



# Department of Finance, Services and Innovation Flexible Working Hours Agreement 2016

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## Department of Finance, Services and Innovation Flexible Working Hours Agreement 20161

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# 1. Title

- 1.1 This agreement shall be known as the Department of Finance, Services and Innovation Flexible Working Hours Agreement 2016.

DRAFT - FOR CONSULTATION - 16/06/16

## 2. Principles

- 2.1 This Agreement will apply to all employees of the Department and will operate in conjunction with the following principles:
- 2.1.1 The purpose of the Agreement is to modify Clause 21 Flexible Working Hours of the Award as it applies to the Department.
  - 2.1.2 The introduction of this Agreement is intended to improve the Department's organisational performance while providing flexibility for all employees to ensure that there is an appropriate balance between work and personal commitments.
  - 2.1.3 The Agreement aims to strengthen a genuine two-way cooperative workplace culture that fully takes into account our service obligations to the people of NSW.
  - 2.1.4 The PSA, PA, employees and management recognise that this will occur if all parties understand and accept the spirit of the Agreement, as well as its operation, and respect the needs of the organisation, our customers, co-workers, and individual employees.
  - 2.1.5 Customer service is a priority of the Department and needs to be a consideration when operating any flexible working arrangement.
  - 2.1.6 The Department and its employees shall take all reasonable steps to ensure that an employee does not regularly accumulate excess credit hours at the conclusion of settlement periods.
  - 2.1.7 It be recognised by all parties to the Agreement that due to the operational needs of the Department, and its customers all employees may not have equal access to flexible working arrangements.

For example, call centres and customer facing areas may have fixed operational requirements due to opening times and may not be able to offer their employees the same level of flexibility as other DFSI employees.

2.1.8 Actual working hours and patterns of work will be determined based on business and customer needs and by mutual agreement in advance between an employee and their manager.

The parties recognise that there may be a need for a manager to place an employee on standard hours. When based on reasonable business or team requirements, such a decision shall not constitute evidence of bullying, harassment or discrimination.

2.1.9 Decisions regarding working hours and patterns of work will be made in consultation with the employee by taking into account the following factors:

- (a) the operational needs of the Department and its customers;
- (b) the customer contact hours of the Department;
- (c) seasonal peaks of work within the Department;
- (d) the availability of necessary and productive work within the business unit;
- (e) the need to limit the working of overtime;
- (f) personal commitments and needs of employees, including family responsibilities;
- (g) WHS and equity issues; and
- (h) any other factors as may be agreed, from time to time, by the parties.

2.1.10 The accumulation of work time and taking of flex leave requires mutual agreement in advance between a staff member and their manager. The factors listed in 2.1.9 will also be taken into account when reaching such an agreement. The lack of agreement from an employee will not negate the ability of a manager to provide reasonable instructions/directions in line with this agreement and the business and customer needs of the Department.

- 2.1.11 No employee covered by the Agreement will suffer any loss or diminution in their conditions of employment as contained in the Award as consequence of this Agreement.
- 2.1.12 Other flexible work practices (eg working from home or satellite office policies) may be considered in conjunction with this Agreement.
- 2.1.13 Any disputes arising from the application of this agreement shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority within the Department

## **3. Coverage**

### **3.1 Inclusion**

3.1.1 This Agreement applies to all on-going and temporary employees of the Department with the exception of those excluded in 3.2.

3.1.2 All employees, upon joining the Department, are to work in accordance with this Agreement.

### **3.2 Exclusion**

3.2.1 This Agreement does not apply to the Chief Executive Service, Senior Executive Service, Senior Executives, Transitional Senior Executives, Senior Officers, casuals, contractors and named occupants of the positions of Manager Technical Services and Inspectors under the *MVRIC Enterprise Agreement 1994*.



