

SUBMISSION

FAIR WORK AMENDMENT (RIGHT TO WORK FROM HOME) BILL 2025

JANUARY 2026

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide feedback on the Fair Work Amendment (Right to Work from Home) Bill 2025.

The ARA and the NRA (the Associations), which are amalgamating on 1 February 2026 to form the Australian Retail Council (ARC), represent a \$444 billion sector that employs 1.4 million Australians—one in ten workers—making retail the nation's largest private sector employer and a cornerstone of the Australian economy, contributing 16 % of national GDP.

Our combined membership spans the full breadth of Australian retail: from family-owned small and independent businesses, which comprise 95% of our membership, to the largest national and international retailers that support thousands of jobs and sustain communities across both metropolitan and regional Australia. Our industry operates more than 155,000 retail outlets nationwide, with the majority of those also represented by an online or e-commerce presence.

A strong retail sector delivers widespread benefits to all Australians, with a significant portion of every dollar spent in retail flowing back into employees, suppliers, superannuation funds, and local communities. We are united in advocating for the policy settings, reforms and collaboration that will drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

EXECUTIVE SUMMARY

The Associations support employer-led flexible working arrangements, recognising that many retailers already offer hybrid or remote working options for certain roles through voluntary, negotiated arrangements.

For the retail sector, enshrining a statutory right to work from home raises significant concerns. Retail is a contact-intensive industry that relies on physical presence, customer service, supervision, and on-the-job training. While some office-based roles may be suited to hybrid arrangements, the majority of retail roles require employees to be on site. The proposal risks entrenching a two-tier workforce, with statutory benefits available to a limited cohort of employees while remaining inaccessible to frontline workers performing equally essential roles. It does not appropriately recognise the diversity of Australian retail businesses, many of which operate in ways that cannot accommodate such arrangements at all.

Existing remote or hybrid working arrangements are working effectively. These arrangements have evolved organically, including through negotiation at a workplace level and through a desire by employers to provide a strong value proposition. Changing working arrangements from a benefit to an entitlement would erode flexibility and increase the potential for dispute.

Enshrining a statutory right to work from home would represent a material shift in the national industrial relations framework by narrowing the grounds on which employers may refuse requests to work from home for up to two days per week. In practice, this shifts working from home toward a general entitlement rather than a matter for agreement, reducing employer discretion over how work is organised and performed.

Furthermore, it would also increase regulatory complexity and compliance risk, particularly for small and medium-sized retailers, by exposing employers to greater dispute risk and Fair Work Commission intervention while constraining operational flexibility across a national workforce.

The proposal is also duplicative. The Fair Work Act already provides employees with comprehensive rights to request flexible working arrangements, including work from home, supported by established processes, obligations on employers, and access to dispute resolution. Creating an additional, standalone right introduces

parallel pathways that are likely to cause confusion for both employers and employees, rather than improving access to flexibility or redress. The Associations do not believe there is a case to depart from the existing framework, which already supports flexibility through the right to request arrangements and voluntary workplace practices.

For these reasons, the Associations strongly oppose the introduction of a statutory right to work from home and consider that flexibility is best achieved through negotiated, role-appropriate arrangements rather than prescriptive statutory change.

BODY OF SUBMISSION

This submission outlines the direct, indirect, and broader implications of enshrining a statutory right to work from home for the retail sector and explains why the Associations do not support the proposed approach.

DIRECT IMPACTS

Direct impacts to the retail workforce

A statutory right to work from home would not apply evenly across the retail workforce. Retail is a sector in which the majority of roles require physical presence in stores, warehouses, and distribution centres¹. While a limited number of head office or support roles may be capable of being performed remotely, the overwhelming majority of retail employees are customer-facing and cannot work from home. Creating a statutory framework that privileges remote work for some roles but not others risks embedding inequity within retail workplaces.

By formalising work location as a statutory entitlement, this approach would increase expectations among employees that remote work should be available as a default, even where the nature of the role makes this impractical. This creates a risk of increased requests and disputes, particularly in roles with mixed duties or partial administrative functions, and places pressure on managers to justify refusals in circumstances where physical presence remains essential.

Enshrining a statutory right to work from home also risks entrenching a two-tier workforce. Office-based employees would gain access to a statutory benefit that is structurally unavailable to frontline workers performing equally essential roles. This has implications for workplace cohesion, morale, and perceptions of fairness, particularly in retail businesses that rely on close collaboration between in-store teams and support functions.

