

Proposed working from home legislation

Submission of the Public Sector Gender Equality Commissioner

Contents

[Introduction 1](#_Toc209517813)

[The Act and workplace flexibility 1](#_Toc209517814)

[Undertaking a GIA on the proposed legislation 2](#_Toc209517815)

[Summary of recommendations made in this submission 4](#_Toc209517816)

[Submission 4](#_Toc209517817)

[The challenges and benefits of geographical flexibility 4](#_Toc209517818)

[The gendered impacts of traditional work structures 6](#_Toc209517819)

[References 9](#_Toc209517820)

# Introduction

As Victoria’s inaugural Public Sector Gender Equality Commissioner, I welcome the opportunity to make this submission to the Department of Premier and Cabinet (department) in relation to the development of the potential working from home legislation.

I strongly support the core principle of making working from home a protected, legal entitlement. This acknowledges the evolving nature of work and has the potential to be transformative for individuals of all genders, particularly those with caring responsibilities, or who face other barriers with traditional work structures. It recognises the diverse needs of a modern workforce.

However, it is important that in the development of the proposed legislation that the department consider the specific challenges presented by hybrid working environments, including:

* proximity bias and its potential to exacerbate the impacts of workplace bias and discrimination on women and other marginalised individuals (Williamson et al. 2024; Williamson and Colley 2022; Parmelee and Codd 2023);
* the increased safety risk posed by hybrid working arrangements for individuals experiencing domestic and family violence (DFV) (Boxall et al. 2020);
* workplace technology-facilitated sexual harassment (WTFSH), with women and young people being particularly at risk of victimisation (Flynn et al. 2024); and
* the potential for flexible working arrangements, including those related to geographical flexibility, to reinforce existing gender stereotypes and roles.

The department should also, in developing its implementation and communication plan with respect to the proposed legislation, ensure that due consideration is given to these issues.

## The Act and workplace flexibility

As Commissioner, I am responsible for the implementation of the nation-leading *Gender Equality Act 2020* (Vic) (the Act) and for promoting gender equality across public sector workplaces and in the broader Victorian community.

The Act covers approximately 300 Victorian public sector organisations, universities and local councils that are required to make gender equality progress in their workplaces and public-facing policies, programs and services. In particular, duty holders are required to:

* consider and promote gender equality and take necessary and proportionate action towards achieving workplace gender equality;
* undertake a gender impact assessment (GIA) when developing or reviewing policies, programs and services that have a direct and significant impact on the public, and report on these GIAs in their progress reports;
* conduct a workplace gender audit and develop a Gender Equality Action Plan (GEAP) every four years; and
* make reasonable and material progress in relation to the seven workplace gender equality indicators (WGEIs) and their GEAP strategies and measures, and report on this progress every two years.

The seven WGEIs represent the key areas where workplace gender inequality persists and where progress towards gender equality can be achieved through focused action. Relevantly, they include the availability and utilisation of terms, conditions and practices related to, among other things, flexible working arrangements and working arrangements supporting employees with family or caring responsibilities. As will be discussed further below, geographical flexibility is crucial to workplace gender equality, as it supports employees to balance work with caring and other responsibilities, recognises the barriers faced by individuals who experience compounded forms of inequality, and facilitates more equitable workforce participation and career progression – all of which can lead the reduction of the gender pay gap (WGEA 2024).

Finally, as you may be aware, the Act is also ground-breaking in its recognition that gender inequality may be compounded by other forms of disadvantage or discrimination that a person may experience on the basis of their Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation, and other attributes. As part of fulfilling their requirements under the Act, duty holders are required to consider intersectionality when conducting their workplace gender audits, in the development of their GEAPs, and where practicable, when undertaking GIAs.

## Undertaking a GIA on the proposed legislation

The obligation to undertake a GIA under the Act extends to legislative proposals that have a direct and significant impact on the public. This includes the development of the proposed legislation.

The department must therefore assess the effects that the proposed legislation may have on people of different genders and document how it was developed to meet the needs of people of different genders, address gender inequality and to promote gender equality. Where practicable, the department must take into account that gender inequality may be compounded by disadvantage or discrimination that a person may experience on the basis of Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation, and other attributes.

