

Information on flexible working at MCH

Date: 9 October 2021

About: OIA Response to request for information on flexible working at MCH

Author: Ministry for Culture and Heritage

This document has been proactively released.

Redactions made in this document may include information redacted to protect the privacy of natural persons and/or redactions made in accordance with the Official Information Act 1982 (the OIA). In the case of the latter, the redactions are labelled with the relevant section of the OIA. Where information was withheld, no public interest was identified that would outweigh the reasons for withholding it.

Please note information is current as at the date it was supplied to the requester, or as at the date outlined in the response.

8 November 2021

9(2)(a)

Tēnā koe 9(2)(a)

I refer to your request received on 11 October 2021, pursuant to the Official Information Act 1982 (OIA), seeking:

1. A copy of your flexible working policy;
2. A copy of any policy/processes specifically regarding applications for remote working;
3. The number of applications for flexible working arrangements under Part 6AA of the Employment Relations Act 2000 received by this agency between 1 January 2019 and 8 October 2021, the type of flexibility sought in these applications eg compressed hours, remote working, reduced hours etc., and whether each applicant was a manager or a non-manager;
4. The number of applications for flexible working arrangements under Part 6AA of the Employment Relations Act 2000 approved by this agency between 1 January 2019 and 8 October 2021, the type of flexibility sought in these applications eg compressed hours, remote working, reduced hours etc., and whether each applicant was a manager or a non-manager;
5. The percentage of applications for flexible working arrangements under Part 6AA of the Employment Relations Act 2000 approved by this agency between 1 January 2019 and 8 October 2021;
6. The number of applications for flexible working arrangements under Part 6AA of the Employment Relations Act 2000 refused by this agency between 1 January 2019 and 8 October 2021, the type of flexibility sought in these applications eg compressed hours, remote working, reduced hours etc., the recorded reason for the refusal, and whether each applicant was a manager or a non-manager;
7. The percentage of applications for flexible working arrangements under Part 6AA of the Employment Relations Act 2000 refused by this agency between 1 January 2019 and 8 October 2021;
8. The number of people working in your agency as at 8 October 2021, and a breakdown of your employees by gender.

Regarding question 1, attached is a copy of our current flexible working policy. We are in the process of developing a new flexible working policy which is close to finalisation and will provide this to you when it is complete. We expect it to be in place by the end of November 2021.

Regarding question 2, Manatū Taonga does not have a separate policy or process for remote working. Please refer to the flexible working policy attached.

Regarding questions 3 to 7, I am refusing this part of your request under Section 18(e) of the OIA on the grounds that the information either does not exist in the format requested or cannot be made available without substantial collation or research. Manatū Taonga does not have an electronic system for recording and coding flexible working requests made under part 6AA as distinguished from flexible work requests made outside of part 6AA (e.g., as part of employment agreement negotiations or amendments and or/informal requests that do not require an employment agreement amendment).

It may be useful to note that, new recruits are welcome to discuss flexible working options when they start, this is advertised in all job vacancies. In practice this means subsequent requests are fewer as Manatū Taonga supports and encourages staff to request their flexible working preferences from the outset.

In a 2019 survey 71% of Manatū Taonga worked flexible in some way. In 2021, Manatū Taonga has normalised flexible working to the point where over 90% of employees now work flexibly in some way. I.e., Given it's part of our culture we have a lot of flexible working arrangements in place but very few have been requested specifically under clause 6AA.

Regarding question 8, we record our employee figures monthly. The breakdown requested can be found in the table below as is current as at 30 September 2021.

Gender	Headcount
Female	110
Male	57
Total	167

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) [and enclosed documents] on the Ministry's website. Once our draft flexible working policy is finalised, we will update the response accordingly and ensure you receive the final guidance.

Nāku noa, nā



Sarah Hardy

Pou Mataaho o Te Iho

Deputy Chief Executive, Organisational Performance

Flexible Working Arrangements Policy

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Purpose / What

To outline the conditions under which an employee may seek, and be granted flexible working arrangements at the Ministry, under Part 6AA of the Employment Relations Act 2000 (Flexible Working Arrangements).

Principles / Why

One of the great things about the Ministry is the commitment people bring to their work – but we all have commitments and responsibilities outside the organisation too. The Ministry has developed this policy to assist staff to do their jobs effectively even when they have obligations that mean working a standard day would be difficult or impossible.

Authority of the Policy / Who

The HR and OD Manager is the policy owner, and is responsible for the implementation and maintenance of the policy.

Scope / Coverage

The Ministry's policies are comprehensive and potentially applicable to all circumstances under which flexible working arrangements might be sought.

