

## WORKPLACE FLEXIBILITY

### GUIDELINES FOR STAFF AND SUPERVISORS NEGOTIATING WORKPLACE FLEXIBILITY

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### SECTION 1 UNDERSTANDING WORKPLACE FLEXIBILITY

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#### What is Workplace flexibility?

Workplace flexibility relates to formal and informal work practices including how, when and where people work in order to achieve results in the most productive way whilst, at the same time, being able to manage personal circumstances and commitments.

Globalisation, technological change and organisational research, have seen workplaces re-think traditional management styles and the 9am-5pm 'working week'. Depending on the nature of roles, office hours have become more fluid and the range of available devices and I.T. applications allow for high quality off-site and global communications.

In flexible workplaces, there are clear and measurable performance expectations, mutual respect and trust between supervisors and staff as everyone works towards a shared vision of success.

There is an increasing imperative for universities to adopt an integrated approach to workplace flexibility. For Southern Cross University, this is particularly important, given our multiple campuses and regional positioning.

Workplace flexibility has become a key mechanism for attracting, retaining and engaging high performing, talented staff who can undertake world class teaching and research and provide excellence in student experience.

Workplace flexibility promotes fairness, diversity and inclusion. For women, Indigenous Australians, older workers, people with disability and those from culturally and linguistically diverse backgrounds, workplace flexibility goes some way to redressing historical disadvantage by respecting individuality and allowing people to participate and remain in the workforce.

## These Guidelines

These guidelines are for Southern Cross University staff and supervisors negotiating workplace flexibility and should be read in conjunction with current policies and procedures in the [SCU Policy Library](#). The University seeks to develop workplace flexibility arrangements which suit both the professional and personal needs of staff members and the educational and business needs of the University.

## Australian Law

Under Australian anti-discrimination law, it is unlawful to discriminate on the basis of 'protected attributes' such as age, disability, race, sex, intersex status, gender identity and sexual orientation in education and employment. These laws ensure that employees are not discriminated against where they have certain family or carer responsibilities and on the basis of marital status, sex, and pregnancy.

In addition, the Fair Work Act 2009 makes it unlawful for an employer to discriminate against an employee based on their marital status, sex, pregnancy, and family or carer's responsibilities. This Act provides university employees with a legal right to request workplace flexibility. This overarching legislation gives staff the 'right to request' workplace flexibility in hours of work (e.g. changes to start and finish times) and in patterns of work (e.g. job sharing). Requests for workplace flexibility are considered in this context.

## SCU industrial instruments

Each request from staff for workplace flexibility is considered on a case by case basis. The degree of flexibility available will depend on university policy, the needs of the work area in which the staff member is employed, and the terms and conditions of the contract of employment. Requests can be formal and informal.

At Southern Cross University workplace flexibility is covered under the collective staff [Enterprise Agreement 2018](#) and [University policies and procedures](#) which incorporate legislative requirements and provide flexibility and generous leave arrangements as options to assist employees in configuring their work and personal lives.

Academic work by its nature, is based on a flexible and individually negotiated framework encompassing scholarship and service. For professional staff, the University has a guide for [flexitime arrangements](#).

### Informal requests for workplace flexibility (local managerial discretion)

The University understands that any staff member may seek flexibility for reasons which are broader than the areas covered by the legislation. This could be a one-off situation, occasional variations or requests on short notice.

Examples may include staff seeking time to engage in community service, time for elite sport, to undertake a course not offered at night/weekends, to attend a special event, to reduce fatigue of a long commute or to have uninterrupted blocks of time to work on a project or complete a report off site.

Supervisors have some discretion and will work in good faith with staff to negotiate informal flexible arrangements which are of mutual benefit to the staff member and the objectives of the work unit.

### Formal requests for workplace flexibility

**Eligibility: Which staff members have a right to request formal flexible arrangements?**

To be eligible, staff need to have worked for Southern Cross University for at least 12 months on a full-time or part-time basis.

Long term casual employees who have a reasonable expectation of further employment are also eligible. Long term casual employees would usually have been employed on a regular and systematic basis for at least 12 months.