## 4. Definitions

4.1 The following definitions apply throughout this Agreement:

- 4.1.1 **Accumulated work time (AWT)** is all time worked by Departmental employees within the bandwidth with the exception of paid overtime during a settlement period.
- 4.1.2 **Award** is the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* or its replacement.
- 4.1.3 **Contract hours** for a settlement period shall be calculated by multiplying the employee's weekly contract hours by the twelve (12) weeks in a settlement period.
- 4.1.4 **Core time** is the period of time all employees of the Department should be at work. It is defined to enable service delivery and maintain customer contact hours.
- 4.1.5 **Customer contact hours** means the span of hours during which the Department's offices are open to external and internal clients.
- 4.1.6 **Employee** means all persons who are permanently or temporarily employed by the Department, in either a full or a part-time capacity, under the provisions of the *Government Sector Employment Act 2013*. This excludes the Chief Executive Service, Senior Executive Service, Senior Executives, Transitional Senior Executives, Senior Officers, casuals and named occupants of the positions of Manager Technical Services and Inspectors under the *MVRIC Enterprise Agreement 1994*.
- 4.1.7 **Flexible working hours credit** means the time which exceeds the contract hours for a settlement period and is able to be accumulated and carried over into the next settlement period under the Agreement.
- 4.1.8 **Flexible working hours debit** means the debit which arises when the actual hours worked in a settlement period, including approved leave taken during the settlement period and any carry over from the previous settlement period, are less than the contract hours for the period.

- 4.1.9 **Flex leave** is the term given to those periods of time that an employee may, subject to the approval of their manager and the principles of the Agreement, be absent from work.
- 4.1.10 **Minimum daily contract hours** for full-time workers shall be calculated by dividing the employee's weekly contract hours by the number of working days in an ordinary working week. The calculation for minimum daily contract hours does not change due to a public holiday falling within a working week.

For part time employees:

- a) the minimum daily contract hours for each working day shall be taken from the part time contract.
  - b) If daily hours for each working day are not specified in the part time contract, the same calculation for full time employees will be used for the part time employee.
- 4.1.11 **Settlement period** is twelve (12) consecutive weeks. The settlement periods for the purposes of recording attendance times and for flex leave shall coincide.
- 4.1.12 **Standard hours** are from 8.30 am to 4.30 pm, Monday to Friday, with a lunch break of one hour. Or as agreed by the employee and their manager for any 8 consecutive hours including an hour for lunch that is within bandwidth.

## 5. Operational Provisions

### 5.1 Bandwidth

- 5.1.1 Bandwidth is the period during the working day when all employees may work, record and accumulate credit for time worked.
- 5.1.2 The bandwidth is from 7.00 am to 7.00 pm, Monday to Friday.
- 5.1.3 Where business needs require (i.e. in areas where field work or frequent travel is required) management may approve that the bandwidth be varied to between the hours of 6.00 am and 10.00 pm. The earliest commencement of a bandwidth is 6.00 am and latest cessation is 10.00 pm.

The manager and employee must consider the Work Health and Safety implications when determining working hours.

- 5.1.4 Core time shall be between 10:00am and 3:00pm. Subject to business requirements, a manager and employee (or group of employees) may mutually agree to vary their core time to any floating period of five consecutive hours within the bandwidth, inclusive of the lunch break. Where no agreement is reached, or business needs require standard core-time during regular business hours, the standard core-time will be 10:00am – 3:00pm. This does not preclude the setting of a different standard core-time where business needs require other standard hours.
- 5.1.5 For the purposes of accumulation under Clause 5.4, time will not be credited to an employee for attendance outside the bandwidth.
- 5.1.6 Should an employee and their manager be unable to mutually agree on any adjustment under this Agreement, standard hours, or other times that the manager may direct the employee to work to meet the needs of the business and its customers, shall apply.

