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Article Information

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Flexible work arrangements: Is your business meeting the requirements?

The recent Fair Work Commission decision in Elizabeth Naden v Catholic Schools Broken Bay Limited as Trustee for the Catholic Schools Broken Bay Trust [2025] FWCFB 82 clarifies the stringent obligations placed on employers when considering and refusing an employee's request for flexible working arrangements. This case provides unprecedented guidance on the considerations mandated by section 65A of the Fair Work Act 2009 (Cth) (FW Act), and the necessity of including such considerations in the written reasons for refusing the request.

Background

Ms Elizabeth Naden commenced employment with Sacred Heart Primary School Pymble (the **Respondent**) in 2016 as a teacher, and was promoted to an executive role as Religious Education Coordinator (REC role) in 2023.

Following a period of parental leave in 2024, Ms Naden was due to return to work in 2025. On 21 September 2024, in preparation for her return, Ms Naden made a request for flexible working arrangements to assist in balancing her work commitments and her parental responsibilities. Specifically, Ms Naden requested to work three days per week for terms 1 and 2 of the 2025 school year, returning to full-time work thereafter.

Following an extensive period of consultation, on 12 December 2024, the Respondent refused Ms Naden's request for flexible working arrangements. The Respondent stated that whilst the Applicant could work part-time in her capacity as a teacher, she could not similarly do so in respect of the REC role. The Respondent largely grounded this refusal in its policy, which stated that teachers in executive roles cannot job-share or work on a part-time basis. The Respondent also argued that the arrangement requested by Ms Naden would adversely impact student wellbeing and the workload of other staff members, as well as increase costs and reduce leadership at the school.

The dispute was referred to the Fair Work Commission, alleging that the Respondent failed to respond to Ms Naden's request for flexible working arrangements in accordance with the FW Act.

First Instance Decision

Section 65A(3) of the FW Act states that an employer may only refuse a request for flexible working arrangements if all of the following requirements are satisfied:

- the employer has held discussions with the employee and genuinely tried to reach agreement about the request for flexible working arrangements;
- those discussions have not resulted in agreement;
- the employer has had regard to the consequences of the refusal for the employee; and
- the refusal is on reasonable business grounds.

It is insufficient for an employer to satisfy some of these requirements, and not others.

At first instance, the Commissioner held that the Respondent had reasonable business grounds, and was therefore entitled to reject Ms Naden's request for flexible working arrangements.

Decision on Appeal

Although Ms Naden raised a number of appeal grounds, ultimately the Full Bench of the Fair Work Commission granted Ms Naden permission to appeal in respect of one ground only, namely, whether the Commissioner erred by failing to resolve the dispute over the Respondent's failure to consult under s.65A(3) of the FW Act, including that it failed to take into account the consequences of its refusal for Ms Naden.

The Full Bench held that section 65A(3)(c) imposes a *positive obligation* on the employer to consider the consequences of the refusal on the employee. It is not a defence to say that the employee did not fulsomely describe the consequences of a refusal. The requirement in section 65A(3)(c) places an expectation on employers that any such consideration will be discussed in consultations with the employee.

The Full Bench also held that the Commissioner did not adequately consider whether all of the requirements in section 65A(3) were satisfied.

In doing so, the Full Bench observed that the Commissioner at first instance failed to place appropriate weight on the finding that the Respondent did not have adequate regard to the consequences of the refusal for Ms Naden. The consequences of the refusal for Ms Naden were threefold. First, Ms Naden would receive a lower rate of pay by being unable to perform the REC role, adversely affecting her financial position. Second, removal of the REC role placed Ms Naden in a disadvantageous position for future career development. Finally, the REC role aligned with Ms Naden's religious beliefs and therefore meant a great deal to her.

Significantly, in a seemingly unusual expansion of the provision, the Full Bench held that the obligation in section 65A(6) to detail the reasons for the refusal in the written response underpins the obligation in section 65A(3)(c) (being the obligation to have regard to the consequences of the refusal for the employee). Accordingly, in detailing the reasons for refusal, the Full Bench said:

> *"It is to be expected that any such consideration* [regarding the consequences of a refusal on the employee] *will be discussed in the consultations over a request and be included in the written reasons for refusal…"*

Considering the failures of the Respondent to have regard to the consequences of refusal for Ms Naden, and to make any reference to the consequences in the written response, the Full Bench held that the requirement in section 65A(3)(c) of the FW Act was not met. Therefore, the Respondent was not entitled to refuse Ms Naden's request for flexible working arrangements, and the Commission ordered that the Respondent should permit Ms Naden to work in term 2 of 2025, in accordance with her flexible working arrangement request.

Key Takeaways

This decision confirms the Fair Work Commission's comprehensive approach to analysing an employer's refusal of a request for flexible working arrangements, and serves as a reminder of the strict obligations employers must comply with. Employers must be cautious to ensure that they have satisfied the entirety of section 65A(3), including having regard to the consequences of refusal for the employee.

Although it might be said that the Fair Work Commission has taken a fairly expansive approach to determining what should be stated in a written response refusing a request for flexible working arrangements, it would nevertheless be prudent for employers to ensure that its written response is as comprehensive as possible, including by noting how regard was had to the consequences of any refusal and the potential impact on the employee. This will serve as a reminder to employers to ensure that it addresses all requirements of the FW Act, but also assist in demonstrating to the Fair Work Commission (if ever required) that it has had regard to those matters and discussed them with the employee.