Staff have a right to request flexible arrangements when they are:

- a parent, or have responsibility for the care of a child who is of school age or younger;
- a carer (within the meaning of the Carer Recognition Act 2010);
- a person with a disability;
- 55 years or older; or
- experiencing violence from a member of the employee's family or providing care or support to a member of their immediate family or household who requires care or support because they are experiencing violence from the member's family.

**Are requests granted automatically?**

By law, employers must seriously consider a formal request for flexible arrangements. Refusal of a request can only be on 'reasonable business grounds'. These include (but are not limited to):

- The new working arrangements requested by the employee would be too costly for the employer.
- There is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested by the employee.

- 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.
- The new working arrangements requested by the employee would be likely to result in significant loss of efficiency or productivity.
- The new working arrangements requested by the employee would be likely to have a significant negative impact on customer service.

### Types of workplace flexibility available at Southern Cross University

| Variations       | Examples   |
|------------------|--|
| HOURS OF WORK    | <ul style="list-style-type: none"> <li>- temporarily reducing working hours / job sharing*</li> <li>- taking additional annual leave in lieu of receiving leave loading*</li> <li>- working flexitime* (flexible start/ finish times) with accrual of credit and debits</li> <li>- taking accrued days off in different ways such as part-days</li> </ul>  |
| PATTERNS OF WORK | <ul style="list-style-type: none"> <li>- accessing various types of leave: annual, long service, parental, carers, special</li> <li>- negotiating fixed work patterns and rotational work patterns of work</li> <li>- accessing annual leave in single or part-days</li> <li>- having a phased return to work after parental leave (including 9 paid hours allowance in child's first 12 months)*</li> <li>- taking long service leave on full or half pay</li> <li>- accessing leave without pay</li> </ul> |
| LOCATION OF WORK | <ul style="list-style-type: none"> <li>- using video or teleconferencing instead of face-to-face</li> <li>- working from other campuses / SCU locations</li> <li>- in limited circumstances, working remotely or from home</li> </ul>  |

#### \*Notes on Variations

##### Temporarily reducing working hours / job sharing

At Southern Cross University, temporary reductions to working hours and job sharing can be formally requested. The Enterprise Agreement 2018 Clause 114 states: An employee has the right to request flexible working arrangements in accordance with the Fair Work Act 2009 including, but not limited to, a temporary reduction in the number of hours worked per week, or job-sharing.

Reducing working hours is a frequently requested workplace flexibility option at the University. Part-time employees have continuity of employment and accrue benefits including leave provisions on a pro-rata basis (annual, personal, parental and long service).

A shift from full to part-time work may be achieved through reducing hours over a shorter or medium timeframe, used as a phased 'return to work' after extended leave, or in the transition to retirement.

Job sharing is a voluntary arrangement in which one job is shared between part-time employees. Job sharing may be used to attract and recruit staff with unique skills; to increase the skill-sets of a work team and/or assist employees who wish to reduce their hours.

Staff who job-share may be employed on a part-time basis; or be full-time staff who have permanently or temporarily reduced their appointment by formal request.

[Flexitime](#) is a system of attendance whereby employees (either full-time or part-time), in negotiation with their supervisor, agree on start and finish times usually between the hours of 7am and 7pm. (Grounds and outdoor staff observe a 12 hour span of hours to be worked between 6am and 6pm).

The normal hours of attendance at Southern Cross University when employees are required to be on duty (unless on approved leave) are between 9.30am and 3.30pm Monday to Friday inclusive (Staff Enterprise Agreement 2018 Clause 503).

As with all workplace flexibility arrangements, flexitime arrangements must meet the requirements of the work unit. There are provisions within the Enterprise Agreement for carrying over time credits and debits for staff using flexitime.

#### Additional annual leave in lieu of leave loading

As an alternative to receiving payment of leave loading, employees may elect to receive an additional 3.5 days of annual leave (pro-rata). These 3.5 days are non-cumulative and must be taken prior to the end of the year in which the payment is due.

#### Phased return to work following parental leave

The SCU Enterprise Agreement 2018 Clause 167 states: to encourage and facilitate employees to return to work, employees who return to work on a full-time basis within the child's first year will also be entitled to up to nine hours paid leave per week, or alternative arrangements for equivalent amounts of time (as approved by the Head of Work Unit) on a fortnightly basis, to be taken up until the child's first birthday.

