

## **ARA SUBMISSION**

### **RIGHT TO WORK FROM HOME**

SEPTEMBER 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to provide feedback on the proposed statutory right to work from home to the Victorian Government.

The ARA and the NRA (the Associations), which propose to amalgamate to form the Australian Retail Council (ARC), represent a \$430 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.

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 remain committed to ensuring that workplace regulation supports flexibility while balancing the protection of legitimate business operations with the needs of employees, which is a decision that employers are best placed to make. As such, the Associations strongly oppose the Victorian Governments proposed work-from-home legislation.

This submission makes the following observations, in relation to direct and indirect impacts to the retail:

- The Associations remain of the view that employers must retain the discretion to determine where work is performed. This principle is central to effective business management and is well established in law.
- We acknowledge that some retailers already support hybrid practices for certain office-based roles, but stress that these arrangements are voluntary, negotiated and tailored to operational needs, not as statutory entitlements.
- A statutory right to work from home would impose unresolved work health and safety obligations in residential settings, while limiting employers' ability to ensure compliance.
- Such a right would divide retail workplaces, benefitting only a small minority of employees while excluding the overwhelming majority of frontline staff, with negative consequences for workplace cohesion and morale.
- Small and family-owned retailers would bear disproportionate costs and legal risks if such a right were introduced.

We understand that there is no specific detail relating to a proposal for amendment, other than the Victorian government's public statements. However, the Associations make the following assessments:

- The proposed statutory right duplicates existing national entitlements, creating unnecessary complexity and legal uncertainty.
- The government has not addressed the unique operational realities of the retail sector, which relies heavily on physical presence in stores and warehouses.
- The proposal risks creating inequities between support centre roles and front line workers without clear evidence that benefits outweigh costs.
- No case has been made for abandoning the current framework, which already provides for flexibility through the right to request arrangements and through voluntary agreements at the workplace level.

## **DIRECT IMPACTS**

### *IMPACT ON THE RETAIL WORKFORCE*

A statutory right to work from home would not apply evenly across the retail sector. It would create a two-tier workforce, with head-office staff able to access remote work while the vast majority of frontline employees, whose roles require physical presence, would be excluded. Retail workers see the important development of skills, especially customer service and interpersonal skills, acquired through customer-oriented work (2022)<sup>1</sup>.

We are concerned that introducing an automatic entitlement to work from home may also lead to increased requests from retail staff, even where the nature of their roles makes remote work impractical. There is currently limited clarity regarding how exemptions would be determined and applied. This ambiguity risks inconsistent implementation across store functions, particularly if some roles are deemed eligible for remote work while others are not. Depending on how any exemptions are designed, allowing some retail staff to work from home could introduce significant operational challenges. For national retail businesses, such exemptions in Victoria would likely have a flow-on effect to other jurisdictions, making consistent implementation unworkable. While the Victorian Government has indicated that employees should have the right to work from home where it is deemed 'reasonable', the lack of clarity around what constitutes 'reasonable' risks generating unnecessary workplace disputes.

The Productivity Commission (2021)<sup>2</sup> and the ABS Working Arrangements (2024)<sup>3</sup> show that remote work is feasible for most professional occupations but only marginally so for retail. The RBA Bulletin (2023)<sup>4</sup> similarly identified retail as a contact-intensive industry with limited capacity for remote work. This inequity risks undermining cohesion and morale by creating divisions between groups of employees performing equally important roles.

### *RETAIL INDUSTRY REALITIES*

Retail is an industry built on physical presence. Customer service requires employees to be on-site, and stores and warehouses depend on predictable staffing and supervision. The proposed changes will implement impractical obligations on larger retailers who will be unable to reasonably accommodate working from home arrangements for customer-facing roles. For small and family-owned retailers, which make up the majority of the sector, imposing a statutory right to work from home would create disproportionate compliance costs and heighten the risk of disputes.

While some hybrid practices exist in head office roles, these are negotiated voluntarily and tailored to business needs. This demonstrates that flexibility is possible within the current framework, without the need for prescriptive legislation.

## **INDIRECT IMPACTS**

### *MARKET DISTORTION BETWEEN SECTORS*

Introducing a statutory right to work from home would distort competition between industries that can support remote work and those, like retail, that cannot. In professional services or technology sectors, large portions of the workforce may benefit from such a right, while in retail most roles require physical presence. This would create an uneven playing field in the labour market, with certain industries positioned as more attractive to jobseekers not because of pay, progression or conditions, but because of an externally imposed entitlement that is structurally unavailable in customer-facing sectors. This could exacerbate workforce shortages in retail and undermine efforts to recruit and retain staff in an already competitive labour market. This could also affect retailer's ability to attract and retain talent, and place greater emphasis on higher wages and additional benefits that smaller retailers will struggle to accommodate.

### *ECONOMIC IMPACTS*

A statutory right to work from home would also have broader economic consequences. Retail contributes more than

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<sup>1</sup> Technology and skills in the future of retail work: Summary of findings (2022)

<sup>2</sup> Productivity Commission, Working from Home (Research Paper, September 2021).

