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# **Flexible work in the NSW government sector**

**Submission to the  
Public Service Commission**

**September 2016**

# 1 Recommendations

This submission supports the following recommendations:

## **Recommendation 1**

The NSW Premier should issue a Premier's Memorandum to supplement existing NSW Government guidance on flexible work focussing on:

- a. Enshrining in NSW Government policy the principle that flexible work will be approved unless clear, documented and compelling reasons against the use of flexible work in a particular circumstance are provided to the employee by agency management,
- b. A provision for an employee to seek an internal agency review of a refusal to grant flexible working arrangements,
- c. A provision, that if the agency still refuses flexible working arrangements after an internal review, then the employee may seek an independent review by the Public Service Commission (noting the option for an Industrial Relations Dispute remains),
- d. Implementation of the other recommendations as outlined below,
- e. Standing as a model employer to help drive improvements to work-life balance for all workers in NSW.

## **Recommendation 2**

The NSW Government should review its current parameters that relate to flexible working agreements (flex time) in close consultation with relevant Unions and staff representatives to ensure that the parameters are not being used to wind back access to fair and reasonable flex time arrangements.

## **Recommendation 3**

The Public Service Commission should:

- a. collect data and publish it as part of its Workforce Profile Report in respect of the number of applications for flexible work over the prior year, the category of flexible work sought, the outcomes of the applications and the reasons for non-support of any application, broken down for on-going and temporary staff, non-Senior Executive and Senior Executive, and by gender and age demographic in each of these categories,
- b. set targets for the proportion of the government sector workforce subject to flexible work arrangements.

**Recommendation 4**

Where an agency does not support a request for flexible working arrangements, it should be required to report those reasons in writing to the applicant, providing evidence that the request has been properly considered and outlining proposed alternative options or additional consultation to reach a final outcome.

**Recommendation 5**

Staff seeking part-time work should not only have access to permanent part-time work but also to the option to manage part-time work as leave without pay for a number of days per week, leaving them the option to transition back to full-time work at a suitable time.

**Recommendation 6**

Monitoring of the number of staff on flexible working arrangements should be included in each Manager's performance agreement, having regard to the percentage of approved applications for flexible work, to help ensure that accessibility of flexible work is seen as core business.

**Recommendation 7**

The Public Service Commission should develop a training program for government sector managers to assist them to understand and implement flexible working arrangements, including a toolkit with examples to assist practical implementation of flexible working policies.

**Recommendation 8**

Staff should be made aware of the range of the full range of flexible work options including purchased leave, leave without pay and working from home. The NSW Government should also provide all staff with the option to take annual leave, long service leave and sick leave (including carer's leave) on half pay, with consideration of an agency's operational needs.

**Recommendation 9**

Each cluster should establish a specialist unit to guide the government sector transition to greater uptake of flexible work and establish and maintain a job-share register.

**Recommendation 10**

The NSW Government should review flexible work policies to specifically recognise legitimate grounds for access to flexible work including transition to retirement, career breaks and career development, carer's responsibilities, and disability and medical conditions.

**Recommendation 11**

The NSW Government should review emerging trends here and overseas in flexible work and work-life balance and consider piloting innovative models to enhance the uptake of flexible work.

## 2 Introduction

The Public Service Association of NSW (**PSA**) is an active, member-driven union. Our members have a long and proud tradition of improving the lives of the people of New South Wales through delivering a diverse range of services in the public sector and related entities, state owned corporations, TAFE NSW and universities. We proudly represent 38,000 members spread over almost 5,000 worksites.

We welcome the opportunity to provide feedback on flexible work in the NSW Government Sector. This submission was prepared following consultation with our members and delegates and is based on their experience and insight. The PSA is grateful for the skill of our members and delegates and their dedication to public service.

The PSA applauds any effort to increase the use of flexible work practices in the government sector, and welcomes the announcement made by the Premier in March 2016 that “100 per cent of public service jobs will be flexible by 2019.” The benefits are obvious for both employer and worker – increased employee diversity, well-being and engagement, and the ability to recruit and retain valuable staff.