## SECTION 2 PRINCIPLES FOR NEGOTIATING WORKPLACE FLEXIBILITY

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### Principle 1 - Negotiation

Workplace flexibility cannot be assumed. It is to be negotiated between a staff member and their supervisor, with the following considerations:

- Are the proposed arrangements allowed under the SCU Enterprise Agreement and employment contract?
- Will the proposed arrangement provide the appropriate work/life balance the staff member seeks?

- What might be the impact of the proposed arrangement on:
  - Their role (including career development, access to training, salary, superannuation, entitlements)?
  - The requirements of the other work team members?
  - The work unit?
- How could the proposed arrangement be managed to achieve continuity of work and workplace responsibilities?
- What are the possible benefits of the proposed arrangement to all stakeholders (those impacted by the change)?
- What is the timeframe for the proposed arrangement?

**Best practice tip:** *Employers don't have to choose between accepting or rejecting a request in full. Once a request has been made, employers and employees can come to a negotiated arrangement that balances both of their needs.*

## Principle 2 - Mutual Respect and Trust

Employees working flexibly are entitled to the same University support as full-time employees working a 9am-5pm day.

The principles of good job design should apply to all jobs, irrespective of flexible arrangements. The agreed performance outcomes should be designed to be commensurate with remuneration, with varied tasks and opportunities for skill development.

Staff who work flexibly should, as for all staff, be regarded as available and interested in opportunities to perform higher duties or participate in development. The staff member may decline if a change of work pattern is involved, but it should not be assumed that the employee will not be available or interested because they are working flexibly.

## Principle 3 - Timeliness

A formal request from the staff member must be made in writing and must set out details of the changes sought and reasons for these changes. Employers must give employees a written response to the request within 21 days.

## Principle 4 - Due Process

The employer must respond in writing (email) to formal requests and must state whether they grant or refuse the request. They may refuse the request only on reasonable business grounds and must include the reasons for the refusal. It is a contravention of the *Fair Work Act 2009* if an employer does not respond according to these requirements.

## Principle 5 - Communication

Both the supervisor and the staff member have an onus to ensure that the staff member working flexibly continues to be informed of relevant University-wide and workplace matters. Communications such as email, and the capacity to contact the staff member should not be impeded or interrupted.

Ensuring the staff member's continued participation in work unit meetings may require creative solutions, especially where there are a number of staff working flexibly.

Solutions may include: changing meeting days or times; streaming or Skyping meetings, redesigning communication channels for example, nominating a colleague to discuss important matters with absent employees, using IT applications (blogs/chats etc) to discuss or disseminate information or asking employees (with good notice) to attend extraordinary meetings.

## Principle 6 - Reviewing the Arrangement

As part of the negotiation and before commencing agreed workplace flexibility arrangements, it is important for the supervisor and the staff member to agree on the trial timeframe, a schedule of monitoring and a review method and date.

This allows discussion to assess whether the initial arrangement is working for both the staff member and the supervisor and whether modifications are required. Other employees may also need to be consulted where appropriate.

Individual and organisational needs change and unexpected situations may arise which require a re-negotiation of the arrangement, for example, accommodating team leave or illness. One mechanism for formally reviewing workplace flexibility arrangements is during the employee's annual Performance Review and Planning (PRP) process.

## Principle 7 - Ability to Appeal or Challenge a Refusal of Request

There is no requirement for an employer to agree to a request.

The Fair Work Act 2009 empowers the Fair Work Commission or some other person to deal with a dispute, although this generally only happens if the parties to the dispute have agreed for that to occur (in an employment contract, enterprise agreement or other written agreement).

The Fair Work Act 2009 also allows State and Territory laws to continue to apply to employees where they provide more beneficial entitlements in relation to flexible work arrangements.

An employee may also have remedies under relevant discrimination legislation, including the discrimination provisions under the Fair Work Act 2009, if an employee considers they have been discriminated against by the employer's handling or refusal of their request.

Part 17 of the SCU Enterprise Agreement 2018 sets out the requirements for making formal written individual flexibility arrangements.