It is important that the department undertake this GIA *concurrently* with the development of the proposed legislation. I therefore recommend that the department undertakes the GIA alongside its Legislative Impact Assessment (LIA). This will reduce duplication of consultation and ensure the GIA on the proposed legislation is genuine and meaningful. I have set out below some guidance for the department in line with the LIA process and my [*Gender Impact Assessment Toolkit*](https://www.genderequalitycommission.vic.gov.au/gender-impact-assessment-toolkit/step-1-define-issues-and-challenge-assumptions).

### Step 1: Problem analysis

In identifying the case for action, the department should consider how gender shapes the ‘problem’ that the proposed legislation is seeking to address:

* challenging any gender-based assumptions and stereotypes about the ‘problem’. This includes its significance, underlying causes, who is affected by it and who benefits from the current system; and
* identifying any gaps in understanding and information about how gender shapes the ‘problem’.

The department should then collect evidence to determine any intersectional gendered impacts of the ‘problem’ and the proposed legislation, including by:

* conducting desktop research and gathering internal data. You will see that I have included some relevant data and observations in my submission below; this may act as a starting point for the department’s further desktop research; and
* undertaking early consultation (as the department is now). Given this consultation is already underway, I recommend that the department consider, after having reviewed the submissions to this consultation, whether further targeted consultation is required with advocacy and community groups that represent diverse populations.

As I have outlined in my submission below, there is clear evidence that proposed legislation has intersectional gendered impacts. As such, the department should document these impacts (as they have arisen out of this consultation process and the department’s desktop research) and consider these impacts in its assessment of the ‘problem’.

### Step 2: Statement of objectives

When considering the outcomes the proposed legislation is aiming to achieve, the department should consider whether promoting gender equality is identified as a specific objective. Doing so offers a clear path to embedding the promotion of gender equality in the department’s impact assessment (as discussed below).

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| Recommendation 1  I recommend that the department explicitly identifies the promotion of gender equality as an objective of the proposed legislation for the purposes of undertaking its impact analysis. |

### Step 3: Impact analysis

In undertaking the impact analysis with respect to the proposed legislation, the department should consider the benefits and drawbacks of each identified option as they relate to the promotion of gender equality and the reduction of gender inequality. For example, the department might consider:

* Will some people benefit more from the option than others?
* Will the option contribute to transforming gender norms in a positive way, for example, by contributing to a more balanced distribution of unpaid care work between men and women?
* How are the most vulnerable groups likely to be impacted by the option?
* Can any amendments to the option be made to ensure it meets the needs of persons of different genders?

### Step 4: Preferred option and implementation plan

In selecting the preferred option, the department should describe its rationale in relation to how the preferred option will or will not meet the needs of people of different genders, address gender inequality and promote gender equality.

The department should consider any gender equality-related risks that have been identified in the preferred option and any mitigation strategies that could help avoid harmful unintended outcomes. These should be documented in the relevant implementation and communications plan.

### Step 5: Consultation

If the department undertakes consultation on the final proposed legislation, it should include questions relating to the gendered impacts of the preferred option, including how these compare to the gendered impacts of the other non-preferred options.

### Step 6: Record keeping

In recording this GIA process for the purposes of progress reporting under the Act, the department should clearly identify the ways intersectional gender equality considerations have or have not shaped the design of the proposed legislation. Do this by articulating:

* how the department designed the proposed legislation to enhance intersectional gender equality;
* how the department designed any consultation and implementation plans to account for intersectional gender equality;
* why gender and intersectional considerations did not shape the design of these elements (if this was the case); and
* any remaining information gaps about how gender and intersectionality shape the proposed legislation and the ‘problem’ it is seeking to address.

In its record keeping for the purposes of progress reporting, it is important that the department exclude any details that would disclose Cabinet in Confidence information.