Policy Statements / Specifics

The Ministry will approve the use of these flexible working arrangements where doing so is appropriate to the needs of the individual staff member, the team he or she is working in, and the Ministry. Flexible working arrangements require a high level of trust between the organisation and the individual, and both are responsible for maintaining that trust, and the open communication that supports it. Those who have queries about working more flexibly should raise them in the first instance with their managers. Individual needs concerning work arrangements are also very appropriately discussed during the annual performance management and planning processes.

The Employment Relations Act 2000 sections 69AA specifically addresses flexible working arrangements. The purpose of this section of the Act is to:

- provide employees with a statutory right to request a variation of their working arrangements; and
 - require an employer to deal with a request as soon as possible but not later than 1 month after receiving it; and
 - provide that an employer may refuse a request only if it cannot be accommodated on certain grounds; and
 - if an employer does not deal with a request in accordance with the process as specified in this part of the Act, the matter can be taken to a Labour Inspector, then to mediation, and then to the Authority.

Principles and Processes

These principles and processes need to be applied to flexible working arrangement requests:

- All requests will be considered and responded to within one month of the request;
- Requests must be in writing and must be dated. Either email or letter is acceptable;
- The flexible working arrangement must not impact unreasonably on the staff member, colleagues or the work of the Ministry;
- The flexible working arrangement must be mutually agreed between the employee and his or her manager, and must be documented in writing;
- The flexible working arrangements should always be agreed in advance, except in exceptional circumstances;
- Some circumstances might require more than one policy to be invoked (eg working from home and working flexible hours), and this should be explicitly discussed and agreed;
- Due consideration must be given by both the employee and manager to meet health and safety requirements of any flexible working arrangements;
- The employee's role must be suited to the flexible working arrangement (some positions and tasks may not be suitable);
- Arrangements agreed should generally be cost neutral or, on occasion, may incur small or nominal costs for example providing equipment to ensure the flexible working arrangement is viable; and
- Where practicable, we will seek to overcome potential obstacles to an individual's flexible working arrangements. If appropriate solutions cannot be agreed, the request may need to be declined. The Employment Relations Act 2000 explicitly outlines the grounds to decline a request. An explanation for declining the request must be made clear in the written response.

Types of Flexible Arrangements

The types of flexible working arrangements that could be considered include:

Part-Time Work

This could mean working fewer than five days a week, for example, or working fewer hours each day.

Job-Sharing

Job sharing involves more than one person doing one job. It may involve splitting time (eg both employees work 20 hours per week), or splitting clients/agencies, projects or tasks.

The job share arrangement may provide full coverage over the week, including hand-over time, or the arrangement may run simultaneously, that is, both employees are at work at the same time.

Working Reduced Hours for a Limited Period of Time

A temporary and short term reduction in hours (eg working three days per week) could be agreed when - for example - an employee is returning from parental leave or accident leave or needs to spend extra time away from work during a time of family illness.

Working Away From the Office / Working from Home

A temporary change in work location eg at home or at another centre whilst caring for an elderly relative may sometimes be authorised. The Ministry has a formal working from home policy which should be referred to.

Flexible Hours

Flexible hours include the ability to start early or finish late. Split shifts, where the normal working day is split into two separate periods of work, may also be an option.

Time-Banking

Time banking enables an employee to accumulate up to an agreed number of hours that can then be taken as time-in-lieu within an agreed period.

Time banking is slightly different from standard time in lieu, which may be approved where an employee is going to be required to work additional hours due to work pressures. Time banking is an option whereby an employee essentially works hours additional to his or her standard hours in advance (with no additional pay) and then takes the time off (on pay). For example, attendance at a school sports day might be managed by banking the time that an employee will be out of the office in the week or fortnight preceding the event.

Time banking must be agreed in writing before the additional hours are worked.

Use of Leave Entitlements in Smaller Amounts

Annual leave is usually applied for in blocks of one day or a half day. In some instances, an arrangement may be made where annual leave could be taken in a smaller block eg two hours or three hours.

Leave Without Pay (LWOP)

The MCH Collective Employment Agreement specifies the terms and conditions of LWOP (as they apply to all staff, whether or not they are members of the Collective). Depending on the period of LWOP applied for, individual positions may or may not be held open. There are also implications for calculating length of service. Staff should make themselves familiar with these terms before applying for any period of LWOP.

LWOP should only be applied for after annual leave has been exhausted. The option of taking annual leave in advance should also be considered prior to applying for or approving leave without pay.

Each request for LWOP should be discussed with the applicant's manager first. If approved, it can then be applied for through the Employee Self Service (ESS) online portal. HR must also be advised to ensure the appropriate payroll changes are made.

Purchasing Additional Leave

Under this arrangement, an employee forgoes part of his or her salary for a year in return for additional leave. Additional leave must be purchased as a block of one week or two weeks. One week's additional leave can be 'purchased' at a cost of a 2% reduction in salary. Two weeks additional leave can be 'purchased' at a cost of a 4% reduction in salary.

