

FLEXIBLE WORKING ARRANGEMENTS – SPECIFIC CIRCUMSTANCES

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Authority and Application

Clause 10 of the *Victorian Public Service Enterprise Agreement 2020* (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

Overview

Clause 10 of the Agreement sets out the circumstances when an Employee has the right, protected under the *Fair Work Act 2009* (Cth) (FW Act), to request flexible working arrangements. An Employee's

right to request flexible working arrangements may apply in a range of circumstances, including to accommodate the Employee's caring responsibilities, people over 55 years of age or with a disability or experiencing family violence. A casual Employee is not entitled to make a request unless the Employee is a Long Term Casual Employee with an expectation of continuing employment on a regular and systematic basis.

From 6 June 2023, in addition to the categories outlined in clause 10.1 of the Agreement, Employees also have the right under the FW Act to request flexible work arrangements if they are pregnant or if the Employee or a member of their immediate family or household experiences family and domestic violence.

Flexible working arrangements refer to adjustments to the Employee's usual working arrangements, such as hours of work, days of work or location of work, which will help them to manage their personal circumstances. It is acknowledged that some Employees may require flexible working arrangements more than others due to the gendered nature of caring and family responsibilities and gendered nature of family violence.

Flexible working arrangements must be agreed between the Employer and Employee to their mutual benefit. Where an Employee makes a request under the clause it may only be refused on reasonable business grounds.

The Employer must, before responding to a request, discuss the request with the Employee and genuinely try to reach an agreement on a change in working arrangements that will reasonably accommodate the Employee's circumstances. The Employer is also obliged to respond to each request in writing within 21 days, and where the request is refused, the Employer must provide reasons for their refusal and detail other alternative proposed changes which might be able to be offered to support the employee (if any).

This policy deals with the rights of Employees to request flexible working arrangements under circumstances specific to clause 10 of the Agreement and section 65 of the *Fair Work Act 2009*. All Employees may also be eligible to request other flexible working arrangements under other provisions of the Agreement, employer policy or anti-discrimination legislation.

Relevant provisions of the VPS Agreement

Clause 10. Flexible Working Arrangements – Specific Circumstances

Supplementary Guidance Information

1. Types of flexible working arrangements

1.1. A flexible working arrangement may include (but is not limited to):

1.1.1. flexible start and/or finish times;

1.1.2. days of work, such as part-time work or compressed full-time hours;

1.1.3. patterns of work, such as job-sharing arrangements; and

1.1.4. the location of work, such as working from home or another location.

1.2. Where potential flexible arrangements may reduce the total hours of work to be performed, the employee may wish to seek independent advice regarding how their desired change might impact upon their end of career superannuation payout and/or the Employer with respect to other entitlements.

2. Right to request – Eligibility

2.1. All full-time and part-time employees within any of the categories outlined in clause 10.1 of the Agreement can make a request under this clause.

From 6 June 2023, in addition to the categories outlined in clause 10.1 of the Agreement, Employees may also request flexible working arrangements if they are pregnant, or if the Employee or a member of their immediate family or household experiences family and domestic violence.

2.2. A casual employee is not entitled to make a request unless they are a Long Term Casual Employee with a reasonable expectation of continuing employment on a regular and systematic basis.

2.3. Clause 10 of the Agreement, together with entitlements under the FW Act, provide that for Employees may request a flexible working arrangement where they are experiencing family and domestic violence or where the Employee provides care or support to a member of their immediate family or household who is experiencing family violence. Employers and Employees should note that such requests may also enliven entitlements under clause 52 of the Agreement. Please refer to the Family Violence Leave Policy for further guidance, including other leave options which may be available.

3. Application for flexible working arrangements

3.1. Flexible working arrangements must be agreed between the Employee and the Employer.

3.2. Eligible Employees can request to work flexibly on a short-term or long-term basis, noting approvals will be subject to regular review and are not transferrable to new roles (see section 6 & 7 below).