## 5.2 Daily hours worked

- 5.2.1 With consideration of business needs, an employee and their manager will determine starting and finishing times by mutual agreement.
- 5.2.2 All employees are entitled to work their minimum daily contract hours on any nominated normal working day. An employee cannot be directed to work less than the minimum daily contract hours on any nominated normal working day. However, depending on the operational needs of the unit, a manager may require employees to work only their minimum daily contract hours.
- 5.2.3 An employee may, subject to the approval of their manager, elect to work standard hours or minimum daily contract hours with fixed starting and finishing times.
- 5.2.4 A manager may, at the request of an employee, and in accordance with the provisions of this Agreement, vary the employees working hours at any time.
- 5.2.5 The maximum hours worked each day shall not exceed 10 hours on any one day. This may be varied subject to management approval.
- 5.2.6 A staff member's attendance outside the hours of a standard day but within the bandwidth shall be subject to work requirements. Accumulation of additional flex time must be through the performance of productive work and is subject to management agreement in advance of business need.
- 5.2.7 Nothing in the Agreement shall prevent the Department from requiring an employee to work standard hours or limit flexible working hours arrangements where:
- a) operational demands require it; or
  - b) the employee requests to work standard hours and this request is agreed to by their manager, or
  - c) the Secretary finds, in accordance with the *Government Sector Employment Act 2013* that the employee is not observing the terms of the Agreement.

### **5.3 Lunch and meal breaks**

5.3.1 An employee must take a meal break in accordance with the provisions of the award. The standard entitlement for a lunch break is 1 hour. This may be varied by mutual agreement to a minimum of 30 minutes and a maximum of 2.5 hours.

5.3.2 The scheduling and duration of lunch breaks are subject to the operational requirements of the Department, the needs of the employee and require the approval of the employee's manager.

### **5.4 Accumulation of work time within the settlement period**

5.4.1 An employee may only accumulate AWT in excess of the minimum daily contract hours where management agree in advance that business needs requires them to work additional time. A manager may instruct an employee to work only minimum contract hours when additional work is unavailable. Such instruction will be considered reasonable management action.

5.4.2 All approved time worked during the settlement period in accordance with the Agreement (except paid overtime) will count towards the employee's AWT.

5.4.3 An employee should have worked their contract hours as AWT at the conclusion of a settlement period.

5.4.4 Where AWT results in more than 10 hours debit at the end of the settlement period, the employee will be required to use available accrued leave to cover the shortfall in hours. If the employee has no accrued leave available, leave without pay (LWOP) may be used.

5.4.5 An employee is entitled to accumulate and carry forward up to and including an additional 42 hours in excess of their contract hours.

5.4.6 Hours worked are to be monitored by the employee and their manager over the 12 week period, through the use of flex time records as set out in clause 5.5 of this agreement.

5.4.7 Employees cannot take more than six (6) days flex leave in a settlement period.

5.4.8 Banking of flex days is excluded by this agreement.

## **5.5 Monitoring of accumulated work time**

5.5.1 Hours worked are to be monitored by the employee and their manager over the 12 week period through the use of flex time records. Managers should encourage employees not to work in excess of 42 credit hours in a settlement period.

5.5.2 Employees must ensure that a partially completed flex sheet is available for their manager in each two week lot of the 12 week settlement period to review in line with the pay cycle. The completed flex sheets should be submitted to the manager for approval within 2 days of each two week period ending.

5.5.3 An employee should notify their manager of excess credit hours where an employee has credit hours in excess of 42 credit hours at any point during the settlement period

5.5.4 The employee and their manager, upon notification of excess credit hours, shall devise a strategy in writing to reduce the excess credit hours.

5.5.5 Methods to ensure the reduction of excess credit hours may include:

- a) reducing the hours worked during the remainder of the settlement period; or
- b) the taking of flex leave to prevent the accumulation of hours at the end of the 12 week settlement period.
- c) the granting of additional full days, consecutive days, half days, or any combination of days and half days

## **5.6 Scheduling flex leave**

5.6.1 Subject to the operational requirements and approval in advance by their manager, an employee may vary working hours to suit their particular needs or absent themselves from work using flex leave.