## Summary of recommendations made in this submission

I recommend that the department:

* include the promotion of gender equality as an explicit objective when identifying the objectives of the proposed legislation in the LIA;
* include within the proposed legislation a requirement on employers to have in place a hybrid working policy, developed in consultation with employees, that:
  + contains guidelines for the separation of home and work environments and effective collaboration in a hybrid working environment;
  + outlines the obligations of the employer and employees to minimise risks while working from home, including those related to psychosocial work hazards and workplace technology-facilitated sexual harassment, under the *Occupational Health and Safety Act 2004* (Vic);
  + contains a specific section dealing with DFV and remote work;
  + specifies that the employer will establish a reasonable communication strategy for working from home days to establish effective, accessible communication tools and expectations;
  + specifies the measures that the employer will take to prevent proximity bias;
* includes, within its implementation plan with respect to the proposed legislation, the development of requirements and guidance on WTFSH policies, training and responses to help employers appropriately investigate reports, provide trauma-informed support to victims and survivors, hold perpetrators accountable and ensure appropriate responses or penalties.
* undertake specific consultation with academics, advocacy groups and individuals with lived experience of DFV to ensure the proposed legislation contains appropriate safeguards with respect to the increased risk of DFV in hybrid working arrangements;
* embed the concept of compounded inequality within the proposed legislation, for example, by including an express acknowledgment that traditional workplace locations and arrangements present unique barriers for individuals that experience compounded inequality due to their Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes; and
* undertake specific consultation with academics, advocacy groups and individuals with lived experience of compounded inequality due to their Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes, to gain a comprehensive understanding of the potential impacts of the proposed legislation.

# Submission

## The challenges and benefits of geographical flexibility

The shift to remote work brought about by the COVID-19 pandemic, referred to as the ‘Geographical Work Revolution’, is widely accepted as ‘a lasting change in the modern work environment’ (Bissell et al. 2024; AIHW 2023). Research in relation to the impacts of this revolution confirms that Australian workers expect geographical flexibility and that there are a number of challenges and benefits that require consideration. The key benefits are as follows:

* **Wellbeing and job satisfaction**: Geographical flexibility enables greater work-life balance and improved wellbeing for many individuals due to the elimination of a daily commute, and the ability to spend more time with family, friends, and the community (Productivity Commission 2021; Clausen et al. 2024). Working from home may also provide workers with a greater sense of autonomy and control (Laß et al. 2023).
* **Productivity**: Many workers report being more productive, and spending more time working, when they work from home and other ‘third’ spaces, such as co-working and community spaces, libraries and cafes (Bissell et al. 2024; WGEA 2025; Bloom et al. 2023).
* **Talent attraction and retention**: Organisations report that geographical flexibility has enabled them to attract talent beyond their standard geographic talent pool (Kho et al. 2024). International research also shows that men and women are more likely to shortlist job advertisements mentioning flexible work arrangements (GEO 2021). In Australia, 88% of workers would like to work remotely at least partially, and 60% prefer a hybrid arrangement allowing individuals to work remotely and in the office, as desired (MIAESR 2022)
* **Normalisation of flexible work**: By embedding geographical flexibility into legislation, the Victorian Government has an opportunity to reduce flexibility stigma and its negative effects – including career progression penalties (Clausen et al. 2024). This may, in turn, encourage the increased uptake of flexible work arrangements by men, an important step in the enhancement of workplace gender equality.

The key challenges that should be considered are as follows:

