



# DECISION

*Fair Work Act 2009*

s.65B - Application for a dispute about requests for flexible work arrangements

**Charles Gregory Gregory**

v

**Maxxia Pty Ltd**

(C2023/5280)

COMMISSIONER PLATT

ADELAIDE, 16 NOVEMBER 2023

*Application to deal with a dispute about the right to request for flexible working arrangements*

[1] On 1 September 2023, Mr Charles Gregory (the Applicant) lodged an application for the Commission to deal with a dispute under s 65B of the *Fair Work Act 2009* (the Act) concerning a request for a flexible work arrangement with his employer, Maxxia Pty Ltd (the Respondent or the Employer).

[2] On 6 September 2023 a conciliation conference was conducted but the matter was unable to be resolved.

[3] Directions were issued requiring each party to submit an outline of their submissions, witness statements and material to be relied upon (including the provision of medical evidence in respect of the Applicant). This material was compiled into a digital hearing book and distributed to the parties prior to the hearing.

[4] The hearing was conducted in person on 24 October 2023.

[5] The Applicant was self-represented, the Respondent was represented by Mr Toni Dimovski.

[6] The digital hearing book was received into evidence. The Applicant and Mr Adam Henderson (Team Leader) gave evidence.

[7] For the reasons which follow, at the conclusion of the hearing I determined that the first component of Mr Gregory's application was not validly made under s 65B(3) and, accordingly, I have no jurisdiction to arbitrate that portion of the dispute under s 65B(4)(b) and s 65C.

[8] In respect of the second component, I found that the Employer discussed the request with Mr Gregory, genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the circumstances, did not

reach an agreement; that the Employer had regard to the consequences of the refusal for the employee; and the refusal was on reasonable business grounds.

### **The factual matrix**

[9] The Respondent provides salary packaging advice and assistance to employers. The Applicant's current role requires him to provide advice and manage cases. I note that he was recently seconded as a Support Coach to the Coaching and Quality Assurance Team.

[10] Mr Gregory's full time contract of employment requires him to attend the Respondent's premises to perform work. I accept that for much of Mr Gregory's service, the COVID-19 pandemic intervened and in that period he worked from home. However, the worst of the pandemic appears to have passed and the Respondent is now within its rights to require its employees to return to the office in accordance with their contracts of employment.

[11] The Respondent has a Hybrid Working Guidelines policy that requires its employees to work at least 40% of their hours from the office.

[12] On 17 August 2023, Mr Gregory submitted his flexible working arrangement application form to the Respondent requesting that he work 100% of his full-time hours from home on an ongoing basis. The grounds for the application were:

- Mr Gregory is the parent of a child who is of school age or younger and is seeking a custody arrangement such that he cares for the child every second week. At the time of the hearing (by way of an informal agreement) Mr Gregory cared for his child for one day every two weeks.

[13] The Applicant attached a letter from a Dr Hetanyi with the request. The letter advised that the Applicant suffered from inflammatory bowel disease and supported the request for flexible work arrangements. The written application did not reference the Applicant's medical condition as a basis for the request. It was however clear that Mr Gregory's preference was to work exclusively from home.

[14] Mr Henderson considered the request and considered the following factors:

- a. Their clients have high expectations of service delivery and productivity, they are the sole provider of salary packaging services for the South Australian Government, and there is an expectation 99% of calls are answered within 3 minutes, and emails within 2 business days.
- b. There are significant financial penalties under client contracts if Maxxia do not meet their contractual obligations.
- c. Mr Gregory's daily productivity was approximately 50% at the time he recommenced working in my team, this was below the target of 85%.
- d. Mr Gregory was stepping back into a specialist role, which required different skills compared to the skills required for his secondment.

- e. Mr Henderson had already scheduled fortnightly support sessions (on Teams) with Mr Gregory to assist him to regain the skillset he required for his role and increase his productivity.
- f. Errors can have significant impacts for an end user's access to money in real time (this is because an error can cause a larger salary sacrifice deduction than expected leaving an end user client with significantly reduced salary).
- g. The existing support put in place for Mr Gregory was not achieving an increase in productivity, and so it would be advantageous to observe and support Mr Gregory in the office.
- h. Someone with the tenure of Mr Gregory was valuable and needed to contribute to team culture, training and discussions, for the benefit of employees with lessor tenure and this can be done more effectively from the office.
- i. Mr Henderson wanted to remain fair and consistent across the team with the hybrid working expectations, and only allow exceptions where genuinely required.
- j. Mr Henderson had noticed that Mr Gregory was struggling mentally, and Mr Henderson felt that he was not in a position to support him properly as a team leader while Mr Gregory worked from home.

