAA notes that a recent workers compensation decision,⁹ provides validation for the concerns expressed by survey respondents. In that matter, the tribunal member found that an employer had wrongly rejected the workers compensation claim of an employee who broke their arm falling over a fence, despite that employee having themselves erected the fence to keep their rabbit and a puppy they were looking after separate whilst they worked at home.

Whilst the original decision was subsequently appealed to a full bench who upheld the appeal and remitted the matter for redetermination, MTAA notes that full bench decision was not unanimous. Further, the dissenting judgment provided support for the original decision, stating they would have dismissed the employer's appeal for reasons including that it was "not to the point" that the puppy fence was temporary and "irrelevant" that the fence had a private purpose.¹⁰

⁹ *Lauren Vercoe v Local Government Association Workers Compensation Scheme* [2024] SAET 91.

¹⁰ *Local Government Association (City of Charles Sturt) v Vercoe and Return to Work Corporation of South Australia* [2025] SAET 135, [80].

Environmental compliance

Further highlighting the unsuitability of the proposed introduction of a right to work from home to the automotive industry, survey respondents raised a number of obvious environmental compliance issues:

"EPA laws, how can we fix cars from home????"

"How can we dispose of old paints at home? Our houses aren't zoned for industry work"

"We can't stockpile tyres at our houses"

"How do they drain the oil so there is no effect to the environment. What happens if they spill the oil, who will be held accountable - the employee or the employer??"

Privacy and security of information

Privacy and security of information, including associated organisational risks, were also matters raised by survey respondents in relation to the practical compliance-related implications of the proposed introduction of a right to work from home:

"Privacy of sensitive information."

"...unacceptable. lack of privacy"

"The employees home security and internet security and upgrade of internet access etc will be a nightmare! Hence why our business will not employ staff to work from home, otherwise we will close up. We will not be bullied by the government!"

Compliance costs

Consistent with the above, the compliance costs of the proposed introduction of a right to work from home was raised as a major issue of concern for survey respondents, with 87 per cent reporting that they would incur additional financial costs.

Notably, the increased cost was not limited to those without working from home arrangements currently in place, with over 82 per cent of respondents with at least one employee working from home reporting that the proposed right to work from home would directly increase their costs.

Whilst the amount of the increase was dependent upon the size and nature of the particular business, the costs were significant — with the estimates provided by survey respondents ranging from \$3,000–\$10,000 per employee.

3. Fairness and productivity-related concerns must be addressed

The perceived unfairness of the proposed introduction of a right to work from home is another major issue, with survey respondents raising serious concerns on behalf of both automotive employers and their employees. The loss of productivity and related increase to business costs were also identified as major issues of concern.

Fairness for employers

From an employer fairness perspective, survey respondents confirmed concerns relating to the loss of managerial prerogative in how the business owner, who pays the wages and carries the risk, chooses to operate its business. These concerns were a common feature of feedback received. Often expressed emotively, it demonstrates the adverse impact that perceived government overreach has on Australian employers:

"... It is not the government's business and therefore, if it is introduced, we will either not employ anyone wanting to work from home or cease trading all together. The government can then pay them to sit at home!"

*"...they don't employ the f**cking staff = we do = don't tell us how to run our f**cking business..."*

"Who is paying the staff, not the government..."

"... people who pay the wages and carry the risk"

"...Government is deliberately costing jobs and closing small businesses."

Survey feedback also highlighted the fact that employers are ultimately best placed to determine the working arrangements that are appropriate for their businesses, and do so, where appropriate, at the individual workplace level in consultation with their employees:

"No one knows their industry or business like the owner! They are extremely capable of making that decision themselves and do not need any legislation to make it happen."

"Let the employer work it out with staff."

"I think the government needs to keep out of this; smart employers will know how to incentivize their staff and can make those arrangements directly with their employees."

"I don't object to people working from home, but it is NOT a RIGHT, in every business, in every scenario, in every role, and for every staff member. Each business must be allowed to decide what works for their unique circumstances."

