



# Determination 8: Working Flexibly

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**Government  
of South Australia**

Office of the Commissioner  
for Public Sector Employment

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# Determination: Working Flexibly

**Date of Operation:** 14 June 2022

## **WHO IS COVERED BY THIS DETERMINATION?**

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Under section 16(1) of the PS Act, the Commissioner for Public Sector Employment:

“...may issue determinations relating to

(a) employment in the Public Service; and

(b) public sector employment outside the Public Service that is declared by another Act or the regulations under this Act to be employment to which this section applies.”

Accordingly, the prescriptive content of this document applies as a Determination with respect to agencies and employees:

- the Public Service employed in a public sector agency that is an administrative unit or attached office, as defined by the PS Act; and
- in employment has been declared by another Act or the regulations under the PS Act to be employment to which the above Section 16(1) of the PS Act applies.

Under section 14(1)(d) of the PS Act, the Commissioner for Public Sector Employment may issue Guidelines relating to public sector employment matters.

For agencies and employees to which Part 7 of the PS Act does not apply, this document is a Guideline of the Commissioner for Public Sector Employment. Agencies are encouraged to formally adopt the Guideline as agency policy.

## **INTRODUCTION**

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The challenges faced by the public sector throughout recent years have also presented opportunities to transition to a way of working which embeds flexibility as the 'new normal'.

Enabling flexibility:

- supports our employees to achieve a balance between their work and home obligations
- promotes uniformity and transparency in governance arrangements for the public sector
- is a key enabler to the public sector attracting and retaining the best talent.

Flexible work can be ad-hoc, formal, informal, short or long term. All employees have the right to request flexible working arrangements, which should be considered in line with business requirements.

Not all types of flexibility will work for every role. If a requested flexible working arrangement cannot be accommodated because of the nature of the role, the manager and employee should work together to determine if a different flexible arrangement will work.

This Determination embeds practices and outlines minimum standards to create a more flexible, diverse and inclusive public sector workforce which is both productive and agile.

This Determination should be read in conjunction with *Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave*.

## **FLEXIBILITY PRINCIPLES**

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Flexibility in the workplace should be considered and adopted with the following principles in mind.

- **Flexible working is part of the norm.** Flexibility is embedded in our work and modelled by managers, and focuses on balancing the employee's needs with the agency's requirements.
- **Safe and well no matter where we work.** The physical and mental health and safety of our people is prioritised, regardless of their physical work location.
- **Less about presenteeism and more about outcomes.** The focus is on outputs and achieving deliverables rather than monitoring exact hours worked.
- **Highly inclusive working practices.** Trust is placed in staff, with all employees encouraged to access flexibility regardless of their employment status or the reason for their request.
- **Connected and collaborative.** Employees have the skills and resources to collaborate virtually, with essential meetings delivered at a time and in a way that is inclusive of hybrid working models.

## **REASONS FOR SEEKING FLEXIBILITY**

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A range of personal circumstances can lead to an employee seeking flexible working arrangements to improve their work/life balance. These can include, but are not limited to:

- caring responsibilities for children, parents, partners or others
- illness or disabilities, including non-permanent conditions
- participating in children’s educational or extra-curricular activities (i.e. coaching school sports)
- participation in community and family events
- domestic and family violence
- general health and wellbeing
- transition to retirement
- study commitments
- pursuit of outside of work interests, e.g. volunteering.

## **FLEXIBILITY AND PEOPLE WITH DISABILITY**

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Under the *Equal Opportunity Act 1984 (SA)* and the *Disability Discrimination Act 1992 (Cth)*, agencies have a responsibility to make reasonable workplace adjustments that facilitate people with disabilities performing the inherent requirements of a job. Flexible working arrangements may assist a person with a disability to perform the inherent requirements of a job. To support this, the employee should share appropriate information with their employer to ensure a proper assessment can be made regarding which flexible arrangements should be supported.

## **FLEXIBLE WORKING OPTIONS**

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Flexible working arrangements can include any change to an employee’s pattern, place or hours of work. Arrangements need to be considered in conjunction with any applicable industrial provisions in the relevant Enterprise Agreement or Award.

From an audit and work health and safety perspective, agencies must be able to account for their staff during their normal hours of work. This includes ensuring leave applications are completed, monitoring offsite work visits, and understanding when staff are working flexibly.

A range of options exist to support working flexibly. The Information Sheet: “Working Flexibly – Flexibility Options” details some possible options which may be considered for implementation with an agency. Agencies may also have additional options available for their employees.

## **MINIMUM STANDARDS**

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Some, but not all, flexibility options are also subject to minimum standards as detailed below.

### **Working from home (WFH) and remote working**

When implementing a formal WFH/remote working arrangement, agencies must first ensure:

- a WFH/remote work application is completed and approved by the appropriate delegate
- a date is set to review the effectiveness of the arrangement
- work health and safety issues are identified and addressed, including ensuring the employee has an emergency management plan if necessary (for example, if living in a bushfire-prone area, a [bushfire survival plan](#) may be required)
- adequate and appropriate duties are available for the employee to carry out from home

- confidentiality and security of information is not compromised by the WFH arrangement
- the employee can remain contactable via email and phone during core hours.

Any arrangement where an employee is permitted to work all their hours from home should be reviewed frequently to ensure the employee remains connected to their colleagues and their work.

The availability of other flexibility options while working remotely or from home is to be determined by the agency. This includes accruing flexitime or operating under an approved days off scheme.

Entitlements to public holidays are unaffected by a working from home arrangement.

WFH/remote work may be used for any shift work situation that has been approved by the delegate.