[15] On 18 August 2023, the Respondent responded to the request, proposing to allow Mr Gregory to work 20% in the office until the end of September, and then 40% in the office from 2 October 2023; and allocate his office days to the week that he would not have custody of his son.

[16] On 23 August 2023 the Applicant, Mr Hendersen and others met to discuss the request. The Applicant rejected the offer and sought to work 100% from home. The Applicant sought that the Respondent consider further medical evidence.

[17] On 28 August 2023 the Applicant provided an email from Dr Hetanyi which stated that Applicant had a situational crisis and inflammatory bowel disease and requested that his flexible workplace request be granted whilst he worked through his health issues. Mr Gregory advised that he was not undertaking any treatment plan in respect of his medical issues.

[18] Later that day the Employer advised in writing that it would not agree to Mr Gregory working 100% from home.

[19] The Respondent contends they have discussed the request, genuinely tried to reach agreement about making changes to accommodate the Applicant's medical condition and parental responsibilities and have had regard to the consequences of refusal.<sup>1</sup>

[20] Given there was no agreement reached, the Respondent submits the application was refused on reasonable business grounds pursuant to s 65A(3)(d).

[21] At the commencement of the hearing, the Respondent confirmed its position that in the event that Mr Gregory's access to his son increased, it would allow him to work from home for the week he had access and vary his start, finish and meal times to allow him to drop off and collect his son from school.

[22] Mr Gregory gave me the clear impression that he does not want to return to the office. Whilst I accept he has a sound basis for the periods when he would have care of his child, his position with respect to the remaining week was poor. The Respondent advised that it was prepared to locate the Applicants work desk closer to the office toilet and that he was one of only two men on the floor. The Applicant gave me the impression that he did not want to use the office toilet, this was somewhat perplexing given his preparedness to use service station toilets if needed whilst driving around Adelaide.

## LEGISLATION

### Legislative framework

[23] Division 4 of Part 2-2 of the Act, *The National Employment Standards* is concerned with 'Requests for flexible working arrangements'. Division 4 has been substantially amended a number of times since the enactment of the Act in 2009, most recently by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Cth) (SJBPA Act).

[24] Section 65 of the Act in its current form sets out the circumstances in which an employee may request for a change in working arrangements. It provides:

#### **65 Requests for flexible working arrangements**

*Employee may request change in working arrangements*

(1) If:

- (a) any of the circumstances referred to in subsection (1A) apply to an employee; and
- (b) the employee would like to change his or her working arrangements because of those circumstances;

then the employee may request the employer for a change in working arrangements relating to those circumstances.

Note: Examples of changes in working arrangements include changes in hours of work, changes in patterns of work and changes in location of work.

(1A) The following are the circumstances:

- (aa) the employee is pregnant;
- (a) the employee is the parent, or has responsibility for the care, of a child who is of school age or younger;
- (b) the employee is a carer (within the meaning of the *Carer Recognition Act 2010*);
- (c) the employee has a disability;
- (d) the employee is 55 or older;
- (e) the employee is experiencing family and domestic violence;

- (f) the employee provides care or support to a member of the employee's immediate family, or a member of the employee's household, who requires care or support because the member is experiencing family and domestic violence.

(1B) To avoid doubt, and without limiting subsection (1), an employee who:

- (a) is a parent, or has responsibility for the care, of a child; and
- (b) is returning to work after taking leave in relation to the birth or adoption of the child;

may request to work part-time to assist the employee to care for the child.

(2) The employee is not entitled to make the request unless:

- (a) for an employee other than a casual employee—the employee has completed at least 12 months of continuous service with the employer immediately before making the request; or
- (b) for a casual employee—the employee:
  - (i) is, immediately before making the request, a regular casual employee of the employer who has been employed on that basis for a sequence of periods of employment during a period of at least 12 months; and
  - (ii) has a reasonable expectation of continuing employment by the employer on a regular and systematic basis.

(2A) For the purposes of applying paragraph (2)(a) in relation to an employee who has had their employment converted under Division 4A of Part 2-2, any period for which the employee was a regular casual employee of the employer is taken to be continuous service for the purposes of that paragraph.