3.3. A request for flexible work arrangements must be submitted in writing setting out details of the change sought and the reasons for the change. The Employer must give a written response within 21 days.

3.4. The Employer may only refuse the request for flexible work arrangements if:

- (i) the Employer has discussed the request with the Employee, and
- (ii) the Employer has genuinely tried to reach an agreement with the Employee about making changes to the Employee's working arrangements to accommodate the Employee's circumstances, and
- (iii) the Employer and the Employee have not reached such an agreement regarding the Employee's working arrangements, and
- (iv) the Employer has had regard to the consequences of the refusal for the Employee, and
- (v) the refusal is on reasonable business grounds.

3.5. Clause 10.8 of the Agreement sets out what may be defined as reasonable business grounds. Employees are encouraged to submit their request for flexible working arrangements in writing as far in advance as reasonably practicable. This also applies to requests to change an existing flexible working arrangement.

4. Assessing a request for flexible working arrangements

4.1. An Employer will genuinely try to reach agreement with an Employee on a change to an Employee's working arrangement where they can reasonably accommodate the Employee's circumstances.

4.2. The Employer may consider operational requirements and the effects of the proposed working arrangements on other team members when considering requests for flexible working arrangements.

4.3. A request for flexible working arrangements will not be unreasonably refused and will be assessed in a timely manner.

4.4. Before responding to a request, the Employer must discuss the request with the Employee in accordance with clause 10.5 of the Agreement.

- 4.5.** In assessing a request for flexible working arrangements, in addition to its reasonable business grounds, an Employer should also consider (where applicable):
- 4.5.1.** the Employee's circumstances, including the nature of their caring responsibilities;
 - 4.5.2.** the consequence for the Employee of approving or not approving the arrangement;
 - 4.5.3.** the benefits to the individual and the organisation;
 - 4.5.4.** the availability of appropriately skilled replacement Employees;
 - 4.5.5.** occupational health and safety of both the Employee and other Employees potentially impacted by the flexible working arrangements (for example mental health of the individual or stress caused to other Employees);
 - 4.5.6.** any risks associated with the request;
 - 4.5.7.** the intended duration of the arrangement;
 - 4.5.8.** whether the Employee has other entitlements available that would be more appropriate in the circumstances; and
 - 4.5.9.** whether a trial period is required to test the flexible working arrangement and, if so, how long it is required to evaluate the success or otherwise of the new arrangement.
- 4.6.** No one of the above factors is necessarily determinative on their own. There may be reasonable business grounds other than those listed in clause 10.8 of the Agreement that are relevant when assessing a particular request.
- 4.7.** Gender norms, stereotypes or assumptions should play no role in whether a flexible work arrangement is refused.
- 4.8.** An Employee and Employer should work productively together to facilitate flexible working arrangements where possible and consider options that may resolve any factors likely to have a negative impact on the Employee, the Employer and other team members.
- 5. Responding to a request for flexible working arrangements**
- 5.1.** An Employer must give an Employee a written response within 21 days of submitting a request including any reasons for refusing a request (if applicable). Noting the Employer may only refuse the request on reasonable business grounds (which may include those listed in clause 10.8 of the Agreement).
- 5.2.** An Employer who refuses the request, must provide to the Employee a written response which must include the following:
- 5.2.1.** details of all the reasons for the refusal, including the particular business grounds or ground for the refusal and how the ground or grounds apply, and
 - 5.2.2.** whether or not there are any changes in working arrangements that the Employer can offer the employee so as to better accommodate the Employee's circumstances, and
 - 5.2.3.** if the Employer can offer the employee such changes in working arrangements, set out those changes in working arrangements, and
 - 5.2.4.** that the Employee may resolve a dispute arising under this policy in accordance with the procedure described at clause 13 of the Agreement.
- 5.3.** If the Employer and Employee have discussed the request and reach agreement on a change in working arrangements that differs from that initially requested by the Employee, the Employer must provide the Employee with a written response to their request setting out the agreed change or changes in working arrangements.
- 6. Review Requirements**
- 6.1.** All long-term flexible working arrangements should be regularly reviewed. It is recommended that long term flexible working arrangements be reviewed, initially after a period of three months

and thereafter at a minimum period of between six to twelve months or on an as needs basis based on the operational requirements of the Employer or personal circumstances of the Employee