Fairness for employees

Survey respondents were also concerned about the unfairness of the proposed introduction of a right to work from home for employees who cannot, or choose not to, work from home. In addition to the negative impact on teamwork and performance, a significant number commented on the internal division and isolation of staff, as well as increased workload on those who remained in the workplace:

"... in a smaller team, (not the public service) where everyone is required to work together and help each other, one rule for one is potentially going to cause resentment and annoyance which will impact teamwork, morale and performance."

"The practical impact of staff not being in an environment where assistance can be provided in a hands-on manner. How this impacts other staff that cannot undertake their role from home and the division this will create in a business."

"The inherent unfairness and divide that will be created for those that can't work from home."

"Increased workload on those on-site during business hours."

Productivity

Survey respondents rejected claims that working from home increases productivity for businesses, with overwhelming feedback suggesting that the opposite is true, at least in relation to the automotive industry:

"Work from home has slowed down the process between assessment and repair timeframes, parts supply and placed pressure on my business to meet turnaround times. It puts cashflow under pressure as a result of slow turnaround"

"...other staff are required to look after the answering of phones, this has shown a decrease in productivity as the staff stop jobs to answer phones. This has not been effective hence all will be working from the workshop"

"...when our staff work from home we see a decline in productivity, the only time we allow this to take place is when they have personal circumstances where we try to assist them to navigate through."

MTAA notes that these observations are consistent with the Productivity Commission's research findings regarding the link between work from home and productivity. In addition to noting the "scant evidence" relating to non-knowledge-based work, the Productivity Commission found that:

"Workers with more need to interact with clients, or with a higher share of group work, for example, could be less productive at home"¹¹

MTAA also acknowledges the Productivity Commission's more generalised finding that suggests that in roles where there may be a short term benefit arising from a potential increase in the productivity of more experienced workers, this:

"... comes at a cost to less experienced employees because of a lack of mentoring opportunities, which could reduce their future productivity..."¹²

¹¹ Productivity Commission, *Working from home can work itself out*, Submission to the Senate Education and Employment Legislation Committee inquiry into the Fair Work Amendment (Right to Work from Home) Bill 2025, January 2026 ('PC Submission'), p 8.

¹² Ibid.

Increased cost of doing business

In addition to the increased compliance-related costs referred to above, survey respondents also noted the increased costs associated with the loss of productivity, as well as related longer-term implications of the proposed introduction of a right to work from home for the automotive industry and small businesses:

"...the cost of doing business will increase, production will go down and it will further impact the cost of living. We should be encouraging higher productivity not taking away from the already difficult landscape of small business."

"What is the full cost on a business for employees to work from home? What is the necessity for employees to work from home, why can they no longer perform their duties at the business premises?"

"It is very important for all businesses to understand this could be catastrophic, lack of people wanting to enter our industry because they would rather do a job from home. Business Owners need to take on more when they are already stretched."

Further observations

Consistent with the observations made by the Productivity Commission noted above, the survey feedback also highlighted the incompatibility of the proposed introduction of a right to work from home with the multifaceted and interdependent nature of employee roles within the automotive industry, particularly within small businesses:

"Our business requires face-to-face contact with customers collecting their car as well as parts delivery etc. I do not have the resources to juggle and split their duties between home and office."

"... employees tend to have many roles and responsibilities. How does an employee interact with an irregular face to face contact with another employee, employer and customers if they have been scheduled to work at home that day. How do you put a price on this situation? It may need an employer to hire another employee to take up the slack."

4. The FW Act already provides a fair and balanced legislative right to request flexible working arrangements, including working from home

As noted by a number of survey respondents, the FW Act already provides a fair and balanced legislative right to request flexible working arrangements, including working from home, with disputes determined by the Fair Work Commission.¹³

Survey respondents expressed valid concerns over how decisions on the 'reasonableness' of an employee working from home would be determined under the proposed right to work from home — with the existing FW Act provisions widely seen as already providing a fair and balanced framework:

"... the balance of decision making needs to sit with the employers. The current model and FWA legislation provides the right amount of coverage in this space."