#### *Formal requirements*

(3) The request must:

- (a) be in writing; and
- (b) set out details of the change sought and of the reasons for the change.

**[25]** In its original form upon the enactment of the Act in 2009, s 65(1) provided for the right to make a request for flexible working arrangements only where the employee was a parent of or had the responsibility for the care of a child who was under school age or was under 18 and had a disability. Sections 65(1), (1A) and (1B) were introduced by the *Fair Work Amendment Act 2013* (Cth) in substantially their current form (except for s 65(1A)(aa)).<sup>2</sup> The Statement of Compatibility with Human Rights in the Explanatory Memorandum for the *Fair Work Amendment Bill 2013* (2013 EM) stated that:

Part 3 of Schedule 1 to the Bill extends the right to request a change in working arrangements to a broader category of persons, including to employees with caring responsibilities, parents with children that are school age or younger, employees with a disability, those who are mature age, as well as to employees who are experiencing violence from a family member or are providing care and support to a member of their immediate family or a member of their household as a result of family violence.

...

Extending the right to request a change in working conditions to this additional range of employees recognises the interests of these particular groups and further enhances the assistance provided to them.

...

These amendments reinforce existing protections against discrimination contained in the FW Act.

[26] In relation to s 65(1), the 2013 EM said (at [27]-[28])

New subsection 65(1) provides that if an employee would like to change his or her working arrangements because of any of the circumstances specified in new subsection 65(1A), then the employee is entitled to request a change in his or her working arrangements. The terms of new subsection 65(1) make clear that the reason the employee would like to change their working arrangement is because of the particular circumstances of the employee. That is, there must be a nexus between the request and the employee's particular circumstances.

These provisions are not intended to limit the timing or nature of discussions about flexible working arrangements generally. For example, where an employee can foresee that he or she may need to assume caring responsibilities in the short to medium term, it is anticipated that the employee could commence discussions ahead of assuming those responsibilities to 'flag' that a request in accordance with these provisions may be coming, and to give the parties an opportunity to explore suitable alternative arrangements that accommodate the needs of both parties. Consistent with the current operation of the right to request provisions and the intent of these provisions to promote discussion between employers and employees about flexible working arrangements, there is no evidence requirement attaching to the request. It would be expected that documentation relating to the particular circumstances of an employee would be addressed in discussions between employers and employees.

(underlining added)

[27] Specifically in respect of the inclusion of 'the employee has a disability' in s 65(1A)(c), the 2013 EM stated (at [35]):

'Disability' in new paragraph 65(1A)(c) is not defined and has its ordinary meaning.

[28] I note that the Oxford Dictionary describes a disability as a 'physical or mental condition that limits a person's movements, senses, or activities; (as a mass noun) the fact or state of having such a condition.'<sup>3</sup>

[29] Section 65A, which was added to the Act by the SJBPA Act, concerns the obligations of an employer which arise when an employee makes a request under s 65(1). Section 65A provides:

#### **65A Responding to requests for flexible working arrangements**

##### *Responding to the request*

- (1) If, under subsection 65(1), an employee requests an employer for a change in working arrangements relating to circumstances that apply to the employee, the employer must give the employee a written response to the request within 21 days.
- (2) The response must:

- (a) state that the employer grants the request; or
  - (b) if, following discussion between the employer and the employee, the employer and the employee agree to a change to the employee's working arrangements that differs from that set out in the request—set out the agreed change; or
  - (c) subject to subsection (3)—state that the employer refuses the request and include the matters required by subsection (6).
- (3) The employer may refuse the request only if:
- (a) the employer has:
    - (i) discussed the request with the employee; and
    - (ii) genuinely tried to reach an agreement with the employee about making changes to the employee's working arrangements to accommodate the circumstances mentioned in subsection (1); and
  - (b) the employer and the employee have not reached such an agreement; and
  - (c) the employer has had regard to the consequences of the refusal for the employee; and
  - (d) the refusal is on reasonable business grounds.

Note: An employer's grounds for refusing a request may be taken to be reasonable business grounds, or not to be reasonable business grounds, in certain circumstances: see subsection 65C(5).

- (4) To avoid doubt, subparagraph (3)(a)(ii) does not require the employer to agree to a change to the employee's working arrangements if the employer would have reasonable business grounds for refusing a request for the change.

