

**COMMISSIONER FOR PUBLIC SECTOR
EMPLOYMENT GUIDELINE AND
DETERMINATION: FLEXIBLE WORKPLACES**

Public Sector Act 2009
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INTRODUCTION

This Guideline and Determination is intended to assist in creating a more flexible, diverse and inclusive South Australian public sector workforce, to generate productivity, increase workforce participation and improve workforce culture. It is also intended that this Guideline and Determination will improve awareness and understanding of how to consistently implement flexible working arrangements in the South Australian public sector.

The Commissioner for Public Sector Employment is empowered to issue Guidelines relating to public sector employment matters pursuant to section 14(d) of the *Public Sector Act 2009* (PS Act). Under Schedule 1, the Commissioner may issue Determinations relating to leave and working arrangements:

- to enable public sector employees to move within the public sector, gain other work experience and undertake professional development;
- to assist public sector employees to balance work demands and family; and personal pursuits and responsibilities; and
- for other purposes.

The Commissioner may determine voluntary flexible working arrangements for public sector employees, including:

- part-time employment;
- flexible working hours;
- purchased leave; and
- compressed working weeks.

This Guideline and Determination is written with the following objects of the PS Act in mind:

- to ensure the public sector is viewed as an employer of choice;
- to make performance management and development a priority in the public sector;
- to promote uniformity and transparency in governance arrangements for the public sector; and
- to provide the framework for the State's Public Service and the effective and fair employment and management of public service and other public sector employees.

This Guideline and Determination is also intended to support the following public sector principles as set out in the PS Act:

- provide services with a high level of efficiency and effectiveness;
- treat public sector employees fairly, justly and reasonably;
- prevent unlawful discrimination against public sector employees or persons seeking employment in the public sector;
- encourage public sector employees to undertake professional development and to pursue opportunities throughout the public sector; and
- acknowledge employee successes and achievements and address under performance.

This Guideline and Determination is designed to complement Commissioner's Determination 3.1: Employment Conditions - Leave, which includes special leave with and without pay.

Who is covered by this document?

Under section 16(1) of the *Public Sector Act 2009* (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.

IMPLEMENTING FLEXIBLE WORKING ARRANGEMENTS

South Australian public sector employees potentially have access to a range of flexible working arrangements. Embedding flexible work and flexible careers as standard business practice can assist to lift organisational performance, with improved outcomes at the organisational, individual and community level.

Flexible working arrangements and workplaces enable more people to participate in the workforce. Similarly, greater workforce participation of older South Australians, people with a disability and Aboriginal and Torres Strait Islander people is likely to be enhanced. An increased proportion of women in leadership roles, and greater diversity in the public sector leadership group generally, may be facilitated.

Flexible working arrangements should not be viewed as special arrangements that are only available to a minority of people based on their personal characteristics. All employees have a right to request access to flexible working arrangements, regardless of their personal characteristics.

The right to request flexible working arrangements does not mean there is a requirement on the part of a Chief Executive/agency head or delegate to approve such requests. Management must balance organisational imperatives against the entitlements and expectations of employees. Chief Executives/agency heads and delegates should objectively consider each request by an employee to participate in flexible working arrangements.

Flexible working arrangements and people with disability

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 persons with disabilities performing the inherent requirements of a job. Flexible working

arrangements may make it possible for a person with a disability to perform the inherent requirements of a job.

Workplace culture

Workplace culture is critical to the successful implementation and management of flexible working arrangements. Management should seek to integrate flexible working arrangements into workplace culture so that employees are comfortable in applying to utilise such arrangements and managers are equally comfortable in considering such applications.

Employees working in organisations where requests for flexible working arrangements are negotiated in a positive and supportive way are more likely to be productive, satisfied, and stay with the organisation over time.

Reasons for seeking flexible working arrangements

To effect a change to workplace culture so that flexible working arrangements are implemented more broadly throughout an agency, requests by individual employees should be accommodated wherever possible.

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;
- 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; or
- pursuit of outside of work interests, e.g. volunteering.

Performance management

Chief Executives/agency heads or delegates are obliged to establish clear performance expectations for their employees and provide regular feedback, regardless of whether flexible work is in place. Implementing flexible work arrangements should not change the performance expectations of an employee. Workloads need to be adjusted where employees change from full-time to part-time working arrangements.

Trust and open communication between managers and employees is essential to engendering a successful approach to flexible working arrangements in agencies.

Decision making: roles, duties and job design

It is important to analyse the roles and duties performed by individuals and teams, as well as the design of roles, to determine the suitability of these to different types of working arrangements. Relevant considerations may include:

- considering operational imperatives and the rights and desires of employees; what duties have the potential to be performed within a flexible working arrangement?;
- how can duties be performed by individual employees or teams where persons are participating in flexible working arrangements?;
- how can the performance of these duties be monitored and managed in the context of flexible working arrangements?;

- how will flexible working arrangements for individuals affect other team members and overall service delivery?;
- are there times that all team members can be physically in the same place e.g. for staff meetings and if not, can the issue be addressed through technology, i.e. telephone attendance by one or more employees?;
- are there any specific security, confidentiality, equipment, software or tools required to facilitate flexible working arrangements?; and
- how can knowledge be shared amongst employees to ensure continuity in service delivery?

Timeframe and review

When implementing flexible working arrangements, arrangements should be reviewed periodically to ensure they remain appropriate from an organisational and individual perspective.