The Associations acknowledge that differences in access to working from home already exist to some extent under current flexible working arrangements, particularly between office-based and frontline roles. However, introducing an explicit statutory right to work from home for up to two days per week, which may only be refused on narrow grounds, risks further entrenching these differences by elevating work location into a distinct statutory entitlement. This risks amplifying perceptions of inequity within retail workplaces, particularly where frontline employees perform equally essential roles but cannot access the same statutory benefit.

In addition to restricting employer discretion over where work is performed, the proposal introduces rigidity over time. By framing work-from-home as a standing entitlement of up to two days per week, the proposal creates an ongoing, always-on arrangement that lacks any mechanism for time-limiting, review, or adjustment in response to changing operational needs. This risks converting what is currently a flexible, reviewable arrangement into a permanent default, reducing employers' ability to manage work patterns dynamically across the year.

Over time, these dynamics may affect recruitment, retention, and engagement across the sector. Retailers already operate in a tight labour market and rely on a diverse workforce with varying preferences for flexibility. A framework that elevates work location as a statutory entitlement, rather than one of many forms of flexibility, risks narrowing rather than expanding meaningful flexibility for retail workers.

¹ Australian Bureau of Statistics, Working Arrangements, August 2024 (Catalogue No. 6342.0); Productivity Commission, Working from Home, Research Paper, September 2021.

Direct impacts on retail operations

A statutory right to work from home would restrict retailers' ability to determine where work is performed by narrowing the grounds on which work from home requests may be refused. In doing so, it reduces employer discretion and shifts operational decisions into a more prescriptive regulatory framework. Creating a need that an employer must show that the job cannot practically be done from home creates an unnecessarily high bar and also ignores the qualitative components of a role that are better performed/assessed in person.

Retail operations rely on physical presence for supervision, training, collaboration, and customer service. Even roles with some administrative functions often require regular on-site engagement. A prescriptive statutory approach does not adequately reflect these realities and risks constraining how retailers organise work to meet operational and service needs. Statutory models of this kind are silent on how a two-day per week work from home entitlement would apply to part-time employees.

By requiring employers to justify refusals against a narrow statutory test focused on inherent requirements, this approach increases uncertainty and dispute risk, particularly in roles with mixed duties. These impacts are likely to fall most heavily on small and medium-sized retailers, which have limited capacity to redesign roles or manage contested work location decisions.

INDIRECT IMPACTS

Regulatory and dispute impacts

Enshrining a statutory right to work from home is likely to increase the frequency and complexity of disputes regarding work location, particularly in sectors such as retail where roles often involve mixed duties and varying degrees of on-site interaction. By narrowing the grounds on which employers may refuse work from home requests, this approach raises the likelihood that reasonable operational decisions will be contested.

An expanded role of the Fair Work Commission in determining whether refusal grounds are made introduces additional regulatory risk and uncertainty. Decisions about the inherent requirements of retail roles are highly context-specific and may vary across businesses, locations, and formats. Greater Fair Work Commission involvement increases the risk of inconsistent outcomes and limits employers' ability to apply uniform workforce practices across multi-site operations.

For retailers, particularly small and medium-sized businesses, increased exposure to disputes would impose additional administrative and legal costs. These indirect impacts risk diverting management time and resources away from core business operations, without clear evidence that a statutory right to work from home would deliver commensurate benefits for employees. It should be further noted that the Fair Work Commission's capacity to deal with claims is being tested due to a 40% rise in the number of claims from FY23-25.

Impacts on small and medium retailers

Small and medium-sized retailers would be disproportionately affected by enshrining a statutory right to work from home. Unlike larger employers, many small and family-owned businesses have limited capacity to redesign roles, implement alternative supervision arrangements, or manage disputes arising from contested work location decisions.

Statutory models of this kind do not provide for exemptions or graduated obligations for small businesses, despite their differing operational realities and resource constraints. The requirement to assess and defend refusals against a narrow legal test would increase compliance risk and expose smaller retailers to potential disputes that they are less equipped to manage.

For many small retailers, flexibility already exists in informal and practical ways, shaped by trust and day-to-day operational needs. Introducing a more prescriptive framework risks undermining these arrangements and replacing them with rigid processes that reduce flexibility rather than enhance it.

Labour market and competitiveness impacts

Introducing a statutory right to work from home risks creating uneven impacts across the labour market by advantaging sectors and roles that can readily accommodate remote work, while disadvantaging contact-intensive industries such as retail². This may distort employment decisions, with jobseekers favouring roles offering statutory access to working from home, regardless of pay, progression, or role suitability.

For retail employers, this could exacerbate existing recruitment and retention challenges, particularly for frontline roles that cannot be performed remotely. Businesses may face increased pressure to compete through higher wages or additional benefits to offset expectations created by statutory work from home entitlements, placing further strain on operating costs.

