

# RIGHT TO REQUEST FLEXIBLE WORKING ARRANGEMENTS

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## Authority and Application

Clause 9 of the Victorian Public Service Enterprise Agreement 2016 (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees covered by the Agreement.

## Overview

Clause 9 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.

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 is obliged to respond to each request in writing, and where the request is refused the Employer must provide reasons for their refusal.

This policy deals with the rights of Employees to request flexible working arrangements under circumstances specific to clause 9 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 VPS Agreement, employer policy or anti-discrimination legislation.

## Relevant provisions of the VPS Enterprise Agreement

### Clause 9. Right to Request Flexible Working Arrangements

- 9.1** In accordance with and pursuant to section 65 of the FW Act, an Employee may request a change in their working arrangements on the basis of the following circumstances:

- (a) the Employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
- (b) the Employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
- (c) the Employee has a disability;
- (d) the Employee is 55 or older;
- (e) the Employee is experiencing violence from a member of the Employee's family;
- (f) the Employee provides care or support to a member of the Employee's immediate family, or a member of the Employee's household, who requires care or support because the member is experiencing violence from the member's family.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

**9.2** To avoid doubt, and without limiting **clause 9.1**, an Employee who:

- (a) is a parent, or has responsibility for the care, of a child; and
- (b) is returning to work after taking leave in relation to the birth or adoption of the child;

may request to work part-time to assist the Employee to care for the child.

**9.3** An Employee is not entitled to make a request under this clause unless:

- (a) for an Employee other than a casual Employee – the Employee has completed at least 12 months of continuous service with the Employer immediately before making the request; or
- (b) for a casual Employee – the Employee:
  - (i) is a long term casual Employee of the Employer immediately before making the request; and
  - (ii) has a reasonable expectation of continuing employment by the Employer on a regular and systematic basis.

**9.4** A request made under this clause must be made in writing and set out details of the change sought and the reasons for the change.

**9.5** On receipt of a request by an Employee under this clause, the Employer must give the Employee a written response within 21 days, stating whether the Employer grants or refuses the request.

**9.6** The Employer may only refuse the request on reasonable business grounds.

**9.7** Without limiting what are reasonable business grounds for the purposes of **clause 9.6**, reasonable business grounds include the following:

- (a) that the new working arrangements requested by the Employee would be too costly for the Employer;
- (b) that there is no capacity to change the working arrangements of other Employees, or recruit new Employees, to accommodate the new working arrangements requested by the Employee;
- (c) that it would be impractical to change the working arrangements of other Employees, or recruit new Employees, to accommodate the new working arrangements requested by the Employee;
- (d) that the new working arrangements requested by the Employee would be likely to result in a significant loss in efficiency or productivity;
- (e) that the new working arrangements requested by the Employee would be likely to have a significant negative impact on customer service.

**9.8** If the Employer refuses the request, the written response under **clause 9.5** must include details of the reasons for the refusal.

## 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.

### 2. Right to request - Eligibility

- 2.1. To be eligible to make a request under clause 9 of the Agreement an ongoing or fixed term Employee must have completed 12 months continuous service within the Victorian Public Service immediately before making the request. Noting any previous service with a public entity deemed as continuous by the *Public Administration Act 2004* (Vic) would also count towards determining an Employee's eligibility to make a request under this clause.
- 2.2. Eligibility requirements for casual Employees are outlined in clause 9.3 of the Agreement.
- 2.3. Whilst clause 9 of the Agreement, provides for Employees who are experiencing violence from a member of the Employee's family to request a flexible working arrangement, Employers and Employees should note that such requests must be dealt with in accordance with clause 48 of the Agreement. Please refer to the Family Violence Leave Policy for further guidance, including other leave options which may be available.

- 2.4. An Employee with less than 12 months continuous service may apply for flexible work arrangements. Any such request will be considered based on operational requirements.

### **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 4 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. The Employer may only refuse the request on reasonable business grounds. Clause 9.7 of the Agreement sets out what are 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. 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.
- 4.2. A request for flexible working arrangements will not be unreasonably refused and will be assessed in a timely manner. 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.
- 4.3. In assessing a request for flexible working arrangements, an Employer should also consider (where applicable):
  - 4.3.1. the Employee's circumstances, including the nature of their caring responsibilities;
  - 4.3.2. the consequence for the Employee of approving or not approving the arrangement;
  - 4.3.3. the benefits to the individual and the organisation;
  - 4.3.4. the availability of appropriately skilled replacement Employees;
  - 4.3.5. 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);
  - 4.3.6. any risks associated with the request;
  - 4.3.7. the intended duration of the arrangement;

- 4.3.8. whether the Employee has other entitlements available that would be more appropriate in the circumstances; and
- 4.3.9. 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.
- 4.4. No one of the above factors is necessarily determinative on their own. There may be reasonable business grounds other than those listed in clause 9.7 of the Agreement that are relevant when assessing a particular request.
- 4.5. Gender norms, stereotypes or assumptions should play no role in whether a flexible work arrangement is refused.
- 4.6. 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. Review requirements**

- 5.1. 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 annually or on an as needs basis based on the operational requirements of the Employer or personal circumstances of the Employee.
- 5.2. 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:
  - 5.2.1. the operational or team requirements have changed;
  - 5.2.2. there are concerns regarding efficiency, productivity or customer service;
  - 5.2.3. the Employee wishes to change the arrangement; or
  - 5.2.4. the flexible working arrangement impacts the Employee's ability to effectively undertake their role.
- 5.3. The Employer will 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.

## **6. Varying or ending a flexible working arrangement**

- 6.1. Flexible working arrangements can be altered to meet the changing operational requirements of the workplace.
- 6.2. Either party may propose a variation to the flexible working arrangements.
- 6.3. Any variation to an Employee's flexible working arrangements is subject to legislative requirements and should be documented. Consistent with clause 9.6 of the Agreement, request for flexible working arrangements can only be refused on reasonable business grounds.

- 6.4. 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.
- 6.5. 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.
- 6.6. 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 9.7 of the Agreement.
- 6.7. 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 in to accommodate the Employee's original request.

## **7. Requests from Employees experiencing family violence**

- 7.1. Where a request for flexible working arrangements is made by an Employee who is experiencing family violence, those requests must be managed in conjunction with the requirements of clause 48 of the Agreement.

## **8. Other sources of flexible working arrangements**

- 8.1. This policy deals with the rights of Employees to request flexible working arrangements under circumstances specific to clause 9 of the Agreement and section 65 of the *Fair Work Act 2009*.
- 8.2. An Employee who is ineligible to make a request for a flexible working arrangement under clause 9 of the Agreement, may still be able to access flexible working arrangements through other provisions of the Agreement, Employer policy or anti-discrimination law.
- 8.3. 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.

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## Dispute resolution

An Employee who is directly affected by a decision made or action taken pursuant to clause 9 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 12 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).

## Related policies or documents

### VPS Enterprise Agreement Common Policies

- Employment Categories and Secure Employment
- Parental Leave
- Personal / Carer's Leave

All policies in the VPS Enterprise Agreement Common Policies collection, can be found at <https://vpvc.vic.gov.au/vps-enterprise-agreement-common-policies/>