* **Proximity bias**: The phenomenon of proximity bias has been described as ‘the tendency of leadership to show favouritism or preferential treatment to employees that are close to them physically’ (Lutkevich 2023). Research has shown that proximity bias (negatively impacting those who work from home) can lead to decreased employee engagement and retention, as well as exacerbate existing workplace inequalities experienced by women and marginalised communities (Williamson et al. 2024; Williamson and Colley 2022; Parmelee and Codd 2023). Employers should adopt practices to actively mitigate against this phenomenon (Tsipursky 2022).
* **Isolation and disconnection**: Remote work has also been found to increase feelings of social isolation and disconnection (Bissell et al. 2024; Mousa et al. 2025; Wang et al 2021), as well as to negatively impact employee wellbeing due to the blurring between work and home spaces (Dong et al. 2025; Bissell et al. 2024).
* **Safety in the home:** In addition to potential psychosocial hazards, such as those stemming from isolation and the lack of separation between work and home locations, remote working presents an increased safety risk for those experiencing DFV. The Australian Institute of Criminology’s analysis of over 15,000 women found that nearly 70% of women who experienced physical or sexual violence from a current or previous partner reported that such violence either first occurred or escalated in frequency and severity when working remotely (Boxall et al. 2020). Workplaces play a vital role in preventing and responding to DFV, including when employees are working remotely.
* **Technology-facilitated workplace sexual harassment**: Recent research has revealed that of 3,345 Australians surveyed, 1 in 7 people have engaged in WTFSH, with men being significantly more likely (men: 23.9%, women: 6.9%) to report engaging in WTFSH (Flynn et al. 2024). Remote working was explicitly identified by this research as contributing to WTFSH (Flynn et al. 2024). While employers have primary responsibility for addressing WTFSH, the Victorian government ‘should provide mandated requirements and guidance on WTFSH policies, training and responses to help employers appropriately investigate reports, provide trauma-informed support to victims and survivors, hold perpetrators accountable and ensure appropriate responses or penalties’ (Flynn et al. 2024: 12).
* **Reinforcement of gender roles and stereotypes**: It is important that the department consider the communication of the proposed legislation to ensure it does not reinforce gender stereotypes and roles in relation to the commonly held (but inaccurate) perception that women want and need flexible work arrangements more than men so as to accommodate their caring responsibilities (Clausen et al. 2024).
* **Collaborative work**: Employers have expressed concerns about the reduction of collaborative work and diminished innovation that may stem from the decrease in office attendance (Bissell et al. 2024).

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| Recommendation 2  I recommend that the department include an obligation within the proposed legislation on employers to have in place hybrid working policy, developed in consultation with employees, that:   * contains guidelines for the separation of home and work environments and effective collaboration in a hybrid working environment; * outlines the obligations of the employer and employees to minimise risks while working from home, including those related to psychosocial work hazards and workplace sexual harassment, under the *Occupational Health and Safety Act 2004* (Vic); * contains a specific section dealing with DFV and remote work; * specifies that the employer will establish a reasonable communication strategy for working from home days to establish effective, accessible communication tools and expectations; and * specifies the measures that the employer will take to prevent proximity bias. |
| Recommendation 3  In the development of the legislation, I recommend that the department undertake specific consultation with academics, advocacy groups and individuals with lived experience of DFV to ensure the legislation contains appropriate safeguards with respect to the increased risk of DFV in hybrid working arrangements.  Recommendation 4  I recommend that the department includes, within its implementation plan with respect to the proposed legislation, the development of requirements and guidance on WTFSH policies, training and responses to help employers appropriately investigate reports, provide trauma-informed support to victims and survivors, hold perpetrators accountable and ensure appropriate responses or penalties. |

## The gendered impacts of traditional work structures

### Workers with unpaid domestic and caring responsibilities

Demands of unpaid care and domestic responsibilities often prevent individuals from engaging in traditional work structures, including full-time, office-based work. On average, women in Australia do 32 hours of unpaid domestic and care work per week, 9 hours more than men (PM&C 2025). They are also more likely to utilise flexible working patterns, such as part-time work, to accommodate these responsibilities (CGEPS 2022; WGEA 2024). Men are increasingly seeking greater involvement in caregiving and also value flexibility to manage personal and family responsibilities, despite making fewer requests to do so (Clausen et al. 2024).

Employers who promote flexible work, including geographical flexibility, for all staff and at all levels of the organisation (including senior management and executive positions) enable more equitable division of paid and unpaid responsibilities between women and men, and more equitable workforce participation and career progression for all workers (WGEA 2024).

### Part-time workers

Victorian women are significantly more likely to work part-time than men in both the public and private sectors (VPSC 2024; ABS 2025). In developing the proposed legislation, the department should ensure that part-time employees receive working from home entitlements based on the proportion of their hours worked.