The NSW public sector was once the leader in flexible work practices in Australia. However, that is no longer the case as private sector organisations seek to become an employer of choice and attract the best and the brightest. Our members now report a high level of arbitrary refusal of flexible work requests, as well as incidents of bullying and discrimination in making requests and working flexibly. This is clearly unacceptable. Some examples of the experiences of our members are contained in Appendix 1.

Most NSW government agencies still have excellent flexible work policies. The problem is that they are not well understood and are under-utilised. The reasons for this are manifold, and are further addressed below.

## 3 What are the conditions that enable the successful use of flexible work in the NSW government sector?

The NSW government sector is no different from any other in the successful use of flexible work. Workers need to be well informed and able to access flexible work arrangements. Managers and agencies need to be able to reasonably accommodate flexible work, and all parties need to be creative and innovative in structuring arrangements. More broadly, there needs to be a culture of encouraging and facilitating flexible work, in which there is leadership and modelling of flexible work within an agency, and crucially, there is accountability around measures that indicate the successful implementation of flexible work.

The NSW government sector is marked by the sheer size of its workforce and diversity of roles. This should provide a wealth of options and opportunities for flexible work.

## 4 What are the barriers, how can they be overcome, and what are the opportunities?

### 4.1 Leadership and culture

When flexible work is considered normal, it becomes much easier for flexible work arrangements to be negotiated and implemented. This will only occur if there is a change in culture of NSW government sector agencies, and this requires support from all levels of management.

The PSA recommends that the Premier issues a Premier's Memorandum on flexible work to promote the initiative, ensure consistency and entrench the practice. Senior managers need to champion flexible work, and ideally model it themselves.

Clear policies and procedures are important, but many government sector agencies already have excellent policies. However, they are only as good as their implementation. Flexible work policies work best when there is either an existing positive attitude toward flexibility, or when there is a concerted change management process to establish a new culture.

Successful cultural change can easily be derailed if the process is undermined by contradictory messages. For example, a central component of flexible work is the working of flexible hours. Flexible working hours agreements are used so that workers can better balance the demands of work and workload with commitments outside of work. However, many of our members feel that this is currently under attack by efforts of some Departments to limit and control access to flexible hours.

The PSA has campaigned on recent NSW Government efforts to undermine flexible working hours agreements. The push from the Wages Policy Taskforce (**WPT**) is for Departments to have a single agreement. In 2012 the WPT created bargaining parameters for these agreements which impose restrictions such as limiting the carry forward of accumulated hours.

The PSA has recently worked closely with the Justice cluster and the Department of Finance, Services and Innovation (**DFS**) to ensure a fair deal for workers facing new flexible working hour agreements. The PSA wrote to NSW Industrial Relations calling for a moratorium on negotiations and an extension of the notice period. We have noted that the parameters are completely contrary to the NSW Premier's statement on International Women's Day supporting flexible work.

The Justice Cluster has now extended the notice period for changes to the Flexible Working Hours Agreement and the PSA has successfully negotiated on the flexible working hours provisions for DFS. But the issue of fair bargaining parameters for flexible working hours agreements needs to be re-examined on a sector-wide basis and with wide consultation with relevant Unions and employees.

Another issue is promoting and using other provisions that contribute to flexible work such

as the option for staff to purchase leave. The Award allows employees to purchase additional leave with their salary reduced over the full year in accordance with the number of weeks of additional leave purchased. Employees should be made aware of this and should also be able to access the alternative provisions of leave without pay and also annual and long service leave at half pay. This allows employees to balance earnings and leave to meet obligations such as caring for children in the school holidays. However, the current purchase process is overly restrictive, not permitting further flexible work arrangements until after the end of the leave purchase agreement, and this should be reviewed.

## **4.2 Education and information**

Any change in the area of flexible work would need to be supported by a comprehensive training program and resources for workers and managers. Currently, there is a significant gap in knowledge around the circumstances in which flexible work arrangements are available, and the many forms that those arrangements could take. Ensuring that all parties are fully informed is essential for the practical implementation of flexible working policies.

## **4.3 Applying for flexible work**

In many agencies, current processes for applying for flexible work are convoluted and designed to suggest that approval for a proposed arrangement will be the exception rather than the norm. The PSA supports the Premier's announcement that by 2018 flexibility for public sector jobs will be on the basis of 'if not, why not?' There should be a presumption in favour of approval of flexible work arrangements, and detailed written reasons provided when approval is not given.