<sup>3</sup> Australian Bureau of Statistics, Working Arrangements, August 2024 (Catalogue No. 6342.0).

<sup>4</sup> Reserve Bank of Australia, Bulletin — The Evolution of Working from Home in Australia (September 2023).

\$430 billion annually to the national economy and employs one in ten Australians. Policies that restrict operational flexibility and create inequities across the workforce risk undermining this contribution.

In addition, retailers in CBD locations are heavily dependent on consistent foot traffic from office workers to sustain trade. If a right to work from home reduces the number of employees attending workplaces in city centres, this will directly impact retail sales, hospitality venues and service providers that rely on daily commuter spending. The decline in foot traffic would not only threaten the viability of CBD retailers but also diminish the vibrancy of these areas, with flow-on effects for commercial property, transport systems and local government revenues. By shifting spending patterns away from the CBD, a statutory entitlement risks weakening the economic ecosystems that underpin Australia's CBDs and the communities they support.

## BROADER IMPLICATIONS

### LEGAL AND CONSTITUTIONAL FRAMEWORK

Employment conditions, including the location of work, are regulated at the national level under the *Fair Work Act 2009* (Cth). Victoria referred its powers in this area to the Commonwealth through the *Fair Work (Commonwealth Powers) Act 2009* (Vic).<sup>5</sup> Introducing a state-based statutory entitlement risks inconsistency with federal law and invalidity under section 109 of the Constitution, which provides that Commonwealth law prevails in the event of conflict.<sup>6</sup>

The experience of the Victorian Wage Theft offences, later overtaken by federal laws, highlights the risks of duplicating or diverging from the national framework. For national retailers in particular, fragmented regimes would create legal uncertainty and administrative burden.

### EMPLOYER DISCRETION

At common law, employees must comply with lawful and reasonable directions of their employer, including directions about work location. This principle has been confirmed in *McManus v Scott-Charlton*<sup>7</sup> and in the Full Bench decision of *CFMMEU v Mt Arthur Coal*.<sup>8</sup>

Employers should be able to retain the ability to refuse working from home requests based on business needs that are of strategic or operational importance. Creating an automatic right to work from home would constrain a business's capacity to operate in accordance with its requirements and undermine existing workplace policies and practices that have been developed within the specific parameters of each business. While the Victorian Government has noted there will be exemptions to any entitlement, it has not clarified whether employers would retain discretion in how such an entitlement is implemented or whether it would be largely unrestricted.

For retail, the workplace is central to the role. In-store staff, warehouse operatives and distribution workers must be present to deliver customer service and ensure operational continuity. A statutory right to work from home would erode this managerial prerogative and restrict employers' ability to organise their businesses effectively.

True workplace flexibility may not look the same for all employees. Some may prefer working in the office but within a different span of hours, while others may benefit from alternative tailored arrangements. Flexibility should be established through mutual agreement between the employee and employer, informed by operational requirements and individual circumstances. Introducing an automatic entitlement to work from home risks undermining these existing, negotiated arrangements and removing the opportunity for meaningful dialogue around operational needs, role suitability, and any necessary limitations. Businesses must retain the ability to assess and tailor working arrangements to ensure they align with both operational and individual needs, which may or may not involve working from home.

<sup>5</sup> *Fair Work (Commonwealth Powers) Act 2009* (Vic).

<sup>6</sup> *Australian Constitution* s109.

<sup>7</sup> *McManus v Scott-Charlton* (1996) 70 FCR 16, 140 ALR 625.

<sup>8</sup> *Construction, Forestry, Maritime, Mining and Energy Union v Mt Arthur Coal Pty Ltd* [2021] FWCFB 6059.

## RECOMMENDATIONS

The Associations recommend that:

- No statutory right to work from home be introduced, as existing protections such as the right to request flexible working arrangements already operate effectively under national law.
- Flexibility, including hybrid work practices where suitable, should continue to be a matter for agreement between employers and employees, reflecting operational requirements.
- If any framework is pursued, it must exclude small businesses and make clear that frontline, customer-facing and operational roles are not covered. More broadly, the Government must provide clarity around which roles and sectors are included or excluded, and accept any onus where discrepancies with that definition arise.
- Government efforts should instead focus on supporting voluntary flexible arrangements through guidance, education and resources, rather than legislating prescriptive entitlements.

## CONCLUSION

The Associations do not support the creation of a statutory right to work from home. Retail is a sector built on physical presence, customer service and operational continuity. A legislated entitlement would divide the workforce, undermine managerial prerogative and create a class-system workforce that distorts cross-sector employment.

Flexibility should remain a matter of agreement between employers and employees, tailored to the needs of each workplace.

The Associations thank the Victorian Government for the opportunity to outline our position and remains available for further engagement on policy settings that support the growth and sustainability of the retail sector.

Any queries in relation to this submission can be directed to our policy team at [policy@retail.org.au](mailto:policy@retail.org.au).