

## **Attachment 1 – Public Service Association of South Australia Inc (PSA SA) submissions in response to the Bill – 11 February 2026**

### **Inquiry into the Fair Work Amendment (Right to Work from Home) Bill 2025**

The majority of the PSA SA membership is covered by the *Fair Work Act 1994* (SA), pursuant to which there are no codified entitlements to flexible working arrangements and working from home. Rather, any entitlement to a flexible working arrangement is derived from the relevant enterprise agreement, and any ability to request working from home is covered by policy.

The policy varies from agency to agency, informed by the South Australian Commissioner for Public Sector Employment's Determination 8: Working Flexibly (Determination 8).

Determination 8 provides that any flexibility request from an employee (including working from home) that is declined due to organisation imperatives, the decision maker is required to advise the applicant of reasons for rejecting the request. However, in practice, agency policies are consistently cited so as to emphasise the discretion of the employer, and employers resist providing detail in the reasons for their decision. The PSA SA has therefore acted for members where efforts to reach an agreed position on a flexibility arrangement or working from home request are frustrated due to the broad nature of the employer's discretion and there being no obligation for an employer to consider what it can accommodate. It is with this insight that the PSA SA offers the observations outlined below.

#### **Reasons for decision**

It is promising that the *Fair Work Amendment (Right to Work from Home) Bill 2025* (Bill) proposes in section 65A(3)(d)(i) to create a higher threshold for refusing a working from home request, by limiting the grounds for a refusal to that of "*the requested change in working arrangements would make the performance of the inherent requirements of the employee's employment duties impractical or impossible*".

As mentioned above, Determination 8 provides that any flexibility request from an employee (including working from home) that is declined due to organisation imperatives, the decision maker is required to advise the applicant of reasons for rejecting the request. In the PSA SA's experience, these refusals are often based on broad and nebulous grounds, such as "operational requirements", "team morale", and "collaborative opportunities". In the absence of any embellishment, these grounds allow an employing agency to refuse a reasonable request and refuse any engagement with the employee or its association representative in seeking to understand the basis for the refusal and amend a request so as to address the employer's concerns. It is the PSA SA's view therefore that there is a good case for additional provisions to be included with the Bill specifying that these broad grounds are insufficient to satisfy the "impracticable or impossible" grounds, and that detailed reasons for the refusal relating specifically to the applicant employee must be provided.

The positive duty introduced onto the employer pursuant to section 65A(4B) of the Bill that an employer must consider any reasonable adjustments the employer could make to accommodate the employee's request, is a good mechanism to ensure that employers are able to be held to account in their decision-making on individual matters.

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### **Existing Arrangements – Change management and protection**

Section 65A of the *Fair Work Act 2009 (Cth)* provides for a clear process and timeframe in considering requests to work from home.

One area that may benefit from further definition is in respect of a minimum timeframe which an employer must allow for to make any proposed changes to an existing working from home arrangement. In an instance in which the employer has agreed to a request to work from home, but workplace circumstances change such that it no longer represents an arrangement the employer can accommodate, workers would benefit from a prescription as to timeframes for the reconsideration or variation of such an arrangement. Workers' life arrangements including those for childcare, family commitments, volunteering etc can require a significant amount of time to re-organise and a change in the workplace should not place workers at a disadvantage in managing their personal arrangements.

In the PSA SA's experience, there are members who have successfully negotiated and implemented arrangements in which they work more than two days per week at home or remotely. For workers who have these arrangements already in place, it would be a helpful and protective provision for phrasing within the Bill to acknowledge that arrangements of greater than 2 days a week should be maintained unless good reasons for reducing it exist and are spelled out.

Further, to prevent an undue narrowing of requests the employer can consider, it would be helpful for provisions that make it clear that any requests for new working from home arrangements of greater than two days per week should also be considered under the same framework. Such provisions could include phrasing to indicate that that the "guarantee" only applies to two days a week but does not preclude an employer from approving a more generous arrangement.

### **Performance Concerns**

The PSA SA notes that it has experienced situations in which an employer will rely upon "performance management" as a ground to refuse or withdraw a working from home arrangement. Oftentimes, these concerns have not been articulated or raised until such time as a flexible working arrangement is sought.

The way the Bill reads at present suggests that an employer could rely on spurious "performance concerns" as a basis for an argument that working from home would make the performance of the inherent requirements of the employee's employment duties impractical or impossible, and therefore refuse the request. Furthermore, working from home arrangements could be leveraged by the employer to coerce compliance from an employee, exacerbating micromanagement and psychosocial hazards within a workplace. Any suggestion by employer groups that performance management should provide grounds for an exemption to the presumption in favour of approval, should be strongly resisted.

In light of these concerns, it is the PSA's view that the Bill has room to provide for some tighter controls around how issues of performance intersect with working from home rights. One

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approach that may be considered is a presumption against performance concerns forming sufficient grounds to satisfy the statutory test to refuse a request in the event such concerns have not been formally raised/escalated until a work from home request has been submitted.