This will require a redesign of the approval process for most, if not all, government sector agencies. This includes the business forms used for flexible work applications, which currently make it overly onerous for a person to apply for flexible work, and for a manager to approve an arrangement.

## **4.4 Accommodating requests**

Managers often lack the ability to adequately accommodate requests for flexible work arrangements. This is partly cultural, as many managers perceive flexible work arrangements as difficult, complex and time consuming to implement, and not part of the core business of their unit and therefore a low priority.

It is also structural, as managers are unable to access the resources and support to implement flexible work for their staff. Agencies must have policies and processes designed to support flexible work, and must be active in ensuring that they are utilised. The PSA recommends that each cluster should have a dedicated flexible work unit, at least for a period of transition, to design and implement improved processes, monitor the take-up of flexible work, and support agencies and managers to accommodate flexible work requests. This unit could be responsible for the job share register proposed by the Premier on a cluster-wide basis in the first instance, and to contribute to a government sector-wide

register that could be maintained by the Public Service Commission.

The policies to be developed will need to address a greater use of technology to support flexible work arrangements, together with new models of supervision, accountability and team co-operation. No role should be considered unsuitable for flexible work. More flexible access to leave entitlements should also be considered, such as access to recreation, sick and family and carers leave at half-pay.

Staffing levels also need to be considered. The application of efficiency dividends and other cuts has meant many agencies have lost key administrative and support staff. This can greatly diminish an agency's ability to absorb flexible work arrangements. Adequate levels of staffing enable an agency to be sufficiently agile to deliver services while also accommodating flexible work for its employees.

#### **4.5 Accountability**

Agencies need to be accountable for flexible work. This accountability should take two forms. Firstly, agencies should be accountable to their own employees. They need to provide detailed written reasons when an application for flexible work is refused, and these decisions should be subject to an accessible and specialist system of review.

Secondly, agencies should have information about flexible work collated and published by the Public Service Commission. This way agencies can be transparent in their implementation of flexible work, performance can be measured against targets and there will be competitive pressure between agencies to deliver outcomes.

#### **4.6 Flexible work to enable phased retirement**

Flexible work policies should specifically address transition to retirement for NSW government sector employees. There are a number of benefits of retaining older staff, such as retaining skills and organisational knowledge, maintaining diversity of skills and experience in the workplace, and training and mentoring younger workers. However, many older workers find it difficult or inconvenient to work full-time or on full duties. Federally, older workers have the right to request part-time work, but no equivalent provision exists in NSW.

Improved availability of flexible work assists in retaining the skills of older workers who wish to phase into retirement. There is also an opportunity to use the extra capacity created by older employees shifting to part-time employment to accommodate other flexible work arrangements, or even create vacancies for additional full time workers, allowing for a better workforce transition.

Other factors justifying flexible work should also be explicitly recognised in flexible work policy and implementation including career breaks, career development, carer's responsibilities and accommodating a disability or medical condition.

# Appendix 1

## Case Studies

### *Case study 1: The hidden cost of an arbitrary denials of flexible work*

Anna\* worked for over 20 years in a full-time supervisory position for Corrective Services NSW (CSNSW). During her career she worked in specialised units housing inmates with high needs, such as inmates with an intellectual disability, violent offenders, sex offenders and inmates who were aged and frail. CSNSW invested considerable resources training and developing Anna over this time. Anna mentored new staff, giving them the benefit of her knowledge and experience.

In 2008, Anna applied to work part-time to care for her partner, who had developed Alzheimer's disease. The application was supported by her manager and was implemented without difficulty by the rostering clerk. This arrangement worked very well for nearly three years.

A new manager took over in 2011. She told Anna that she could not remain on an ongoing part-time agreement as the CSNSW no longer offered this arrangement. The new manager said she could only offer her a six month temporary part-time agreement.

At the end of this agreement, Anna requested a further extension. The manager became increasingly hostile toward Anna and informed her that she could have one more agreement, but asked, "What will you bring to the table if I approve this? I need bums on seats." Anna reluctantly agreed to work an extra day.

