



DECISION

Fair Work Act 2009

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

Kellie Fitzpatrick

v

University of New South Wales

(C2025/10836)

COMMISSIONER MCKINNON

SYDNEY, 2 MARCH 2026

Referral of dispute about flexible working arrangements

[1] On 3 November 2025, Ms Kellie Fitzpatrick referred a dispute to the Commission under s.65B(3) of the *Fair Work Act 2009 (Cth)* (the Act). The dispute is about a request for flexible work arrangements made in writing to the University of New South Wales (UNSW) on 3 September 2025.

[2] Under s.65 of the Act, if one of the circumstances in s.65(1A) apply to an employee, and the employee would like to change their working arrangements because of those circumstances, they may request a change in working arrangements relating to those circumstances from their employer. The application to the Commission identifies Ms Fitzpatrick's eligibility to make the request as based on two circumstances: firstly, that she is the parent of a child under school age (s.65(1A)(a)), and secondly, her status as a carer (s.65(1A)(b)). As a parent of a young child, Ms Fitzpatrick is eligible to make a request for flexible working arrangements under s.65 because of that circumstance. The second circumstance is no longer pressed because Ms Fitzpatrick accepts that she is not a 'carer' for the purposes of the Act.

[3] Ms Fitzpatrick currently lives in Sydney, NSW. She has an approved flexible work arrangement with UNSW to work part-time, two days from home and one day on site. This arrangement was put in place following Ms Fitzpatrick's return to work from parental leave and in connection with the care of her child. The arrangement adequately meets Ms Fitzpatrick's needs, including in relation to childcare.

[4] The request in dispute seeks to change those arrangements indefinitely (revised from 'at least 12 months' and later 'review after 6 months') to allow Ms Fitzpatrick to work exclusively from home for three days each week. The original request proposed minimal requirements to attend on site (once every 6-8 weeks) although by the time of hearing, the request sought involved no mandatory onsite attendance. The reason for the change, as stated in the written request made to UNSW on 3 September 2025, was to enable Ms Fitzpatrick and her partner to move to Adelaide to pursue a "significant job opportunity" and thereby improve her partner's health and career prospects, as well as their financial position. This reason was revised on

9 September 2025 in a meeting with UNSW, when Ms Fitzpatrick advised that her family was considering moving either to Adelaide or Queensland. At the time of hearing, Queensland had become the destination of choice.

[5] The question in this case is whether the request made on 3 September 2025 was ‘because of’ the circumstance of being a parent of a young child. Other than a passing reference to the need to make plans for childcare and a rental property, there is no reference to Ms Fitzpatrick’s parenting responsibilities in the body of the request. In further correspondence on 3 October 2025, Ms Fitzpatrick restated the only reason for her request as related to her partner’s health and wellbeing.

[6] Ms Fitzpatrick says the request is necessarily based on her parental circumstances, because it is not easy to find equivalent part-time flexible work elsewhere, and her partner’s current work and mental health is affecting the stability of her household. If the family moves to Queensland but the requirement to attend on site one day each week is maintained, she will be unable to look after her child on the days she is required to work in Sydney. If the request is granted, this difficulty will be overcome. If the request is not granted, Ms Fitzpatrick says her partner will have to return to an unsafe work environment or face ongoing employment instability affecting her household’s financial security and stability.

[7] The submission discloses the tenuous connection between Ms Fitzpatrick’s parenting role and the request made under s.65 for a flexible work arrangement. At the time the request was made, and unchanged at the time of hearing, Ms Fitzpatrick’s parental role was based in Sydney. It was (and remains) adequately supported at work by an existing flexible work arrangement. Ms Fitzpatrick wants, but is not required, to move to Queensland to support her partner’s health and career while also improving the family’s financial position. Her reasons are understandable, but they are not circumstances of the kind that engage the right to request under s.65.

[8] There is also no certainty as to what a move to Queensland might entail, or what childcare arrangements might be required, or even when these pieces of the puzzle would start to come together. The request could not have been made ‘because of’ circumstances that did not yet exist.

[9] For these reasons, I find no causal connection between the circumstance of Ms Fitzpatrick as a parent of a young child and her request to work full time from home, whether for a finite or indefinite period, to support a move interstate. The request made on 3 September 2025 was not validly made under s.65 of the Act. UNSW was not bound by any responsive obligations in s.65A in relation to the request, and it is not necessary to consider whether UNSW had reasonable business grounds to refuse the request.

[10] The application is dismissed.



Appearances:

Ms. K Fitzpatrick on her own behalf.

Ms. H Carter for the Respondent.

Hearing details:

Sydney:

February 17.

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