- 6.2.** However, flexible working arrangements may need to be reviewed earlier or more regularly as the circumstances require. Circumstances which may warrant more regular reviews might include:
- 6.2.1.** the operational or team requirements have changed;
 - 6.2.2.** there are concerns regarding efficiency, productivity or customer service;
 - 6.2.3.** the Employee wishes to change the arrangement; or
 - 6.2.4.** the flexible working arrangement impacts the Employee's ability to effectively undertake their role.
- 6.3.** The Employer should have informal discussions with the Employee on a regular basis about their flexible working arrangements and any necessary adjustments that may need to be made to support them or their team.

7. Varying or ending a flexible working arrangement

- 7.1.** Flexible working arrangements can be altered to meet the changing operational requirements of the workplace.
- 7.2.** Either party may propose a variation to the flexible working arrangements.
- 7.3.** Any variation to an Employee's flexible working arrangements is subject to legislative requirements and should be documented. Consistent with clause 10.7 of the Agreement, request for flexible working arrangements can only be refused on reasonable business grounds.
- 7.4.** Flexible working arrangements are not transferable. Employees who are reassigned or appointed to a new position or accept higher duties assignments must re-apply for their flexible working arrangements.
- 7.5.** Where a current arrangement can no longer be accommodated on reasonable business grounds, the reasons why and available options should be discussed with the Employee. It is recommended that the Employer provide at least 28 calendar days written notice where a regular or ongoing arrangement needs to be changed.
- 7.6.** Either party may terminate a flexible working arrangement, subject to at least 28 calendar days' written notice. If the Employer terminates the arrangement, a written confirmation must be provided to the Employee including reasons for termination, having regard to the 'reasonable business grounds' outlined in clause 10.8 of the Agreement.
- 7.7.** Where the Employee seeks to terminate the arrangement, they should first discuss with their Employer appropriate cessation arrangements, having regard for any reasonable alternative arrangements the Employer may have put in place to accommodate the Employee's original request.

8. Requests from Employees experiencing family and domestic violence

- 8.1.** Where a request for flexible working arrangements is made by an Employee who is experiencing family and domestic violence or where the Employee is providing care or support to a member of an Employee's immediate family or household who is experiencing family and domestic violence, those requests may also enliven entitlements under clause 52 of the Agreement and should be handled consistent with the requirements of clause 52 of the Agreement.

9. Other sources of flexible working arrangements

- 9.1.** This policy deals with the rights of Employees to request flexible working arrangements under circumstances specific to clause 10 of the Agreement and section 65 of the *Fair Work Act 2009*. This policy also deals with recent amendments to the FW Act that come into operation from 6

June 2023 that give Employees the right to request flexible work arrangements if they are pregnant, if an Employee experiences family and domestic violence, or where the Employee provides care or support to a member of their immediate family or household who is experiencing family violence.

- 9.2. An Employee who is ineligible to make a request for a flexible working arrangement under clause 10 of the Agreement, may still be able to access flexible working arrangements through other provisions of the Agreement, Employer policy or anti-discrimination law.
- 9.3. Clause 8 of the Agreement provides a list of other provisions in the Agreement that are available to facilitate an individual's need for flexibility, consistent with business requirements and legislative obligations.
- 9.4. Further the Victorian Public Sector Commission has published guidance on flexible work in the VPS. Their policies and guidance can be found [here](#).
- 9.5. For further information or advice Employee's should contact their local Human Resources or People and Culture Unit (or equivalent).

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 10 or this policy may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Authorised by Industrial Relations Victoria:

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