At the conclusion of that agreement, Anna requested another part-time arrangement. The manager told her that this was impossible and that she must either return to work full time or resign. Anna found another staff member who wanted to job-share, but the manager said that this was not available either.

Anna returned to work full-time, but over the following two years used all her accrued sick leave (mostly as carers leave), all of her extended leave and all of her annual leave. She eventually applied to the Industrial Relations Commission, with the assistance of the PSA, about CSNSW's refusal to accommodate her flexible work request. Anna was also bullied throughout the process and is now on workers compensation due to a psychological injury. She is considering a common law claim against CSNSW.



### ***Case study 2: Part-time work and adjustments to work duties***

Pat\* is an administrative officer. She had an arrangement in place to work part-time to care for her frail mother and adjusted duties to minimise keyboard work due to a hand injury. In 2015, her agency was restructured and Pat was advised that access to flexible work and adjusted duties were not guaranteed following the restructure and she would need to make a new application if she was given a new role.

Pat was offered a role in the restructure, and she then submitted an application for part-time work. Her supervisor implied that it would probably be refused as the role required a full-time person. This would have meant that Pat would have to decline the role. There was extensive delay in having the application assessed. It was eventually approved after the PSA made representations to the manager in charge of the restructure.

Pat then made a separate application on the work adjustment, submitting a new medical certificate. She noted that the request would not constitute any change to the manner in which she was currently performing the role. However, Pat's manager refused the application and the area manager threatened that if she did not sign the offer letter, she would lose her job. The PSA again made representations to the manager for the restructure, who intervened and approved the work adjustment.

### ***Case study 3: A positive example of senior manager part time work***

Jane\* was a Senior Executive Service (SES) manager in a NSW Government agency, with 15 staff reporting to her. After maternity leave she wished to return to work part-time, 3 days per week. The HR Division was very positive about flexible work and agreed to this. Jane worked 3 days per week and the most senior person reporting to her, David\*, acted up in her role for the remaining two days each week. This worked well and the acting up was seen as a development opportunity for David. After a period David was promoted to a full time SES role and a new person was able to take advantage of the part-time acting-up opportunity. Jane worked as a manager 3 days per week in the agency for over 10 years before changing jobs. This model has also been used for other senior staff in the agency.

***Case study 4: Arbitrary refusal of flexible working arrangement ends in Court (Caryn Huntley)<sup>1</sup>***

Caryn was diagnosed with Crohn's Disease after working for Corrective Services NSW (CSNSW) for about 10 years

She requested a flexible working arrangement, namely to work from home part of the time as reasonable adjustment as her diagnosis restricted her ability to travel.

Her request to work from home part of the time was refused, with only the vague reason of 'security issues' provided. She was then forced to use a substantial amount of sick leave and other leave. She was bullied after requesting the flexible working agreement and her secondment was discontinued.

Caryn made a disability discrimination complaint, which was eventually determined by the Federal Court in 2015. The Court found in her favour and awarded substantial damages.

***Case study 5: Promotion offered to next best candidate***

Milos\* had been working at a small district office for around a decade, and was on a part-time arrangement as he was caring for his with two young children under school age. There was a shortage of child care in the area.

He was acting as a manager and applied for a vacant manager role. He was offered the position, but was informed that he would be required to work full-time. He was unable to find alternative child care that would allow him to return to full-time work, and was forced to refuse the role. It was then offered to the next best candidate.

***Case study 6: More flexible hours negotiated to pick up children from school***

Margot\* has a role in a Justice agency. She works part-time (four days per week), and asked to finish earlier on two of her days due to carer duties for her school aged children. The agency initially refused her request on the basis of 'business needs'. It was suggested she could reduce her role to three days per week and then the other days could be back-filled. Margot was unable to afford the drop in income and could not agree to this.

The PSA assisted Margot by canvassing with her and her employer the options available to them in accommodating the arrangement. A flexible work arrangement was agreed to that involved combining different forms of leave and working irregular hours on some days, so that Margot worked four days a week while still being able to meet her carer responsibilities.

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<sup>1</sup> *Huntley v State of New South Wales, Department of Police and Justice (Corrective Services NSW)* [2015] FCCA 1827

\* Names have been changed