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## **SUBMISSION TO EDUCATION AND EMPLOYMENT LEGISLATION COMMITTEE**

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

Submitted by: Council of Small Business Organisations Australia (COSBOA)

Date: 4 February 2026

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### About COSBOA

1. The Council of Small Business Organisations Australia (COSBOA) is the national peak body for small business in Australia, representing the interests of small businesses across all industry sectors through our member organisations.
2. Small businesses, represent 96.6% of all Australian businesses, 43.8% of private sector employment, and 34.7% of private sector value-added to the economy. They are the backbone of the economy, employing most workers and driving innovation and growth.
3. Regulations that treat small businesses as if they have the same capabilities and resources as large corporations are fundamentally unjust and economically damaging. Our role is to advocate for policies that enable small businesses to start, survive, and thrive while contributing to economic growth, innovation, and community wellbeing.

### Executive Summary

4. The Council of Small Business Organisations of Australia (COSBOA) maintains that the Fair Work Amendment (Right to Work from Home) Bill 2025 should not proceed, as it duplicates and distorts existing flexible work rights in the Fair Work Act, creates new legal and compliance risks for small business, and undermines practical, workplace-level flexibility without clear evidence of need or proportionality.

### Introduction

5. COSBOA welcomes the opportunity to comment on the Fair Work Amendment (Right to Work from Home) Bill 2025 (the Bill). COSBOA represents millions of small business owners who are disproportionately affected by workplace relations changes and generally lack in-house HR and legal support.
6. COSBOA supports flexible work in principle and recognises that working from home (WFH) is now a normal and often positive feature of many small workplaces. However, COSBOA cannot support this Bill, which would introduce a statutory “right to request” WFH for up to two days per week, a narrow test for refusal, and expanded Fair Work Commission (FWC) oversight.



7. COSBOA considers the Bill unnecessary given the existing flexible work regime under section 65 of the Fair Work Act 2009 (FW Act), recently strengthened dispute resolution powers, and related rights such as the right to disconnect. Instead of improving flexibility, the Bill risks increasing regulatory complexity and litigation while reducing genuine, trust-based flexibility for small businesses and their employees.
8. We are further concerned that there is potential to allow extension of the provisions to apply to Contractors and other suppliers who are not and should not be included in provisions applying to employees.

### Existing FW Act framework already provides adequate flexibility

9. Section 65 of the FW Act already provides eligible employees with a right to request flexible working arrangements, including changes to hours, patterns and location of work, such as working from home. Employers must respond within prescribed timeframes and give reasons for any refusal and are required to discuss requests and consider alternatives.
10. Recent reforms have:
  - Expanded who can access flexible work rights.
  - Strengthened the requirement for genuine consideration and consultation.
  - Given the FWC enhanced powers to deal with disputes about refusals of flexible work requests, including arbitration.
  - Introduced complementary rights, such as the right to disconnect, which support work–life balance without mandating specific locations of work.
11. This framework is comprehensive and already capable of accommodating WFH where it is operationally appropriate. Creating new WFH-specific entitlement risks overlap and inconsistency with section 65 and will make the system harder—not easier—for small businesses and employees to navigate.
12. There is no evidence to suggest the current arrangements do not demonstrate that the current FW Act provisions are inadequate, nor that WFH cannot be secured under the existing regime.
13. Disputes about WFH are already being tested within the present framework, including FWC oversight of employer refusals. Recent legislative amendments and case law have not yet had time to stabilise. COSBOA considers it premature to legislate a new WFH-specific right before the impact of these changes has been properly assessed.
14. A more proportionate response would be to:
  - a) Continue using the existing flexible work provisions, including for WFH.
  - b) Improve practical guidance and education for small businesses on managing WFH under current law.
  - c) Monitor dispute trends and only consider targeted amendments where clear, evidence-based gaps emerge.