### Workers who face compounded forms of inequality

While the right to work from home offers broad advantages, its potential to enhance gender equality is profoundly amplified when considering the specific needs and experiences of individuals experiencing compounded forms of disadvantage and discrimination. For many Victorians, traditional workplace locations and commuting demands present unique barriers. The proposed legislation offers a vital opportunity to dismantle some of these barriers and foster truly inclusive participation in the workforce.

#### Workers with disabilities

The labour participation rate of people with disability in Australia is considered quite low (53.4%: Martel and Day et al 2020). In 2018, labour force participation was higher among men with disability than women with disability (ABS 2019). Specifically, 56.1% of men with disability compared with 50.7% of women with disability participated in the labour force, and 31.0% of men with a profound or severe limitation compared with 23.6% of women with a profound or severe limitation participated in the labour force (ABS 2019).

There is clear evidence that geographical flexibility helps to bridge the workforce participation gap for people with disabilities (Liu and Quinby 2024; Bliss and Glassman 2024; Schur et al 2020; Padkapayeva et al. 2016). In particular, remote work enhances accessibility by:

* **Reducing barriers of the built environment**: Working from home can significantly mitigate challenges associated with inaccessible workplaces, transportation, and public infrastructure that have simply not been designed with disabilities in mind (Martel and Day et al 2020). For workers with mobility impairments, chronic pain, or fatigue, avoiding a difficult commute and the navigation of an inaccessible office environment can be transformative, allowing them to conserve energy for their work itself.
* **Reducing sensory overload and the need for masking**: Workers with sensory, neurodevelopmental and cognitive disabilities can be more susceptible to overwhelm and distraction in the office, including due to sensitivities to noise, heat, cold and glare (Pfeiffer et al 2017). Many workers also experience exhaustion due to conscious and unconscious masking of their neurodivergent traits or behaviours so as to ‘fit into’ a neurotypical workplace culture and setting (Praslova 2025).
* **Allowing individuals to create their own, accessible work environment**: Individuals can tailor their home office environment to their specific accessibility needs (e.g., ergonomic setups, lighting, assistive technology) in a way that is often challenging or impossible to replicate in a standard office, even with adjustments (Lai et al 2020). This aligns with principles of reasonable accommodation and universal design, promoting greater autonomy and sustained employment.
* **Managing health conditions**: Geographical flexibility allows for better management of health conditions and medical appointments without needing to disclose personal health information or take sick leave frequently, thereby reducing the disability penalty in employment.
* **Reducing bias and discrimination**: Remote work can assist to reduce the stigma associated with disability as well as instances of discrimination and bias in recruitment and promotion practices (Jones 2023). By increasing the representation of workers with disability, an organisation builds a workplace culture rooted in respect, diversity and inclusivity – which attracts diverse talent and reduces systemic bias and discrimination.

#### Gender-diverse workers

Geographical flexibility may also have particular benefits for gender-diverse workers. Traditional workplaces can be harmful sites of misgendering, discrimination, and harassment for gender-diverse and other LGBTQIA+ workers (VLA 2024; Irwin 2002). Indeed, evidence suggests that a majority of LGBTQIA+ Australians do not disclose their identity or otherwise modify their daily activities in their workplace due to fears of heterosexism and the negative impact disclosure may have on their career (Hill et al. 2021; Robinson and Berman 2010; Bowers 2006; Pitts et al. 2006).

Working from home can provide a safer and more affirming environment, reducing the mental load and stress associated with potential microaggressions or overt prejudice. This includes by providing:

* **Flexibility during affirmation processes**: While undergoing gender affirmation and the return-to-work process, employees may need additional flexibility to accommodate physical changes, medical appointments, and unexpected aspects of recovery. The ability to work from home offers the privacy and flexibility needed to navigate these intensely personal and often vulnerable times without the added pressure of a public-facing workplace, supporting sustained workforce participation and well-being.
* **Autonomy over presentation**: Geographic flexibility allows individuals greater control over their presentation and environment during challenging periods, fostering comfort and reducing gender dysphoria, which can significantly impact focus and productivity.