"There is already the right to make flexible arrangements - if needed - ... However, the job requirements are - in the main - to be in premises, and customer facing. You simply CANNOT service a customer's car, or wash a customer's car while working from home."

"Since we already have the flexible work arrangements, we need to define what 'reasonably' means. Who decides who can reasonably work from home?"

Further support for the view that the current arrangements already provide a 'fair and balanced' framework is provided by the Productivity Commission, who suggest that Australian workplaces appear to have already found the 'sweet spot' when it comes to working from home under current legislative settings.¹⁴ Relevantly, MTAA also agrees with the Productivity Commission's assessment that:

"Introducing a right to work from home may, at best, have indiscernible effects on work-from-home arrangements agreed between employers and workers. At worst, it may impede the ability of employers and workers to come to mutually beneficial arrangements if employers are unable to refuse requests they believe have genuine costs, such as those that flow from reduced collaboration." ¹⁵

¹³ Fair Work Act 2009 (Cth) Part 2-2, Division 4.

¹⁴ PC Submission, p 3.

¹⁵ Ibid., p 9.

MTAA feedback on the drafting of the Bill

1. The drafting of the Bill shows that survey respondent concerns are well-founded

MTAA submits that it is evident from even the most cursory review of the Bill that its survey respondent concerns are well-founded.

Notably, given the expanded definition of a 'work from home up to 2 days request' to include remote work generally under the proposed section 65A(4A), concerns related to compliance and related costs — particularly in regard to WHS and workers compensation — are if anything, significantly understated.

Similarly, survey respondent concerns regarding fairness for both employers and employees are also understated given the Bill's proposed removal of both the employer's right to refuse work from home requests on reasonable business grounds (which currently includes consideration as to the impact on other employees¹⁶) and the current merit-based consideration of an employee's personal circumstances.

Whilst these fairness related considerations are explored further below, MTAA notes that the claim made in the aforementioned media release that the changes proposed in the Bill would be a 'productivity boon' demonstrate a fundamental lack of understanding of how businesses, and small SMEs in particular, operate in practice. Far from a 'boon', the adoption of the Bill's proposed amendments would prove a bane for the productivity of Australian automotive workplaces.

2. The Bill introduces unfair and unreasonable requirements on employers that would be unworkable in practice, particularly for SMEs

The Bill introduces unfair and unreasonable requirements on employers that would be unworkable in practice, particularly for SMEs, in four main ways.

Firstly, the Bill expands the number of employees entitled to make a request for flexible working arrangements through removal of the current (merit-based) consideration of an employee's personal circumstances provided under ss 65(1), (1A) and (1B).

Secondly, the Bill creates a new procedural requirement under the proposed s 65A(3)(a)(ii) for the employer to have 'genuinely engaged' with employees on the apparent unjustified premise that the current requirement to genuinely try and reach agreement is inadequate.

Thirdly, the Bill introduces a new 'reasonable adjustment' requirement under proposed s 65A(4B) for employers in relation to work from home requests, that appears intended to operate akin to discrimination law.¹⁷

¹⁶ See, eg, s 65A(5)(b) and (c).

¹⁷ See for example, *Equal Opportunity Act 2010* (Vic) s 20.

Finally, the Bill removes the ability of employers to refuse work from home requests on reasonable business grounds under proposed s 65A(3)(d), resulting in a two-tiered flexible working arrangement system.

Removal of merit-based personal circumstance consideration

MTAA notes that the removal of personal circumstance considerations has the potential to adversely impact both employers and employees. From an employer perspective, in addition to 'expanding the right universally',¹⁸ the Bill seeks to remove the ability for an employer to preference the accommodation of those requests based on what is fair and reasonable given the individual circumstances of the employee.