## Undue intrusion into small business management and judgement

15. Small businesses run on thin margins, with owners directly responsible for supervising staff, managing client relationships and controlling risk. Decisions about where work is done are core management decisions, not mere preferences.
16. COSBOA submits the Bill would:
  - a) Create a statutory right for all employees to request WFH up to two days per week.
  - b) Limit refusals to circumstances where WFH would make the “inherent requirements” of the role impractical or impossible.
  - c) Allow the FWC to review refusals and make binding directions.
17. While described as a “right to request”, in practice this architecture:
  - a) Creates a strong presumption in favour of WFH.
  - b) Shifts the onus onto employers to justify refusals against a narrow legal test.
  - c) Invites second-guessing of everyday operational decisions through external dispute processes.
18. In a small business, choices around supervision, client service, scheduling, and the use of shared systems are based on detailed, situational knowledge. The Bill risks converting those inherently practical judgements into formal legal issues, with the FWC acting as a forum of appeal on matters best resolved at the workplace level.
19. The focus on whether WFH would make the inherent requirements of the role “impractical or impossible” is too narrow for the way small businesses operate. Problems arise not only when a task literally cannot be done at home, but where:
  - a) Effective supervision, mentoring and quality assurance require being physically present with colleagues. Client expectations and competitive dynamics rely on visible, in-person team presence.
  - b) Work involves high levels of confidentiality, risk, or professional accountability better managed on-site.
20. Many small business roles are hybrid and fluid rather than neatly separable into “WFH-suitable” and “not suitable” components. Even where individual tasks can be done from home, the cumulative impact on team cohesion, training, responsiveness and risk management may justify office-based work. These kinds of nuanced judgements are difficult to capture in a statutory test and lend themselves poorly to adversarial dispute processes.

## Disproportionate compliance and dispute burden on small business

21. In recent years, small businesses have had to adjust to:
  - Expanded flexible work rights and new dispute resolution mechanisms.
  - The right to disconnect and associated obligations about contact outside working hours.
  - Changes to fixed-term contracts, wage compliance, and other complex amendments.



22. Each reform has required new policies, documentation, training, and often external advice. Larger employers can spread these costs across HR and legal teams; small businesses cannot. For them, every additional process is time away from running the business and serving customers.
23. The Bill would add another layer by:
  - a) Creating a separate WFH request mechanism that sits alongside existing flexible work provisions.
  - b) Imposing additional documentation and reasoning obligations tailored to WFH.
  - c) Increasing exposure to FWC disputes specifically about location-of-work decisions, over and above general flexible work disputes.
24. From COSBOA's perspective, this is an archetypal example of regulatory over-engineering: multiple overlapping rights and tests, rather than a single clear framework that small operators can understand and apply.

### Risk of reduced genuine flexibility

25. Paradoxically, the Bill may discourage small businesses from offering the very flexibility it aims to promote. Once WFH is framed as a quasi-entitlement:
  - a) Employers will feel compelled to formalise and strictly police WFH policies to manage legal risk.
  - b) Differences between roles or individuals (for example, one employee can WFH, another cannot be due to job content) become flashpoints for allegations of unfair treatment.
  - c) The availability of external review makes escalation more likely, especially in small teams where everyone can see who is getting which arrangements.
26. Faced with these risks and limited administrative capacity, some small businesses may adopt a conservative stance: offering fewer ad hoc or discretionary WFH opportunities for fear of setting precedents or inviting challenge. That outcome is directly contrary to the policy intent and harms both employers and employees who currently benefit from informal, trust-based flexibility.

### Impacts on productivity, training, safety and client service

In small workplaces, productivity is tightly linked to how well the team functions as a unit. While WFH can improve individual productivity in some roles, there are important trade-offs:

- a) **Training and mentoring:** New or junior employees often learn through shadowing, quick questions, and impromptu discussions. Those interactions are harder to replicate consistently when key staff are remote multiple days a week.
- b) **Team cohesion:** Small teams rely heavily on informal communication to coordinate work and maintain morale. Fragmented attendance patterns can weaken shared culture and make collaboration clunkier.

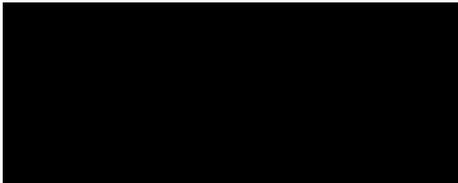


- c) **Service quality:** Many small businesses compete on responsiveness and personal service. Regular remote work by key staff can slow decision-making and complicate client interactions.
27. These impacts are highly context-specific and cannot be meaningfully assessed through a one-size-fits-all statutory test. COSBOA is concerned that a legislative presumption towards WFH risks placing individual preference above collective performance and development needs.

### Conclusion

28. COSBOA urges the Committee to reject the Fair Work Amendment (Right to Work from Home) Bill 2025 in its current form. The existing FW Act framework already provides employees with enforceable rights to request flexible working arrangements, including WFH, backed by FWC dispute resolution powers.
29. Superimposing a new, WFH-specific statutory entitlement with a narrow refusal test will:
- a) Disproportionately burden small businesses with additional process and dispute risks.
  - b) Intrude into core management decisions and professional judgements.
  - c) Risk reducing, rather than enhancing, genuine flexibility and employment opportunities in the small business sector.
30. COSBOA would welcome the opportunity to appear before the Committee to further explain the small business implications of the Bill.

**Yours sincerely,**



**Matthew Addison**  
**Chair**

Council of Small Business Organisations Australia (COSBOA)