*Reasonable business grounds for refusing requests*

- (5) Without limiting what are reasonable business grounds for the purposes of paragraph (3)(d) and subsection (4), reasonable business grounds for refusing a request include the following:
- (a) that the new working arrangements requested would be too costly for the employer;
  - (b) that there is no capacity to change the working arrangements of other employees to accommodate the new working arrangements requested;
  - (c) that it would be impractical to change the working arrangements of other employees, or recruit new employees, to accommodate the new working arrangements requested;
  - (d) that the new working arrangements requested would be likely to result in a significant loss in efficiency or productivity;
  - (e) that the new working arrangements requested would be likely to have a significant negative impact on customer service.

Note: specific circumstances of the employer, including the nature and size of the enterprise carried on by the employer, are relevant to whether the employer has reasonable business grounds for refusing a request for the purposes of paragraph (3)(d) and subsection (4). For example, if the employer has only a small number of employees, there may be no capacity to change the working

arrangements of other employees to accommodate the request (see paragraph (5)(b)).

*Employer must explain grounds for refusal*

- (6) If the employer refuses the request, the written response under subsection (1) must:
- (a) include details of the reasons for the refusal; and
  - (b) without limiting paragraph (a) of this subsection:
    - (i) set out the employer's particular business grounds for refusing the request; and
    - (ii) explain how those grounds apply to the request; and
  - (c) either:
    - (i) set out the changes (other than the requested change) in the employee's working arrangements that would accommodate, to any extent, the circumstances mentioned in subsection (1) and that the employer would be willing to make; or
    - (ii) state that there are no such changes; and
  - (d) set out the effect of sections 65B and 65C.

*Genuinely trying to reach an agreement*

- (7) This section does not affect, and is not affected by, the meaning of the expression 'genuinely trying to reach an agreement', or any variant of the expression, as used elsewhere in this Act.

**[30]** Sections 65B and 65C of the Act, also introduced by the SJBPA Act, empower the Commission to deal with disputes arising from an employer's refusal of, or failure to reply within 21 days to an employee's request made under s 65(1):

**65B Disputes about the operation of this Division**

*Application of this section*

- (1) This section applies to a dispute between an employer and an employee about the operation of this Division if:
- (a) the dispute relates to a request by the employee to the employer under subsection 65(1) for a change in working arrangements relating to circumstances that apply to the employee; and
  - (b) either:
    - (i) the employer has refused the request; or
    - (ii) 21 days have passed since the employee made the request, and the employer has not given the employee a written response to the request under section 65A.

Note 1: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

Note 2: Subsection 55(4) permits inclusion of terms that are ancillary or incidental to, or that supplement, the National Employment Standards. However, a term of a modern award or an enterprise agreement has no effect to the extent it contravenes section 55 (see section 56).

### *Resolving disputes*

- (2) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.

### *FWC may deal with disputes*

- (3) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (4) If a dispute is referred under subsection (3):
  - (a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and
  - (b) the FWC may deal with the dispute by arbitration in accordance with section 65C.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate. The FWC commonly deals with disputes by conciliation. The FWC may also deal with the dispute by mediation, making a recommendation or expressing an opinion (see subsection 595(2)).

### *Representatives*

- (5) The employer or employee may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of:
  - (a) resolving the dispute; or
  - (b) the FWC dealing with the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

## **65C Arbitration**

- (1) For the purposes of paragraph 65B(4)(b), the FWC may deal with the dispute by arbitration by making any of the following orders:
  - (a) if the employer has not given the employee a written response to the request under section 65A—an order that the employer be taken to have refused the request;
  - (b) if the employer refused the request:
    - (i) an order that it would be appropriate for the grounds on which the employer refused the request to be taken to have been reasonable business grounds; or

- (ii) an order that it would be appropriate for the grounds on which the employer refused the request to be taken not to have been reasonable business grounds;
- (e) if the FWC is satisfied that the employer has not responded, or has not responded adequately, to the employee's request under section 65A—an order that the employer take such further steps as the FWC considers appropriate, having regard to the matters in section 65A;
- (f) subject to subsection (3) of this section:
  - (i) an order that the employer grant the request; or
  - (ii) an order that the employer make specified changes (other than the requested changes) in the employee's working arrangements to accommodate, to any extent, the circumstances mentioned in paragraph 65B(1)(a).

