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Victoria's Work-From-Home Plan Faces Legal Test

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Federal Minister Tanya Plibersek signals the Commonwealth won't block Victoria's proposed laws granting employees a right to work from home two days a week, but legal experts warn of constitutional challenges.

Victorian Premier Jacinta Allan's plan to legislate a right for employees to work from home two days a week, announced at the Australian Labor Party's state conference on August 2, 2025, has sparked debate over its legal viability. Federal Social Services Minister Tanya Plibersek indicated on Channel 7's Sunrise program that the Commonwealth government supports work-from-home arrangements when practical and negotiated with employers, but it will not interfere with Victoria's initiative. Plibersek noted that the federal Fair Work Act 2009 allows certain employees, such as parents and

carers, to request flexible arrangements, but Victoria's proposal goes further by mandating the right for all workers whose jobs can reasonably be done remotely.

Legal experts caution that Victoria's plan may clash with federal law. Section 109 of the Australian Constitution states that Commonwealth laws prevail over conflicting state laws. Since Victoria ceded most workplace regulation powers to the Commonwealth in 1996, enforcing such a law could be problematic. Stephen Smith, principal at ACTUS Workplace Lawyers, told *The Age* that Victoria's legislation would be invalid if it contradicts the Fair Work Act, particularly if implemented through the state's Equal Opportunity Act 2010, as it must tie to recognized discrimination grounds like age or disability. Professor Joellen Riley Munton from the University of Technology Sydney echoed this, telling AAP that businesses could easily challenge the law by citing federal supremacy.

Business groups have raised alarms over added red tape. The Victorian Chamber of Commerce and Industry warned that the policy could harm productivity and create workforce inequities, as only some roles suit remote work. Committee for Melbourne's CEO Scott Veenker called it unnecessary, arguing existing employer-driven arrangements work well. Victorian Opposition Leader Brad Battin, while open to work-from-home flexibility, told ABC Radio Melbourne that the Liberal Party awaits detailed legislation before deciding its stance, criticizing the lack of clarity on implementation.

Allan defended the proposal, citing advice that state anti-discrimination laws can coexist with the Fair Work Act. She argued it would save workers time and money while boosting productivity. With legislation slated for 2026, a potential High Court challenge looms, testing Victoria's ability to enforce this Australian-first policy against federal authority.