5.6.2 The taking and scheduling of flex leave will be made in an equitable, transparent and fair manner that takes into account its impact on all aspects of the Departments operations, including the impact on the employee's co-workers.

- 5.6.3 The scheduling of flex leave must be approved by management and flex leave should be scheduled at least five (5) days in advance. This may be varied subject to management approval.
- 5.6.4 The maximum flex leave able to be accessed by an employee is six (6) flex days per twelve (12) week settlement period.
- 5.6.5 Subject to the operational requirements and approval by their manager, an employee may schedule their approved flex leave as single days or half days or a combination of both.
- 5.6.6 An employee can take no more than six (6) consecutive flex days at any one time regardless of the settlement periods.
- 5.6.7 When considering the flex leave entitlements of this Agreement, employees and managers are to ensure that Award requirements that at least two (2) consecutive weeks of recreation leave shall be taken by an employee every twelve (12) months, except by agreement with the Secretary in special circumstances.
- 5.6.8 Should an employee have an excess accrual of recreation leave of over thirty (30) days, flex leave cannot be taken and employees should be placed on standard hours so as to not accrue additional credit hours until recreation leave balance is below thirty (30) days.
- 5.6.9 If the application for flex leave is to combine the taking of flex leave with recreation leave and will result in the accrued recreation leave balance being less than thirty (30) days, then flex leave may be taken.
- 5.6.10 There is management flexibility for giving time off in lieu of lengthy out of hours travel or work time in accordance with the relevant provisions of the Award.

## **6. Additional flex parameters**

### **6.1 Easter concessional half day**

- 6.1.1 An employee working under the provisions of this Agreement may be allowed to take an additional half day flex leave, subject to operational and business requirements, on the Thursday preceding the Good Friday public holiday or a period as determined by New South Wales Industrial Relations subject to 6.1.2
- 6.1.2 All other provisions of this agreement are to apply including limits on the carryover at the end of the settlement period.

### **6.2 Overtime**

- 6.2.1 The provisions of the Award will apply.

### **6.3 Natural emergencies and major transport disruption**

- 6.3.1 An employee prevented from attending at a normal work location by natural emergency or by a major transport disruption may:
- a) Apply to vary the working hours as provided in Clause 16. Variation of Hours of the Award or its successor, and/or
  - b) Negotiate an alternative working location with the Department; and/or
  - c) Take available family and community service leave and/or flex leave, recreation or extended leave or leave without pay according to the provisions of the Award to cover the period concerned.

### **6.4 Emergency operations and deployment**

- 6.4.1 This clause applies to employees who are required to work:
- a) for a declared emergency under the *State Emergency and Rescue Management Act 1989*
  - b) or for a declared emergency by the Premier
  - c) or are deployed elsewhere, either domestically or overseas, for an emergency operation.

- 6.4.2 With Secretary approval, this Agreement will be suspended for those employees required to work the emergency operations.



- 6.4.3 Employees required to work the emergency operations on a full time basis, including weekend work and rostered 24 hour operations, will revert to standard hours for the period involved in the emergency operations.

## **6.5 Separation from the Department**

- 6.5.1 Where an employee gives notice of resignation, retirement or transfer to another government department, the employee will, with approval of their manager, take all reasonable steps to eliminate any accumulated credit or debit of hours, during the termination notice period.
- 6.5.2 Managers will, provided there is no negative impact on the Department's operations, facilitate the elimination of accumulated credit or debit hours by such employees so there is a zero flex balance on the last day with the Department.
- 6.5.3 Any residual credit hours will not be paid out upon separation from the Department.

## **6.6 Part-time Employees**

- 6.6.1 All part-time employees, including those in job-sharing arrangements, have the same rights to flexible working hour arrangements as full-time employees. Flexible working hours credit and debit limits and the periods of flex leave permitted, will be the same as for a full-time employee.
- 6.6.2 Part-time employees may not be directed to work more than their pro-rata contract hours.
- 6.6.3 All other provisions of this Agreement apply to part-time employees.