Note: An order by the FWC under paragraph (e) could, for example, require the employer to give a response, or further response, to the employee's request, and could set out matters that must be included in the response or further response.

- (2) In making an order under subsection (1), the FWC must take into account fairness between the employer and the employee.
- (2A) The FWC must not make an order under paragraph (1)(e) or (f) that would be inconsistent with:
  - (a) a provision of this Act; or
  - (b) a term of a fair work instrument (other than an order made under that paragraph) that, immediately before the order is made, applies to the employer and employee.
- (3) The FWC may make an order under paragraph (1)(f) only if the FWC is satisfied that there is no reasonable prospect of the dispute being resolved without the making of such an order.
- (4) If the FWC makes an order under paragraph (1)(a), the employer is taken to have refused the request.
- (5) If the FWC makes an order under paragraph (1)(b), the grounds on which the employer refuses the request are taken:
  - (a) for an order made under subparagraph (1)(b)(i)—to be reasonable business grounds; or
  - (b) for an order made under subparagraph (1)(b)(ii)—not to be reasonable business grounds.

*Contravening an order under subsection (1)*

- (6) A person must not contravene a term of an order made under subsection (1).

Note: This subsection is a civil remedy provision (see Part 4-1).

**[31]** Schedule 1 to the Act sets out transitional provisions applying to amendments to the FW Act. Item 64 of Schedule 1 provides that the amendments in, relevantly, Division 3 of Part 11 of Schedule 1 to the SJBP Act (which added ss 65A, 65B and 65C to the FW Act) 'apply in

relation to a request made under subsection 65(1) of [the FW Act] on or after the commencement of that Part'. Item 17 of s 2(1) of the SJPB Act provides that the Part 11 amendments commenced on 6 June 2023.

### **Jurisdictional prerequisites for arbitration**

[32] In *Jordan Quirke v BSR Australia Ltd*<sup>4</sup> a Full Bench of the Commission set out the jurisdictional pre-requisites for applications of this type. The Full Bench stated:

“Section 65B(1) relevantly provides that s 65B applies to a dispute between an employer and an employee if, first, the dispute relates to ‘a request by the employee to the employer under subsection 65(1) for a change in working arrangements relating to circumstances that apply to the employee’ and, second, the employer has either refused the request or has not given the employee a written response under s 65A within 21 days. Thus, to the extent that s 65B(3) permits a dispute to be referred to the Commission and s 65B(4) empowers the Commission to deal with the dispute (including, if necessary, by arbitration under s 65C), the dispute must be of the type referred to in s 65B(1). Absent the existence of such a dispute, the Commission lacks jurisdiction under s 65B(4) and cannot engage in arbitration under ss 65B(4)(b) and 65C. Because, as explained, the first predicate for such a dispute is that it must relate to a request by the employee under s 65A(1), then the Commission’s jurisdiction is dependent on a request of that nature having been made.

There are five discernible requirements in s 65 that must be satisfied in order for a request under s 65(1) to have been validly made. The first two requirements are contained in s 65(1) itself. *First*, s 65(1)(a) requires that ‘any’ — that is, at least one — of the circumstances in s 65(1A) must *apply* to the employee. The use of ‘apply’ in the present tense connotes that the relevant circumstance must, as a matter of fact, exist (rather than being anticipated or the subject of anticipatory discussions) in respect of the employee at the time the request is made. It follows that, where the Commission is asked to arbitrate pursuant to s 65B(4)(b), it must be able to be satisfied that one of the circumstances in s 65(1A) applied to the relevant employee at the time of the employee’s request for flexible working arrangements.

*Second*, the employee’s desire for changed working arrangements must be ‘because of’ the relevant circumstance in s 65(1A) (s 65(1)(b)), and the request for a change in working arrangements must ‘relate to’ the relevant circumstance. This embodies the requirement for a ‘nexus’ between the request and the relevant circumstance referred to in the 2013 EM.

The *third* requirement is that contained in s 65(2), namely that the employee has a minimum period of service which, in the case of a non-casual employee, is 12 months of continuous service immediately before making the request.