Once purchased, the leave does not have to be used as a block – it can be taken in one day segments as it accrues. The additional leave must be taken in the year it accrues. At the end of the year, the salary will return to its original level, the accrual will reduce and any outstanding leave will be cashed up and paid through the payroll (less PAYE).

Arrangements for purchasing additional leave will apply for one year, they are not ongoing arrangements.

For the purposes of calculating total remuneration and placement within the MCH remuneration range, the additional leave will form part of the employee's remuneration package for that year.

What Needs to be Considered?

In deciding whether a flexible working arrangement is appropriate, the staff member and his or her manager will need to consider:

Nature of the Work

- Does the nature of the work being undertaken allow for the type of flexibility being considered?
- Have all aspects of the job been considered (including the tasks, relationships and interactions with others)?
- Have the staff member and his or her manager established clearly defined outputs and performance objectives?
- Are there security or confidentiality concerns that could arise due to the nature of the work and the arrangement being considered?
- Are there ways any negative impacts on clients or colleagues could be eliminated or minimised?
- Would the arrangement require the job description to be amended?
- Would the arrangement require some duties to be reassigned?
- What is the impact on other staff of reassigning work, dealing with queries etc?

Impact on Others

If the arrangement involves reducing the staff member's hours, how will the remaining work be handled by the organisation, eg bringing in other resources, reprioritising, sharing amongst other staff members?

Would the arrangement impact adversely on other members of the team, eg limiting their access to files, giving them a disproportionate share of telephone inquiries? If so, are there ways that this impact could be minimised?

Communication

Does the arrangement have the potential to impact adversely on communication between the staff member and the organisation or any other stakeholders? If so, are there ways that this impact can be minimised?

Are there times when the employee must be in the office to attend specific meetings?

What arrangements need to be made as to if, how and when the organisation can contact the staff member when he or she is not at the office?

Degree of Flexibility of the Arrangement

What arrangements need to be made as to when the arrangement could be disrupted e.g. attendance at training courses, briefing sessions, school holidays, work related travel, peaks in work demand?

Impact on the Organisation

Can the arrangement be kept administratively simple e.g. minimal changes to payroll, leave accruals etc?

If the arrangement has financial implications, is it financially viable for the organisation? What additional requirements are there that impact on the Ministry?

What additional equipment etc is necessary, and who will provide it?

If the arrangement involves time-in-lieu, is there a time-frame in which this time must be taken?

Individual Suitability

- Has the staff member made an honest assessment of the suitability of the arrangement and its length for his or her personal circumstances?
- Does working from home fit his or her working style?
- Is self-motivation a potential issue?
- What about isolation and lack of social interaction? What are the social implications in terms of interactions with members of his or her team and the wider Ministry?
- Might the individual need a separation between work and home?
- Does home offer the appropriate working environment?
 - space and lighting?
 - furniture and equipment?
 - peace and quiet?
 - understanding from family, friends and neighbours?

Salary Implications

If, as a result of a change in working arrangement an employee's salary decreases, there are implications for:

- ACC – it may affect the level of any ACC payments received in the case of an accident;
- Superannuation employer contributions (KiwiSaver, SSRSS, Global Retirement Trust) – it will affect the level of contribution paid by MCH into a superannuation scheme;

- GSF – as with other superannuation schemes the employer contribution will decrease, but individuals can elect to pay an additional amount to maintain the prior/higher salary level; and
- Social welfare/IRD payments/Child Support payments may be affected (but a reduction in salary should not be designed specifically to reduce child support or tax obligations).

Such implications need to be considered carefully.

Term of Agreement

Normally all arrangements will be pre-planned. Emergency arrangements will be considered when required by the staff member's situation.

Generally a request for a new working arrangement will be for a set period of time. Some changes will need to be documented as a variation to the staff members' terms and conditions of employment and will need to be agreed in writing. HR will prepare the documentation. Other one-off changes (eg working from home the next day) may be agreed by way of email

Regardless of the term of the agreement, it must be documented in writing.

HR must be consulted prior to a decision being made with respect to any significant or ongoing change.

If a long term change has been requested, it might be appropriate to set up a trial period(s) so that any problems can be ironed out before things are put on a permanent or long term basis. At the end of the trial period, the arrangement will be reviewed by the staff member, his or her manager and if relevant, other members of the team.

During the term of agreement where a variation of the staff members terms and conditions has been agreed, neither the staff member nor the manager has the 'right' to revert back to the previous working arrangement (except for the working from home options), unless this option is recorded in the variation agreement or if there is mutual agreement to revert back and/or change the variation. Any change to a flexible working arrangement should be documented in writing.