MTAA submits that the proposed removal of such considerations threatens employee morale and organisational culture within the workplace, further adversely impacting productivity. It also directly undermines claims made in the EM (and elsewhere) that the Bill is intended to improve inclusion and enable greater workforce participation for carers, people with disability and older workers. It does no such thing. Rather, it serves to promote an adversarial approach to issue resolution, encourage non-meritorious general protections claims and to further marginalise genuinely disadvantaged employees. MTAA's employee-related concerns are further discussed later in this submission.

Genuinely trying to reach agreement no longer enough

MTAA notes that the new requirement to 'genuinely engage' is undefined in the Bill. However, given the inherent subjectivity of the term, it would appear intended to effectively remove the ability of an employer to successfully demonstrate that they have met all the preconditions to lawfully refuse a flexible working arrangement request.

Notably, the EM provides no assistance in understanding the meaning of the term, other than asserting that it "... *strengthens the procedural requirement that employers must genuinely engage (not merely consult) with employees about requests.*"¹⁹ MTAA is further concerned by the derogatory reference to, and seeming misunderstanding of, the longstanding and well understood concept of a requirement to "consult" under industrial law.²⁰

Further, no explanation is provided as to why such change is warranted, or how the current requirement for an employer to genuinely try to reach an agreement with the employee is in any way deficient. Certainly, current case law from the Fair Work Commission further demonstrates a lack of a genuine basis for such change.²¹

¹⁸ Fair Work Amendment (Right to Work from Home) Bill 2025 Explanatory Memorandum ('EM'), n 5.

¹⁹ Ibid.

²⁰ See for example, *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited* [2010] FCA 59, [45].

²¹ See, eg, *Karlene Chandler v Westpac Banking Corporation* [2025] FWC 3115; *Elizabeth Naden v Trustees of the Roman Catholic Church for the Diocese of Broken Bay T/A Catholic Schools Broken Bay Ltd* [2025] FWCFB 82.

Reasonable adjustments

The Bill's introduction of 'reasonable adjustment' requirements are equally concerning. Again, neither the Bill nor the EM seek to define the meaning of the term, other than the EM providing the following non-exhaustive list of examples:

- > Holding meetings online
- > Facilitating the use of digital tools for check-ins and team coordination
- > Providing IT equipment and secure access
- > Establishing reporting methods to support accountability

However, given the terminology used is identical to that used in disability legislation (e.g. the Victorian *Equal Opportunity Act 2010*), it appears reasonable to assume that the legislative intent is for an employer to be required to treat employees that make a 'work from home up to 2 days request' akin to a person with a disability.

Accordingly, the Bill would impose a new requirement on employers to demonstrate that they have considered any changes to the work environment or conditions to allow such employees to work safely and productively. Whilst it is unclear how the employer will be able to satisfactorily demonstrate compliance with the proposed new requirement given the expansive definition of a 'work from home up to 2 days request' itself (i.e. includes remote work generally), MTAA submits that it is both an unfair and unworkable impost for employers, and SMEs in particular.

Two-tiered system

Whilst the Bill's requirement on employers to treat formal work from home requests as akin to a form of disability is alarming, the unreasonable and privileged status proposed for employees seeking to work remotely is not limited to reasonable adjustments. Indeed, the Bill seeks to introduce a two-tiered system which removes an employer's ability to refuse a flexible working arrangement on reasonable business grounds when it is made in the form of a 'work from home up to 2 days request'.

Instead, an employer would be required to demonstrate that the work from home arrangement would be 'impractical' or 'impossible'. It is evident from the EM that the Bill intends for this to be a 'higher threshold', with employers required to show the job cannot practically be done under the proposed work from home arrangement.²² Given such intent, it is evident that an employer would be unable to satisfy this new threshold requirement, despite successfully demonstrating the following (reasonable business) grounds:

- > the new working arrangements requested would be too costly for the employer;
- > that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;

²² EM, n 8.