The final two requirements are the ‘formal requirements’ in s 65(3). The *fourth* requirement, in s 65(3)(a), is that the request must be in writing. The *fifth* requirement, in s 65(3)(b) is that the request must set out the details of the change sought and the reasons for the change. The requirement to set out the ‘reasons for the change’ is to be

understood as connected with the requirements for a valid request in s 65(1), such that the required reasons would need to identify the relevant circumstance in s 65(1A) and explain how the proposed changed working arrangements relates to that circumstance.”

There is a further requirement (*sixth* requirement) that the request has to have been made on or after 6 June 2023.

[33] I adopt the guidance provided by the Full Bench.

### **Consideration**

[34] There is no dispute that Mr Gregory had at least 12 months service as a non-casual employee prior to making the request.

[35] Mr Gregory’s Application has two limbs.

[36] The first limb of Mr Gregory’s request he contends he is suffering from a medical condition that requires him to go to the toilet with urgency and more frequently than usual. The only medical evidence submitted was in the form of letters from Dr Jan Hetenyi of Hola Health, dated 16 October 2023 and a follow up letter from Dr Hetenyi dated 24 August 2023 recommending further treatment and referrals. Dr Hetenyi requested the Applicant’s flexible working arrangement be accommodated and advised that Mr Gregory suffered from a situational crisis and inflammatory bowel disease. Mr Gregory has not sought on-going treatment to address his condition.

[37] Hola Health is an on-line medical provider and Mr Gregory advised that he had not personally attended on Dr Hetenvi.

[38] There first question of law to be determined is whether the Applicant’s medical condition is covered by s.65(1A)(c) which requires the employee to have a disability.

[39] I understand the Applicant has concerns about access to toileting facilities (which are in close proximity to the workplace). Whilst I accept that Mr Gregory’s condition would be an inconvenience, I am not persuaded that it is capable of being described as a disability in the normal context of that word. The medical evidence provides is insufficient to persuade me that Mr Gregory has a disability for the purposes of s.65(1A)(c).

[40] Mr Gregory’s medical condition does not trigger any of the other provisions of s.65(1A) such that there is jurisdiction for any order to me made.

[41] The second limb of Mr Gregory’s request relates to his intention to negotiate an agreement with the mother of his child, such that he is responsible as a parent for the provision of care to his child for one week out of two. In the event that an agreement is reached, Mr Gregory seeks that the employer agree to allow him to work from home for the entirety of his working hours. Mr Gregory also sought some flexibility in the application of his working hours and breaks (particularly in the afternoon) so as to allow him to collect the child from school at the appropriate time.

[42] There is no dispute that the Applicant is the parent of a school aged child that these circumstances fall within s.65(1A)(a). With respect to the nexus between the request and the circumstance, it appears to me that the nexus would only be triggered when the custody arrangement is agreed and that the nexus would only relate to the period that Mr Gregory had custody of the child.

[43] Mr Gregory's request was in writing and set out the details of the change sought and that he be permitted to work 100% from home (including the weeks that he was not caring for his child.

[44] The Respondent has offered to allow Mr Gregory to work from home in the weeks that he is the primary care giver of his school aged child and is prepared to provide flexibility sought with respect to the working hours so as to allow the child to be collected from school.

[45] Mr Henderson outlined the basis why Mr Gregory was required to be present in the office for at least 40% of the time when he was not caring for his child. I accept that it is desirable for there to be face to face contact within workforce team. I accept that a face to face presence would allow for observation, interaction and (if necessary) coaching to improve Mr Gregory's productivity and provide him with greater support. I accept that Mr Gregory's knowledge and experience could be more easily accessed by less experienced team members on a face to face basis.

### **Conclusion**

[46] I find that the Respondent's reasons for refusing Mr Gregory's request in respect of his child care were based on reasonable business grounds.

[47] I find that pursuant to s.65C(1)(b)(i) of the *Fair Work Act 2009*, the grounds on which the employer refused the request to be taken to have been reasonable business grounds and I decline to make any other order.



COMMISSIONER

*Appearances:*

*C Gregory* as the Applicant.  
*T Dimovski*, for Maxxia Pty Ltd.

*Hearing details:*

2023.

Adelaide.

October 24.

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<sup>1</sup> Respondent's Outline of Submissions, pg.2[7], [11].

<sup>2</sup> The drafting of s 65(1A)(e) and (f) was the subject of minor modification by the SJBP Act.

<sup>3</sup> Oxford English Dictionary (online at 14 November 2023) 'disability' (def 1).

<sup>4</sup> [\[2023\] FWCFCB 209](#).