Application Procedure

Ideally a staff member will work through the above considerations and then consult with his or her manager prior to making a formal application.

Applications for a change in working arrangements must be submitted in writing to the manager. The request may be for one or more of the flexible options listed above.

The written application should:

- Be made in writing
- State the employees name and date that the request is being made and that the request is being made under section 66A flexible working of the Employment Relations Act 2000
- Specify the variation of the working arrangement requested and whether this is a permanent change or for a nominated period of time.

- Specify the date on which the new working arrangement would take effect and, if the new working arrangement is for a period of time, the end date of the working arrangement.
- Provide an explanation as to what changes, if any, the employer may need to make to the employers arrangement if the employees request is approved.

Managers must deal with requests promptly, forwarding them on to the relevant Branch Manager with a recommendation as soon as possible. A response to the request must be given within one month from receiving it.

Making the Decision

Generally applications for flexible working options can be approved by a Branch Manager after consultation with HR. Branch Managers must work through the considerations above with the employee's manager/team leader before making a decision. Straightforward requests may be able to be approved within a week of application. Other requests may take longer to consider and work through. Under the Employment Relations Act, the manager is required, to respond as soon as possible, but not later than one month after the request was made.

Where the delegations require the Chief Executive to make a decision (that is, for leave without pay for more than two weeks), the CE will take into account the impact that the arrangement may have on the Ministry's overall operations and whether or not the request is endorsed by the Manager and Branch Manager.

Once a decision is made, HR will need to be notified of the new working arrangement immediately so that appropriate letter/variation documents can be prepared and payroll changes made.

Grounds for Declining

The Employment Relations Act 2000 specifically states the grounds to which a request can be declined. The employer may refuse a request only if the employer determines that the request cannot be accommodated on one or more of the grounds specified below:

The grounds are—

- (a) inability to reorganise work among existing staff:
- (b) inability to recruit additional staff:
- (c) detrimental impact on quality:
- (d) detrimental impact on performance:
- (e) insufficiency of work during the periods the employee proposes to work:
- (f) planned structural changes:
- (g) burden of additional costs:
- (h) detrimental effect on ability to meet customer demand.

However, an employer must refuse a request if—

- (a) the request is from an employee who is bound by a collective agreement; and
- (b) the request relates to working arrangements to which the collective agreement applies; and
- (c) the employee's working arrangements would be inconsistent with the collective agreement if the employer were to approve the request.

Wherever possible, solutions to any difficulties will be sought. If a request is declined, the Branch Manager/Manager will need to provide the staff member with a clear explanation of reasons for declining the request related to the grounds listed above. The staff member may also be given the opportunity to discuss and consider other options.

Appeal Process

If an application for flexible working options is turned down, the employee may in the first instance resubmit the request, this time to the CE. The CE will make a final decision.

If the employee considers that the process under the Act for responding to a request has not been followed, then the matter can be referred to the Labour Inspector, then to a mediator, and then to the Employment Relations Authority.

Responsibilities and Accountabilities

Staff

- Staff should consider the various points under this policy prior to consulting with their manager. Applications must be made in writing.

Staff Manager

- Managers must deal with requests in a timely way and no later than one month of the request being received, and in particular, as outlined by Part 6AA of the Employment Relations Act 2000 (Flexible Working Arrangements).
- Consider the request fairly in line with this policy.
- Consulting with HR when considering a request, and prior to making a recommendation to their Branch Manager.
- Managers are to provide a response to a request in writing.
- Managers are responsible for providing a written explanation when declined applications to staff members.

Branch Manager

- Considers requests/recommendations (in a timely way) and may make approval for flexible working arrangements (after consultation with HR).

Chief Executive

- Considers any appeals, consults with HR and makes a final decision.

Human Resources

- Provides advice to Managers, Branch Managers and the CE as they consider and make a decision on the application.
- Makes the appropriate changes to payroll and prepares any letters and variation documents.

References

Employment Relations Act 2000 (Flexible Working Arrangements)
MCH Collective Employment Agreement
MCH Individual Employment Agreement.

The terms and conditions of Leave Without Pay are specified in the MCH Collective Employment Agreement.

Monitoring Compliance

Human Resources undertake the monitoring to determine compliance with the Ministry's criteria.

Where to Get Help

For Help with this policy contact the Human Resources Team.

Review of the Policy

Review of this policy is due March 2018.

Document History

Version number	Date created	Author/Contributor	Approved by	Date
1	8 April 2009	Our Culture Ourselves [REDACTED] [REDACTED]		28 May 2009
1.1	28 Feb 2011	[REDACTED] (template applied)		
1.2	24 March 2015	[REDACTED] – updated policy due to changes in ERA legislation.	MLT	23 March 2015