- > that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested;
 - that the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
 - that the new working arrangements requested would be likely to have a significant negative impact on customer service²³

Further, the specific circumstances of the employer, including the nature and size of the enterprise carried out by the employer, would also be excluded from consideration for a 'work from home up to 2 days request' under the Bill. MTAA notes that this includes the example provided in the statutory note following 65A(5), of a small business employer who has no capacity to change the working arrangements of other employees to accommodate the request.

MTAA submits that such requirements are untenable to the point of nonsensical for any business, and particularly so for SMEs.

3. The Bill effectively discriminates against those most in need of flexible working arrangements by removing personal circumstance considerations

In addition to introducing unfair and unworkable requirements on employers, the Bill adversely impacts employees by removing the current priority status given to employees in the following personal circumstances:

- > Pregnancy;
- > Parent, or has responsibility for the care, of a child who is of school age or younger;
- > Carer, within the meaning of the Carer Recognition Act 2010;
- > Disability
- > Older workers aged 55 or older
- > Experiencing family and domestic violence,
- > Providing care or support to an immediate family or household member experiencing family and domestic violence.

As alluded to above, by removing consideration of an employee's personal circumstances, the Bill effectively discriminates against those most typically in need of flexible working arrangements. Further, and as outlined earlier in this submission, through the introduction of a 'reasonable adjustment' requirement on employers in relation to work from home requests, the Bill seeks to treat employees making such requests akin to those with a disability – extending universally, protections specifically introduced to address the inherent disadvantages (relative to those without disability), faced by persons with disability. Self-evidently, a request to work from home is not, of itself, a form of disability. Seeking to legislate a requirement on an employer to treat it as if it is, serves only to create a false equivalence that diminishes the status of persons with disability in the workplace.

²³ *Fair Work Act 2009* (Cth), s 65A(5).

Further, the Bill discriminates against those employees whose need for flexible working arrangements cannot be accommodated through a working from home arrangement. For example, under the two-tiered amendments proposed by the Bill, it will be harder for an employee experiencing domestic and family violence to enforce a flexible working arrangement regarding start and finish times at the workplace, than it will be for an employee without any special or extenuating personal circumstances to enforce a preference to work from home.

Given the fact that employers have finite resources, this will ultimately result in outcomes where an employer finds itself in the invidious position of being unable to accommodate such merit-based requests of employees with compelling personal circumstances because they have been compelled to accommodate a non-meritorious work from home request.

Finally, by removing reasonable business grounds considerations, the Bill discriminates against those employees who choose not to work from home or who otherwise must remain in the workplace. As noted above, the impact of a work from home up to 2 days request decision on other employees in the workplace may be direct (e.g. require a change to their working arrangements) or more indirect, such as increasing the risk of workplace aggression or violence resulting from a significant negative impact on customer services.

To simply disregard these considerations is anathema to commonsense and good public policy.

Conclusion

The MTAA submits that the Committee should be satisfied that the amendments to the FW Act proposed by the Bill are not supported by evidence, particularly in blue-collar, customer-facing industries such as automotive. Rather, the evidence suggests that the proposed changes will adversely impact productivity, cooperation and inclusion in the workplace.

MTAA further submits that the Committee should be satisfied that the changes proposed by the Bill are unfair, to both employers and employees; will significantly increase employer compliance costs and encourage unnecessarily adversarial, expensive and time-consuming litigation before the Fair Work Commission; and ultimately, serve to further marginalise small business operators and employees whose personal circumstances most warrant flexible working arrangements.

MTAA therefore agrees with the Productivity Commission's assessment that in addition to having a "chilling effect" on employers, the amendments proposed by the Bill may ultimately result in "... *arrangements that are less than ideal from a community-wide perspective.*"²⁴

Accordingly, MTAA submits that the Committee should oppose the Bill.

²⁴ PC Submission, p 9.

Contact

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