



# ACCI Submission

## Fair Work Amendment Bill 2024

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## Working for business. Working for Australia.

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## Introduction

- 1.1. ACCI welcomes the referral of the Fair Work Amendment Bill 2024 (**the Bill**) to the Senate Education and Employment Legislation Committee (**the Committee**). We welcome the opportunity to provide a written submission.
- 1.2. ACCI was disappointed by the rapidity with which the right to disconnect was pushed through Parliament during the legislative process for the Fair Work Legislation Amendment (Closing Loopholes No 2) Bill 2024, resulting in a mistake which would see employers potentially face criminal penalties for breaching a relevant order.
- 1.3. It is ACCI's view that such a mistake would have been avoided if proper scrutiny was afforded to those provisions as was done with the broader legislative package.
- 1.4. ACCI opposes the right to disconnect in the strongest terms. It is a drastic overreach by the Government into Australian workplaces and is incompatible with a modern, flexible working environment. ACCI urges the Committee to recommend the repeal of these provisions from the Fair Work Act (**the Act**).
- 1.5. However, if they are to remain in the Act, then ACCI is supportive of the Bill as it will remove the potential for criminal penalties. Employers should not be subjected to criminal penalties; this would be an entirely superfluous penalty.

## The Right to Disconnect Legislative Provisions

- 2.1. Disconnection rights will commence for employees on 26 August 2024. However, small business employees do not obtain these rights for a further twelve months, until 26 August 2025.
- 2.2. New section 333M of the Act means that employees will have the right to refuse to monitor, read or respond to contact or attempted contact from their employer or a third party unless the refusal is unreasonable.
- 2.3. The FWC will be able settle disputes about the operation of 333M under new section 333N.
- 2.4. New section 333P then provides that the FWC may make an order to stop refusing contact (on behalf of the employer) or an order to stop taking certain actions (on behalf of the employee).
- 2.5. As it stands currently, breaching the orders references in paragraph 2.4 could result in criminal penalties for employers. In ACCI's view this would be a completely unfair approach.
- 2.6. A right to disconnect term will be inserted into modern awards as outlined in new section 149F.

## Fair Work Amendment Bill 2024

- 3.1. The Bill before the Committee for inquiry amends the Act to clarify that breaching an order specified under new section 333P cannot incur criminal penalties.
- 3.2. The Bill achieves this by amending section 675 of the Act and inserting new subsection 675(2)(fa):  
"an order under Division 6 of Part 2-9 (which deals with the 7 employee right to disconnect);"
- 3.3. Section 675(2) of the Act clarifies that contravening an order of the Fair Work Commission is not an offence for the listed matters in that subsection.

## ACCI Position

- 4.1. Although ACCI supports removing criminal penalties with respect to breaching a Commission order regarding disconnection rights, it reiterates its opposition to the right to disconnect more broadly.

- 4.2. The right to disconnect will be highly impractical and fundamentally incompatible with modern, flexible workplaces.
- 4.3. The multi-factor test, in new section 333M(3) of the Act, of what qualifies as an unreasonable refusal is highly uncertain, legalistic and will need to be settled by the Fair Work Commission before employers will have clarity about the operation of these provisions.
- 4.4. Disconnection rights will also severely limit the capacity of employers to get in contact their employees outside of their regular working hours due to the ability of employees to simply refuse to even monitor contact. It will have implications through all workforces.
- 4.5. On the basis of the above factors, the right to disconnect should be repealed. However, if the provisions are to remain in the Act, then not only should criminal penalties be removed but the prospect of any civil penalties should be removed as well. Additionally, small business employees should be exempted from obtaining disconnection rights.
- 4.6. Although ACCI notes the 12 month delay afforded to small business employers before disconnection rights commence for employees in that context, ACCI submits that small businesses should be exempted altogether if these provisions are to remain in the Act.
- 4.7. Additionally, should this Bill be provided passage through Parliament and remove the possibility of criminal penalties, there will remain three avenues through which employers may face civil penalties. ACCI firmly believes that penalties should not be a possibility with respect to disconnection rights. The three avenues through which we see such an outcome being possible are outlined below.
- 4.8. Firstly, section 45 of the Act clearly states contravening a modern award term incurs civil penalties – as a result of the right to disconnect amendment to the Closing Loopholes No 2 Bill, there will be a right to disconnect term in modern awards.
- 4.9. Secondly, even with the potential for criminal penalties removed, as the Bill seeks to achieve, an employer which contravenes an order covering a worker about their disconnection rights would still trigger the civil remedy provision outlined in proposed section 333Q.
- 4.10. Thirdly, the right to disconnect is a workplace right and therefore enlivens the general protections provisions. There are financial penalties for breaching the general protections provisions.
- 4.11. ACCI opposes any penalties for employers in the context of disconnection rights, and if the broader provisions are to remain in the Act the possibility for civil penalties should be removed.
- 4.12. Finally, ACCI refers to our supplementary submission to the Inquiry into the Closing Loopholes No 2 Bill, which extensively canvassed our concerns with the right to disconnect at a practical level.

### **Circulated Amendments**

- 5.1. ACCI is supportive of the amendments circulated by the Coalition.
- 5.2. With regard to the Opposition amendments on sheet 2415, ACCI supports repealing the right to disconnect and ACCI reiterates its initial opposition to these legislative provisions in their entirety.
- 5.3. ACCI also urges the Committee to support and endorse the Opposition amendments on sheets 2416 and 2417 which would repeal the penalties related to the right to disconnect provisions and exempt small business employees from obtaining disconnection rights.

## About ACCI

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ACCI strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth, and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education, and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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