OPTIONS

Flexible working arrangements can include any change to an employee's pattern, place or hours of work. Below are options:

Flexitime

Flexitime enables employees to negotiate start and finish times, within a range of core business hours, without increasing or reducing the total number of hours worked when averaged over a four week cycle. Flexitime can assist employees to balance work and personal responsibilities. Flexitime can be accrued to enable employees to take a day or part day off, with agencies able to specify minimum and maximum levels of flexitime that can be accrued, including in some circumstances that accrued hours lapse.

Determination

- 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 flexitime taken off during the normal shift period.
- Upon termination of employment or appointment to another position in the public sector or at the end of each flexitime accounting period, payment is not made for any credit time remaining. In addition, any debit time remaining at the cessation of duty will be deducted from the final salary payment due on termination of service.

Part-time

Employees work on a part-time basis when they work fewer hours than full-time arrangements. Hours are generally on a fixed and consistent basis. Salary is adjusted to reflect the actual hours worked. Different part-time options that might be implemented include:

- working a set number of days in the week;
- working a set number of hours a day;
- staggered hours - creating different start and finish times for employees to allow for greatest coverage of staff during core business hours;
- transition to retirement which may incorporate superannuation salary supplementation; and

- progressively increasing working hours until full schedule of agreed hours is reached – for example when employees return from parental leave.

Determination

As set out in the *Code of Ethics for the South Australian Public Sector*:

- public sector employees employed on a full-time basis must not engage in other employment or other remunerative activity where the activity conflicts or has the potential to conflict with their role as a public sector employee or the performance of such outside employment or activity might affect their capacity to perform their duties; and
- public sector employees will obtain written permission from their agency head before engaging in any outside employment or remunerative activity (including any employment, work or service for which payment is made by way of pay, salary, honorarium, commission, fee, allowance or other reward).

Job sharing

Job sharing is where a role is shared between two or more employees who are working less than full time working hours. This may be in the form of separately allocated tasks or the sharing of all tasks over different days.

Compressed weeks

An employee elects to work a set number of hours over fewer days, in order to have a regular day off. Compressed week arrangements can be established on a weekly, fortnightly or monthly basis. Different compressed week options that might be implemented include:

- working weekly full time hours over a shorter time period;
- a weekday-weekend swap, where employees are able to swap a weekday working day for working on a weekend;
- weeks on, weeks off: working one or several weeks and then taking one or several weeks off; and
- annualised hours - agreed number of hours are worked on an annual rather than a weekly basis.

Determination

- Work Health and Safety issues need to 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; and
- compressed hours may be worked in any shift work situation that has been approved by the Chief Executive, Department of the Premier and Cabinet. Shift penalties are calculated on the basis of actual ordinary time worked.

Purchased Leave

An employee reduces the rate of their salary in return for additional periods of leave over a specified period of time. The additional periods of leave are referred to as purchased leave. The periods of purchased leave are planned in advance and funded by salary reductions spread evenly over a service year. Examples of how purchased leave arrangements might operate include:

- working during the school terms and then taking time off during the school holidays;
- annual purchased leave: employee exchanges an agreed reduction in salary for extra periods of leave from 1-4 weeks in a 12 month period; and
- a five year plan: an employee sacrifices some pay every fortnight and then takes the fifth year off.

Determination

- purchased leave is to be 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, recreation leave and sick leave entitlements;
- recreation leave loading is paid at the full award/agreement rate – not the reduced fractional rate and does not apply to extra leave in purchased leave;
- purchased leave cannot be taken to break a period of long service leave;
- retrospectivity does not apply.

Working from home

An employee performs their duties from a place that is different to their usual office location, for a portion of their usual hours, or on an *ad hoc* basis. Arrangements should be made so that employees are contactable via email and phone. Factors that need to be taken into consideration when setting up such an arrangement are:

- how the employee will access emails, electronic files and make/receive telephone calls;
- how the employee interrelates with other team members and colleagues;
- managing expectations as to how and when the employee will be accessible;
- work health and safety risks of the alternate work location; and
- work that can be performed outside of the usual office location including, but not limited to, confidentiality of information.

Determination

- Work Health and Safety issues for any proposed working from home arrangement must be addressed prior to the approval of any proposal;
- overtime is not available unless prior approval is given by a Chief Executive/agency head or delegate;
- entitlements to public holidays are unaffected by a working from home arrangement; and
- working from home may be used for any shift work situation that has been approved by a Chief Executive/agency head or delegate.

Working remotely

An employee performs their role from a different place to their colleagues for the full portion of their hours. This could include a workstation in a different office e.g. in a regional centre.

REFERENCES

Public Sector Act 2009 (SA)

<http://www.legislation.sa.gov.au/LZ/C/A/PUBLIC%20SECTOR%20ACT%202009.aspx>

Code of Ethics for the South Australian Public Sector

<http://www.oper.sa.gov.au/page.php?id=351>

Equal Opportunity Act 1984 (SA)

<http://www.legislation.sa.gov.au/LZ/C/A/EQUAL%20OPPORTUNITY%20ACT%201984.aspx>

Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance (Including Misconduct)

http://files.oper.sa.gov.au/files/Managing_Unsatisfactory_Performance.pdf \

Commissioner for Public Sector Employment's Determination 3.1: Employment Conditions -

Leave <http://files.oper.sa.gov.au/files/commissioners-determination-3-1-employment-conditions---leave.pdf>

South Australian Public Sector Wages Parity Enterprise Agreement: Salaried 2012

<http://www.pswr.sa.gov.au/enterprise-bargaining/approved-south-australian-public-sector-wages-parity-enterprise-agreement-salaried-2012>

Disability Discrimination Act 1992

http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/

SA Public Sector Salaried Employees Interim Award

<http://www.industrialcommission.sa.gov.au/index.cfm?objectid=7B792758-E7F2-2F96-3C00B4DA176BE2E0>