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| <p>At the meeting:</p> <ul style="list-style-type: none"> <li>• Present a considered case which identifies benefits for all stakeholders (the team/work unit). <input type="checkbox"/></li> <li>• Be prepared to discuss options – so there is ‘give and take’ and room for negotiation. <input type="checkbox"/></li> <li>• Understand that your supervisor is responsible for the bigger picture and there may be aspects you had not considered that they need to accommodate. <input type="checkbox"/></li> <li>• Be prepared to trial an option for a period of time. <input type="checkbox"/></li> </ul> |  |
| <p>At the end of the meeting, ask for a written agreement and for it to include:</p> <ul style="list-style-type: none"> <li>• Agreement or refusal of the request; <input type="checkbox"/></li> <li>• The ‘reasonable business grounds’ upon which a refusal is made; OR <input type="checkbox"/></li> <li>• Agreed details of the new flexible arrangement; AND <input type="checkbox"/></li> <li>• A time frame, monitoring schedule, agreed evaluation method, review date for the arrangement <input type="checkbox"/></li> </ul>  |  |

| Checklist for SUPERVISORS considering requests for workplace flexibility  |  |
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| <p>Your team member sends you a written request for flexible work arrangements and asks to meet with you to discuss workplace flexibility. You should:</p> <ul style="list-style-type: none"> <li>• Take the request seriously, be receptive and say you are open to discussing possibilities.</li> <li>• Ensure you have time to prepare before a meeting.</li> <li>• Allow enough time for the discussion (1/2 – 1 hour) at a time which suits you both.</li> </ul>   | <input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/>   |
| <p>Refer to the following documents to be aware of your responsibilities under current legislation and available options at SCU (consult your <a href="#">HR Consultant</a> or the <a href="#">Equity and Diversity Office</a> if you are unsure). You have 21 days to respond to their written request and can only refuse certain requests on 'reasonable business grounds'.</p> <ul style="list-style-type: none"> <li>• <a href="#">Staff Enterprise Agreement 2018</a></li> <li>• <a href="#">SCU Policy Library</a></li> </ul>  | <input type="checkbox"/><br><br><input type="checkbox"/>   |
| <p><b>Preparatory Questions</b></p> <p>In preparation for the meeting with your staff member, consider the following questions (see Section 2 Principle 1 Negotiation) to consider the implications of changes for all stakeholders and the work unit:</p> <ul style="list-style-type: none"> <li>• Are the proposed arrangements they have identified, allowed under the SCU Enterprise Agreement and their employment contract?</li> <li>• Will the proposed arrangement provide the appropriate work/life balance they are seeking?</li> <li>• What might be the impact of the proposed arrangement on: <ul style="list-style-type: none"> <li>- Their role (including your career development, access to training, salary, superannuation, entitlements)?</li> <li>- The requirements of the other work team members?</li> <li>- The work unit objectives?</li> </ul> </li> <li>• How might you need to manage the proposed arrangement in order to achieve continuity of work and work unit deliverables?</li> <li>• What are the possible benefits of the proposed arrangement to all stakeholders (those impacted by the change)?</li> <li>• What could be a suitable timeframe, monitoring and evaluation method, review date for the arrangement?</li> </ul> | <input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/><br><br><input type="checkbox"/> |
| <p>Understand that the personal circumstances of employees differ and be empathic to the possible tensions they may experience between working life and personal commitments.</p>   | <input type="checkbox"/>   |
| <p>Consider the cost of NOT offering workplace flexibility - the competing demands of home and work which may lead to increased stress, lower morale and possible turnover of staff.</p>  | <input type="checkbox"/>   |



## SECTION 4 CONTACTS

Southern Cross University

[HR Services](#)

[Equity and Diversity Office](#)

Fair Work Commission

[www.fwc.gov.au](http://www.fwc.gov.au)

Fair Work Online:

[www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline:

13 13 94

Australian Human Rights Commission [www.humanrights.gov.au](http://www.humanrights.gov.au)

(02) 9284 9600

NSW Anti-Discrimination Board

[www.antidiscrimination.justice.nsw.gov.au](http://www.antidiscrimination.justice.nsw.gov.au)

(02) 9268 5544