



# HIA Submission

***Private Senators Bill – Fair Work Amendment  
(Right to Work from Home) Bill 2025***

Education and Employment  
Legislation Committee  
28 January 2026





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## Introduction

### Executive Summary

The Housing Industry Association (HIA) welcomes the opportunity to provide feedback on the Private Senators Bill proposing to legislate a right for employees to work from home (WFH).

HIA supports initiatives that improve productivity, remove barriers to business and help build a sustainable, skilled workforce. We equally support WFH and other flexible arrangements where they are mutually beneficial, agreed between employers and employees, and conducive to increased productivity and skills retention.

However, the Committee must recognise that the *Fair Work Act 2009* already provides a comprehensive and effective framework for requesting flexible working arrangements, with no evidence of legislative failure to justify further intervention. Equally, decisions about where and how work is performed should remain a matter for employers and employees based on individual circumstances and needs; and not a prescriptive mandate set by Parliament.

This principle is fundamental to Australia's employment law framework and essential for ensuring that businesses can manage their operations, workforce and customer needs effectively.

Importantly, for the residential building industry, as one of the most heavily regulated sectors in Australia, introducing an additional, unnecessary layer of complex employment regulation will only add to the compliance burden and administrative red tape faced by small and medium-sized builders. Any further erosion of business capacity and resources will directly and negatively impact the residential building industry's ability to deliver the volume of new homes Australia urgently needs.

### Recommendation

As outlined in this submission, there is no demonstrated problem that this Bill seeks to resolve. In the absence of evidence of regulatory or market failure, this proposal risks creating avoidable complexity, increased industrial disputes and reduced operational flexibility across the economy.

Accordingly, HIA urges the Committee to recommend rejecting the Bill as proposed.

The case for intervention in the existing employment law framework has not been sufficiently made and does not account for the large bodies of work currently underway to consider this matter in greater detail.



## **Individual circumstances**

While WFH offers flexibility and is a feature of many businesses and work arrangements, it is important to note that not all employees are equally positioned to benefit from the proposed reforms as provided for in the Bill. Some workers may face barriers such as unsuitable home environments, financial constraints, health issues, or caregiving responsibilities. Geographic disparities also play a role - some areas benefit from better and more affordable communication services than others.

Furthermore, HIA is concerned that the unintended consequences of creating rights for some employees and not others, may lead to claims for compensation for what an employee may perceive as a loss of entitlement, placing further financial pressure on employers.

Importantly, the explicit reference to a specific number of days and provision of formal mechanisms to access WFH arrangements enshrined in the FW Act may also have the opposite effect of what is intended; by limiting individual flexibility between employers and employees in agreeing to WFH arrangements that suit the individuals circumstances and allows businesses to be responsive to customer and market needs.

## **Lack of justification for legislative change**

Despite HIA's general support of flexible working arrangements, our primary concern with the WFH proposal is that the Senator sponsoring this Bill has not adequately substantiated a problem with the existing employment law framework that necessitates legislative reform as the remedy. In fact, the proposed Bill and supporting materials fail to recognise that flexible working arrangements are already provided for under the Fair Work Act, as clarified and upheld in the recent Commission decisions.<sup>1</sup>

Accordingly, it is challenging for HIA to support any change that is likely to have a major impact on workplace culture, systems of work, participation and productivity.

A comprehensive national regulatory impact statement (RIS) and cost-benefit analysis is needed to determine the potential economic, operational and competition impacts on businesses, particularly small and medium enterprises, prior to any further consideration of this proposed legislation. To date, we are not aware of any such analysis having been undertaken, raising concerns that the broader consequences of the proposal are yet to be fully assessed.

## **Existing federal framework**

Importantly, the Fair Work Act 2006 (FW Act) already provides a comprehensive framework for employees to request flexible working arrangements, which appears to be operating effectively.

In its 2024-25 Annual Report, the Fair Work Commission recorded 306 applications related to disputes over flexible work arrangements, up from only 29 for the 2023-24 period. While there has been an increase in applications, there remains a low volume of disputes, suggesting that most employers and employees are able to reach satisfactory arrangements without formal intervention. This therefore demonstrates strong compliance and cooperation within the Fair Work system.