#### Workers aged 40+

Workers aged 40+ encounter unique challenges that historically have led to reduced workforce participation and early retirement. In particular, many workers experience a ‘midlife collision’ of caring responsibilities (including caring for elderly parents), financial obligations and health issues, including managing symptoms of menopause (CARC 2024). Geographical flexibility can:

* **Provide greater flexibility for the ‘sandwich generation’**: Many midlife workers find themselves in the ‘sandwich generation’, caring for both aging parents and adult children or grandchildren. Working from home provides the flexibility needed to manage these increasing care demands (CARC 2024).
* **Reduce stigma related to menopause**: Menopause symptoms (such as hot flashes, night sweats, brain fog, anxiety and fatigue) can be uncomfortable and disruptive in a public office setting, impacting work performance, productivity and career trajectories (CARC 2024). In fact, research confirms that 25% of women experience debilitating symptoms causing extended periods of leave or forcing early retirement (CARC 2024), with significant impacts for salary income and superannuation savings (AIST 2024; CARC 2024). Working from home allows workers experiencing these symptoms greater privacy and comfort, adjusting their environment (e.g., temperature control, access to facilities) as needed without drawing attention. This, in turn, helps retain women at a critical stage in their careers when they often hold senior roles, preventing a potential ‘menopause cliff’ in leadership and experience.
* **Increase retention of experienced workers**: Offering working from home options is a powerful tool for retaining experienced workers who might otherwise exit the workforce due to the rigours of commuting and office life (which may be exacerbated due to the experience of age-related mobility challenges, chronic conditions, or fatigue), thus preventing the loss of valuable institutional knowledge and skills.

#### First Nations workers

According to the most recent National Aboriginal and Torres Strait Islander Social Survey (NATSISS) (conducted in 2014-15), 51% of Aboriginal and Torres Strait Islander in Victoria were employed, and of these, 57% were employed full-time (Bargallie et al. 2023). Males (39%) were around twice as likely to be in full-time employment as females (19%). Research suggests that geographic flexibility may play a part in closing this workforce participation gap by:

* **Increasing recruitment opportunities for people living in regional and rural areas**: First Nations people are more likely to be living in remote areas of Australia than non-Indigenous Australians (Gray et al. 2012). A recent study of the experiences of Aboriginal women working in the Victorian Public Service undertaken for my office found that a key barrier to recruitment and promotion included the primary location of roles offered being limited to the Melbourne metropolitan region and larger towns, ‘with little consideration for flexible work location arrangements’ (Bargallie et al. 2023: 23). This report recommended that employers create better access to employment by identifying options for hybridity in work locations (Bargallie et al. 2023).
* **Accommodating disproportionate caring responsibilities**: First Nations women undertake 11.5 hours per day caring for others and/or caring for Country and culture, with such unpaid care work valued deeply (PM&C 2025; Bargallie et al. 2023). Research shows that offering geographical flexibility can increase Indigenous employment by better accommodating these family and community obligations (Eva et al 2023; Gray et al. 2012).
* **Accommodating disproportionate rates of ill-health and disability:** Research based on NATSISS data has consistently found a negative relationship between health and employment for First Nations people (Borland and Hunter 2000; Hunter and Gray 2001; Ross 2006; Biddle and Yap 2010; Stephens 2010): that is, the higher rates of illness and disability amongst First Nations people compared to non-Indigenous Australians is an important factor in explaining the lower workforce participation rate of First Nations people (Gray et al. 2012). As discussed above, geographical flexibility enhances workforce participation for people with disabilities by reducing the barriers presented by the physical workplace (including environmental factors such as noise and temperature), allowing individuals the flexibility required to manage their health conditions and create their tailored work environment, and reducing instances of bias and discrimination.

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| Recommendation 5  I recommend that the department embed the concept of compounded inequality within the proposed legislation, for example, by including an express acknowledgment that traditional workplace locations and arrangements present unique barriers for individuals that experience compounded inequality due to their Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes.  Recommendation 6  I recommend that the department undertake specific consultation with academics, advocacy groups and individuals with lived experience of compounded inequality due to their Aboriginality, age, disability, ethnicity, gender identity, race, religion, sexual orientation and other attributes, to gain a comprehensive understanding of the potential impacts of the proposed legislation. |

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