## **7. Agreement Terms**

### **7.1 Duration**

- 7.1.1 This Agreement will operate for a period of two (2) years from the first full pay period commencing after July 1, 2016 or after the date the Agreement is made by the parties, whichever is later.
- 7.1.2 Twelve (12) months prior and no later than six (6) months prior to the end of the nominal term, all parties will review the operations of the Agreement in relation to its suitability to continue, to be amended or to be terminated.

### **7.2 Dispute concerning the Agreement**

- 7.2.1 In accordance with the objectives of the Award, the parties shall co-operate in the monitoring and operation of this Agreement.
- 7.2.2 Any disputes concerning the Agreement will be dealt with in accordance with Clause 9 Grievance and Dispute Settling Procedures of the Award, or the relevant provision in any replacement Award.
- 7.2.3 In accordance with the principles of the Agreement, an employee may seek and rely upon the advice, assistance and/or representation of the PSA or PA at any stage.

### **7.3 Exit provisions**

- 7.3.1 Should a machinery of government change make it necessary to adjust existing terms or accommodate new terms, a new Flexible Working Hours Agreement will be made within three months of those required changes.
- 7.3.2 At the end of those three months if there is no agreement between the parties for a new Flexible Working Hours Agreement, the prevailing provisions of flexible working hours contained within the Award or its replacement will apply.
- 7.3.3 Either party may terminate this Agreement on providing three months' notice to the other party and revert to the prevailing Award provisions of flexible working hours at the end of the notice period.

## **7.4 Changes to the Department**

7.4.1 The parties recognise that changes to the make-up of the Department will occur from time to time. New divisions and / or departments will transition into the Department whether by machinery of government or other mechanisms, and some will leave the Department to reside elsewhere within the NSW Public Sector.

7.4.2 When other Divisions or departments come into the Department a transition plan will need to be agreed between the parties to ensure that all employees who have joined as part of these changes are covered by this Agreement within three months of the transition occurring.

## **8. Transitional Arrangements**

### **8.1 Transitioning from terminated Flex Agreements**

- 8.1.1 This clause contains the transitioning arrangements in place for the implementation of this Agreement
- 8.1.2 Employees in the classification of Senior Officer under the Award, will be entitled to work flexible working hours in a manner equivalent to the provisions of the agreement applicable to them in operation immediately prior to the signing of this agreement until they cease employment as a Senior Officer, or October 31, 2016, whichever is sooner.

### **8.2 Current Balance**

- 8.2.1 At the time of implementation, current Flex Leave balances will be recorded separately and known as the transitional flex leave balance.
- 8.2.2 This transitional flex leave balance will be made up of any remaining banked leave (allowed for in the terminated agreements) or any additional flex leave properly accumulated prior to this Agreement taking effect.
- 8.2.3 Employees, with the approval of their manager, will be able to access this transitional balance of Flex Leave until the balance is reduced to nil.
- 8.2.4 Employees will have 36 weeks (three settlement periods) to use this transitional flex leave.
- 8.2.5 The provisions of clause 8.2 will also apply to banked Flex Leave which accumulated in accordance with legacy Flexible Hours Agreements.

## 9. Endorsement

This **AGREEMENT** was made on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 **BETWEEN** the Public Service Association and Professional Officers Association Amalgamated Union of NSW, Professionals Australia and the Secretary, Department of Finance, Services and Innovation.

### **SIGNED BY**

General Secretary,

Public Service Association of NSW

in the presence of:

.....

(Witness)

### **SIGNED BY**

NSW Director,

Professionals Australia

in the presence of:

.....

(Witness)

**SIGNED BY**

As Secretary,)

Department of Finance, Services and Innovation)

in the presence of:)

.....

(Witness)

**SIGNED BY**

As Secretary for Industrial Relations,

in the presence of:

.....

(Witness)