These impacts would be felt nationally across a highly competitive labour market, with limited scope for retailers to adapt in ways that preserve workforce balance and operational sustainability.

Unintended consequences for flexibility and equity

Introducing a standalone statutory right to work from home risks unintended consequences that may narrow, rather than expand, flexibility in practice. By formalising work from home around a defined entitlement of up to two days per week, the proposal may create a practical ceiling, with employers defaulting to the statutory benchmark instead of continuing to offer more tailored or expansive arrangements where roles permit.

There is also a risk of indirect equity impacts. Women and carers are more likely to rely on flexible working arrangements, including working from home. Where a statutory entitlement increases compliance risk or dispute exposure, employers may become more cautious in approving such arrangements, potentially disadvantaging the very cohorts the Fair Work Act seeks to support. In this respect, the proposal risks operating in tension with section 3(d) of the Act, which promotes flexible working arrangements that facilitate work-life balance and workforce participation.

BROADER IMPLICATIONS

National industrial relations framework

Introducing a statutory right to work from home represents a shift away from the long-standing approach under the Fair Work Act that balances employee flexibility with employer discretion through the concept of reasonable business grounds. By creating a distinct category of work from home requests with significantly constrained refusal grounds, the Bill elevates work location above other forms of flexibility and alters the underlying balance of the national framework.

This approach risks setting a precedent for further role or arrangement-specific entitlements within the Fair Work system, reducing its capacity to accommodate the diversity of industries, business models, and workforce needs across the economy. In a sector as varied as retail, a prescriptive approach to work location does not reflect the complexity of roles or the need for tailored, workplace-level solutions.

The Associations are concerned that, rather than enhancing flexibility, a statutory right to work from home may narrow the range of workable arrangements available to both employers and employees by substituting negotiated outcomes with rigid statutory settings.

In addition, some Awards cover work performed at a specific premises. To the extent that such work can practically be performed at home, the question arises as to whether the Award would continue to cover the work and how the employer would ensure compliance with the Award and relevant policies (i.e. break times, safe working environment, impact on other employees).

Adequacy of the existing framework

The Associations are not persuaded that the existing national framework is failing to support flexible working arrangements. The Fair Work Act already provides employees with a right to request changes to working

² Productivity Commission, Working from Home, Research Paper, September 2021.

arrangements³, including work location, and requires employers to consider such requests and respond in good faith. Many retailers have demonstrated that flexibility can be achieved within this framework where roles permit.

Voluntary, negotiated arrangements allow flexibility to be tailored to individual circumstances and operational requirements, recognising that meaningful flexibility can take many forms beyond working from home. Prescribing work location through statute risks constraining these arrangements and reducing the scope for employers and employees to reach practical, mutually beneficial outcomes.

In the absence of clear evidence that the current framework is inadequate, the Associations consider that introducing a statutory right to work from home would introduce unnecessary complexity and rigidity into the national industrial relations system without delivering proportionate benefits.

Duplication and legislative complexity

Introducing a standalone statutory right to work from home is duplicative of the existing Fair Work Act framework, which already provides employees with comprehensive rights to request flexible working arrangements, supported by clear employer obligations and established dispute resolution processes. Creating parallel statutory pathways risks confusing employees about how to access flexibility and seek redress, rather than improving outcomes.

These risks are particularly acute for large, decentralised retail employers that rely on simple, consistent processes to ensure clarity and fair application across a dispersed workforce.

CONCLUSION

The Associations do not support introducing a statutory right to work from home in the Fair Work system. While flexibility in working arrangements is important and already occurring where roles permit, this approach moves working from home toward an effective entitlement by significantly narrowing employer discretion over work location. This approach cannot be applied evenly across sectors or roles and does not reflect the operational realities of contact-intensive industries such as retail.

For the retail sector, introducing a statutory right to work from home risks entrenching workforce inequity, constraining operational flexibility, increasing regulatory and dispute risk, and imposing disproportionate burdens on small and medium-sized businesses. By shifting operational decision making into a more prescriptive framework and expanding Fair Work Commission involvement, this approach undermines long-standing principles that recognise employers as best placed to organise work in line with business needs and service delivery requirements.

The Associations do not believe there is a case to depart from the existing national framework, which already supports flexible working arrangements through the right to request process and voluntary, workplace-level practices. Flexibility is most effective when it is employer-led, tailored, negotiated, and responsive to the inherent requirements of roles, rather than imposed through prescriptive statutory change. For these reasons, the Associations consider that introducing a statutory right to work from home should not proceed.

The ARA and the NRA appreciate the opportunity to contribute to this important discussion.

Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

³ Fair Work Act 2009 (Cth), ss 65–65B.