Additionally, these provisions extend beyond WFH and encompass a range of circumstances where flexibility supports workforce participation and wellbeing. Unnecessary duplication and departure from the existing requirements is not only unjustified but will create unnecessary layers of complexity and potential inconsistency for both employers and employees.

Given the existing provisions for flexible work arrangements under the FW Act, it is difficult to understand how the changes as proposed are justified or required.

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<sup>1</sup> *Karlene Chandler v Westpac Banking Corporation* [2025] FWC 3115



## Impact on business operations

HIA is also concerned about the impacts on businesses associated with the proposal, particularly small businesses, including increased compliance costs, administrative burden and reduced business confidence as a deterrent to ongoing investment and continued business activity. Recent HIA research shows 67% of small business members report difficulties recruiting or retaining skilled staff and trades, while 56% say they have had to redirect staff time to manage regulatory and compliance requirements.

This is further supported by the findings in the Australian Chamber of Commerce and Industry, 2024 Small Business Conditions Survey<sup>2</sup> and the Commonwealth Government National Small Business Strategy.<sup>3</sup>

It is important to note that the impacts of increasing regulatory burdens will be exacerbated within the residential building industry, and for small-to-medium sized businesses especially, with the implementation of a prescriptive one-size-fits-all approach to WFH; one that doesn't consider the administrative and cost burdens to businesses in complying. Individual workplaces are best positioned to assess the practicality and effectiveness of WFH arrangements based on their operational requirements and the nature of their work. They are also responsible for ensuring employees have the necessary training, resources, and support to succeed in such arrangements.

It is also difficult to understand how WFH arrangements might operate for residential construction businesses that primarily employ on-site workers that need to physically supervise and perform work. This can hardly be done from home yet the broad nature of the proposed WFH legislation and lack of clear exemptions means that these provisions currently go beyond office and administrative roles to capture businesses and their employees generally.

## Impact on workplace safety

The WFH proposal will also increase existing employer liability and administrative burden in assessing and managing health and safety risks associated with home-based work environments.

The national work health and safety laws apply when workers work from home just as they do in traditional workplaces. This means employers are required to ensure the health and safety of workers "so far as is reasonably practicable," regardless of whether work is performed in a traditional workplace or at home. This includes ensuring ergonomic workstation setups, managing psychosocial risks and addressing environmental hazards.

Additionally, employees injured while working from home may be eligible for compensation if the injury arises out of or in the course of employment. However, determining employer obligations and causation in home-based incidents is often complex and has led to protracted and costly legal disputes.

While these challenges exist under the current framework, it is likely they will be both broadened and further complicated by the duplication and potential divergence between federal and state laws, particularly when pursued through a different legislative mechanism – in this case, through employment law.

Further, Safe Work Australia is currently undertaking a best practice review of the model WHS laws,<sup>4</sup> with a specific focus on the changing nature of work and consideration of flexible, remote and hybrid working arrangements. Accordingly, any proposed change to WFH arrangements should not be considered until this review has been finalised and any recommendations considered to ensure consistent and best practice regulation is achieved.

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<sup>2</sup> See also, Victoria Chamber of Commerce and Industry, "*Half of small businesses considered closure: ACCI*", [www.victorianchamber.com.au/news/half-of-small-businesses-considered-closure-acci](http://www.victorianchamber.com.au/news/half-of-small-businesses-considered-closure-acci).

<sup>3</sup> p 11, <https://treasury.gov.au/sites/default/files/2025-02/p2025-624843-s.pdf>.

<sup>4</sup> <https://consult.swa.gov.au/best-practice-review/bprsurveysubmissions/view/108>



## Impact on workplace culture

Workplaces thrive on cohesion, shared goals, exchanges of information, mentoring and a sense of camaraderie among employees. Introducing a mandated right to WFH may unintentionally undermine this cohesion and instead result in fragmented and less effective work environments.

