



Business Council of Australia

8 March 2024

Mr Gerry McNally  
Committee Secretary  
Senate Education and Employment Committees  
PO Box 6100  
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Canberra ACT 2600

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Dear Committee Secretary

**Senate Education and Employment Legislation Committee inquiry into the *Fair Work Amendment Bill 2024***

Thank you for the opportunity to provide this submission to the Senate Education and Employment Legislation Committee (**Committee**) inquiry into the *Fair Work Amendment Bill 2024 (Bill)*. The Business Council of Australia (**BCA**) remains opposed to the amendments made to the *Fair Work Act 2009 (Cth) (FW Act)* by both tranches of the Closing Loopholes legislation. While we acknowledge the work of the Senate in making amendments to that legislation to minimise some of its more harmful impacts, these changes:

- reduce flexibility;
- increase complexity and costs; and
- do nothing to improve workplace productivity.

Increases to productivity are required to sustain real wage growth. They also allows business to reduce costs to consumers of products and services. This is essential when cost of living increases are at the forefront of concerns for Australians.<sup>1</sup> However we are seeing Australia's productivity declining, falling by 3.7 per cent in 2022-23.<sup>2</sup>

The collective impact of the significant changes made by the Government to the FW Act over several amending acts is yet to be seen. We do not believe there was an adequate Regulatory Impact Statement undertaken, including for the specific additional amendments on the right to disconnect.

The BCA also considers the Closing Loopholes changes add unnecessary complexity and rigidity to Australia's workplace relations system at a time when enterprises need flexibility to adapt to the economic environment and the requirements of customers, to remain competitive.

Employees are also looking to have greater flexibility in how they work. Putting additional requirements in place will hinder the ability of businesses to work with their employees to design arrangements that suit both parties. Finding solutions to these challenges are best undertaken at the enterprise level and legislating in this way risks being stuck with a 'one size fits all' approach.

With respect to the right to disconnect provisions, the BCA remains concerned about the potential impact on businesses, particularly those that operate on both coasts of Australia or internationally. It is unclear what this

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<sup>1</sup> Ipsos, *Ipsos Issues Monitor January 2024*, January 2024.

<sup>2</sup> Productivity Commission 2024, *Annual productivity bulletin 2024*, PC productivity insights, Canberra.

will mean for people working in different time zones, and how businesses will need to respond in those circumstances.

### **Coalition amendments**

The BCA recognises that Australians should be able to switch off from work when they go home. However, this protection already exists in several ways. These include the prohibition on requiring employees to work unreasonable additional hours in the National Employment Standards, hours of work and rostering provisions in modern awards and obligations under work health and safety legislation. Further protections on the right to disconnect have already been implemented in numerous enterprise agreements and implemented via workplace policies in many workplaces.

Implementing such a right in further legislation should be undertaken through a proper process to ensure the desired outcomes are achieved, give workers and businesses certainty and ensure the implementation is clearly thought through to minimise unintended consequences.

Despite the initial Closing Loopholes Bill first being introduced to Parliament on 4 September 2023, the introduction of a right to disconnect was first formally raised as a recommendation of the Committee in the report into the Closing Loopholes No 2 Bill on 1 February 2024. The amendments moved by Senator Barbara Pocock containing the right to disconnect were introduced late on 7 February 2024 and debated the following day. No meaningful public consultation was undertaken.

The BCA supports the amendment moved by Senator Cash to exclude small business employers with fewer than 20 employees and their staff from the application of the right to disconnect provisions. This will help reduce the ever-increasing regulatory burden on small business employers and will not prevent small businesses and their staff from agreeing reasonable limits to out of hours contact at the workplace level (where necessary).

### **Substantive changes in the Bill**

The BCA supports the amendment made by the Bill to exclude breaches of orders made by the Fair Work Commission under Division 6 of Part 2-9 of the FW Act (which deals with the right to disconnect) from being a criminal offence (**Criminal Carve Out**). The BCA considers that it is the lack of public consultation and rushed way in which the right to disconnect was introduced that has led to the failure to include the Criminal Carve Out in the substantive closing loopholes legislation in the first place.

We acknowledge that it was never the intent that breaches of right to disconnect orders made by the Commission (which can apply to both individual employees and employers) be subject to criminal penalties, and this should be recognised in the law. The Bill achieves this aim.

Yours sincerely

**Bran Black**  
Chief Executive  
Business Council of Australia