## **Flexitime**

Flexitime can be accrued to enable employees to take a day or part day off, with agencies to specify maximum hours of flexitime permitted to be accrued, or maximum negative balances that may be carried over to the next flexitime cycle.

Agencies must consider any applicable enterprise agreement provisions as they relate to the carryover of flexitime accruals when determining their internal policy.

Where shift work is approved within a flexitime arrangement, shift penalties are calculated on the actual time worked within a scheduled roster period. Therefore, no shift loading will be paid for the time worked in excess of the normal shift period for the purpose of accruing flexitime credits, or for the flexitime taken off during the normal shift period.

An employee terminating employment or moving to another position must be given adequate opportunity to take any credit time accrued prior to ceasing their role. If opportunity is not provided, any remaining time accrued will be paid out to the employee.

## **Compressed Weeks**

Compressed week arrangements can be established on a weekly, fortnightly or monthly basis. See the information sheet on appropriate compressed weeks arrangements.

Work health and safety issues must be considered in respect of employees who are/could be working in an isolated situation and/or late at night, as well as the number of hours an employee can work in any one day or week.

If employees are required to work on their usual day off, the hours worked are not to be treated as overtime. In this situation the time worked must be taken off at a mutually convenient time.

Compressed hours may be worked in any shift work situation that has been approved by the appropriate delegate. Shift penalties are calculated on the basis of actual ordinary time worked.

## **Purchased Leave**

An employee may reduce the rate of their salary in return for additional periods of leave over a specified period of time. The additional periods of leave are to be planned in advance and funded by salary reductions spread evenly over a service year. Purchased leave arrangements must be mutually agreed to by the employee and employer.

See the information sheet for suggestions as to how purchased leave can be utilised.

Employees who change roles/agencies mid-way a purchased leave arrangement must renegotiate purchased leave with their new employer prior to commencement. If purchased leave is unable to be accommodated in the new role, the former employer must ensure the employee's final payment is adjusted to take into account any over or under payment of deductions withheld to fund periods of purchased leave.

Purchased leave is treated as leave without pay. Any period greater than one month of leave without pay in any service year will not be counted as service for accruing long service leave, retention leave recreation leave and sick leave entitlements.

Purchased leave is not to be used to break a period of long service leave. That is, it should not be granted immediately after a period of long service leave and immediately before a further period of long service leave.

Recreation leave loading is paid at the full award/agreement rate throughout the year rather than at the reduced fractional rate. It does not apply to extra leave in purchased leave.

Purchased leave cannot be applied retrospectively, and cannot break a period of long service leave.

## **IMPLEMENTING FLEXIBILITY**

Delegates will objectively consider any flexibility request from an employee against the impact on service delivery and organisational imperatives. The focus should remain on whether the arrangements can be supported rather than the reason for the application. Consideration should be given to whether alternative arrangements such as job redesign, job share or technology could practically be utilised to support the request.

Where a delegate declines a request due to organisational imperatives, the decision maker must advise the applicant in writing within 21 days of the applicant's request including reasons for rejecting the request.

Where a decision is not able to be made within 21 days, the delegate should advise the applicant in writing of the cause of the delay, and the expected timeframe for a response.

In line with the *Directions of the Premier: Flexibility for the Future*, prior to advertising for any vacancy, serious and positive consideration must be given to whether, and if so, how the role can be redesigned to enable access to flexible working arrangements, including, but not limited to part time or job share. All positions must be advertised to include the following statement about the availability of workplace flexibility:

*The South Australian public sector promotes diversity and flexible ways of working including part-time. Applicants are encouraged to discuss the flexible working arrangements for this role.*

## **Decision Making: Roles, Duties, Job Design**

Roles and duties performed by individuals and teams, as well as the workflow of activities, should be reviewed to determine whether flexibility can be provided.

Relevant considerations include:

- What duties have the potential to be performed flexibly?
- What duties may need to be redesigned or performed differently?
- How can duties be performed by individual employees or teams where people are working flexibly?
- How will flexibility for individuals enhance or affect overall service delivery?
- Are there duties that would need to be restructured, redesigned or reallocated?
- Are there times that all team members need to be physically in the same place?
- Are there any specific security, confidentiality, equipment, software or tools required to facilitate flexibility?
- How can knowledge be shared between employees to ensure continuity in service delivery?

## **Performance Management**

Delegates are required to establish clear performance expectations for all employees and provide regular feedback, regardless of whether flexible work is in place. When implementing flexibility, it is imperative to clearly re-establish performance expectations with the employee.

## **Timeframe and Review**

Flexibility arrangements will generally be temporary and subject to review at least annually to ensure they remain appropriate from both an organisational and individual perspective.

Arrangements will usually only be ongoing if they relate to part-time or are otherwise established under a relevant award or enterprise agreement.

At the end of any temporary arrangement the employee will return to their substantive employment conditions unless another arrangement has been negotiated. Arrangements may cease or be varied before the agreed expiration where agreed. Delegates may also end an arrangement early if the agency's business needs can no longer support the arrangement, or if there are performance concerns necessitating the early cessation. Delegates exercising this authority must give reasonable notice to the employee of the intention to cease the arrangement, including the reasons for doing so, and allow the employee the opportunity to respond before making a final decision.

## **REFERENCES**

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[Public Sector Act 2009 \(SA\)](#)

[Code of Ethics for the South Australian Public Sector](#)

[Equal Opportunity Act 1984 \(SA\)](#)

[Disability Discrimination Act 1992](#)

[Commissioner's Determination 3.1: Employment Conditions – Hours of Work, Overtime and Leave](#)

[South Australian Public Sector Enterprise Agreement: Salaried 2021](#)



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