There are situations where in-person collaboration is necessary, particularly for onboarding, training, and knowledge transfer, allowing new employees to benefit from co-location with experienced staff providing real-time guidance and support. Mandated WFH rules could make this difficult, resulting in skills erosion, disconnection and increasing workforce attrition.

## Cybersecurity risks

Home environments are often less secure than company offices, increasing the risk of data breaches, cyber-attacks, and other security vulnerabilities for businesses. Shared home workspaces or equipment can increase these risks. While employers can set up systems, policies and procedures for employees, the ability to enforce them is reduced when the employee is off-site.

The Australian Signals Directorate Annual Cyber Threat Report 2023-2024<sup>5</sup> details an uptick in Hotline support calls and incident responses, highlighting the continued attempts at exploitation of Australian businesses, including 43% of all cyberattacks targeting small businesses. The report also addresses the considerable and disproportionate cost of an attack on small businesses, at an average of approximately \$50,000.

Home builders are already a significant target for payment diversion scams due to the large sums for progress payments and implementing a broad right to WFH will only increase exposure to cyber risk, requiring the diversion of business resources. If, despite the impost on business, government is minded to progress the WFH proposal, it must ensure the changes are backed by additional support and funding for small businesses to tackle this growing issue.

## Drafting concerns

### Proposed paragraph 65A(3)(d)

While it is noted there has been an attempt to limit the application of the proposed provisions to only workers where “... *the requested change in working arrangements would make the performance of the inherent requirements of the employee’s employment duties impractical or impossible*”, it is considered that this caveat is very broad in nature. This provision may be scrutinised and interpreted by the Courts to have a far broader impact than what may be intended due to the lack of detail around where the exemption is to apply.

Specifically, there is no indication of what is meant by “impractical” or “impossible” in this context. For example, there is uncertainty whether the threshold would be met by the inability of a worker to complete one task, or an entire day’s work. It is unclear how these terms would be applied to businesses or roles where daily duties and tasks constantly change due to the nature of a project, work-site, or weather-related impacts requiring rapid amendments to work-plans.

The accompanying Explanatory Memorandum does not provide clarity or further detail, other than stating employers will be required to demonstrate a “job cannot practically be done under the proposed hybrid arrangement.”

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<sup>5</sup> <https://www.cyber.gov.au/sites/default/files/2024-11/asd-cyber-threat-report-2024.pdf>



Further certainty and transparency is necessary for Parliament, employers, employees, Fair Work or the Courts on how to interpret and practically comply with the requirements, including how an employer can demonstrate the requirement has been met, what types of evidence will be acceptable and where the onus lies in providing it.

Without this, the outcome will likely be an increase in disputes, which if escalated further, add to an overburdened case management system with limited capacity or resources for unsustainable workload growth.<sup>6</sup>

## Next Steps

### Further consultation is required

HIA urges the Committee to recommend rejecting the Bill as proposed, as the case for intervention in the existing frameworks has not been sufficiently made and does not account for the large bodies of work currently underway.

Upon the completion of a specific RIS and consideration of the recommendations from all related concurrent reviews, further targeted consultation would be necessary to ensure any proposal is sufficiently flexible, considers the challenges for different sized businesses and workforces and to avoid unintended consequences.

Noting this standalone Bill follows an unsuccessful attempt to move the proposed amendments to the *Fair Work Act 2009* last year, we encourage all Members of the Federal Legislature and Government to continue to consider appropriate and best practice consultation mechanisms and ensure engagement with industry and the broader community is carried out in relation to important employment law matters.

HIA remains available to continue its engagement on this important issue.

For more information please contact [REDACTED] Senior Executive Director Compliance and Workplace Relations [REDACTED] or [REDACTED], Director Workplace Relations [REDACTED]

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<sup>6</sup> FWC President Statement, indicating the need for the Commission to review and reform its existing case management processes to accommodate increasing workloads: <https://www.fwc.gov.au/documents/consultation/presidents-statement-gp-changes-2025-11-12.pdf>