

# Department of Justice Flexible Working Hours Agreement 2017

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Version

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# 1. INTRODUCTION

- 1.1. This Agreement ("the Agreement") is to be read in conjunction with the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009 ("the Award"). This Agreement is made between the Public Service Association of NSW (PSA), and the Department of Justice (DJ) in accordance with the provisions of clause 10 Local Arrangements of the Award.
- 1.2. This Agreement will take effect on **[insert date]** and remain in force for a period of three years, unless otherwise terminated or varied. This Agreement will be applied to employees within the Department on future dates to be determined by the Department, as provided by clause 15 Transitional Arrangements of this Agreement.
- 1.3. This Agreement rescinds and replaces the following Flexible Working Hours Agreements in force immediately before this Agreement:
  - 1.3.1. **Attorney General's Department of NSW Flexible Working Hours Agreement 2006**
  - 1.3.2. **Department of Corrective Services Flexible Working Hours Agreement 1998**
  - 1.3.3. **Department of Corrective Services Flexible Working Hours Agreement Probation and Parole Service 2001**
  - 1.3.4. **NSW Department of Juvenile Justice Flexible Working Hours Agreement**
  - 1.3.5. **NSW Trustee and Guardian Flexible Working Practices**
  - 1.3.6. **Sheriff's Officers Flexible Working Hours Agreement 2001**
  - 1.3.7. **Finance & Services Flexible Working Hours Agreement** (in so far as it applies to employees within the Department of Justice)
  - 1.3.8. **NSW Department of Ageing, Disability and Home Care Flexible Working Hours Agreement** (in so far as it applies to employees within the Department of Justice)
  - 1.3.9. **NSW Trade & Investment Flexible Working Hours Agreement** (in so far as it applies to employees within the Department of Justice)
  - 1.3.10. **Ministry for Police and Emergency Services Flexible Working Hours Agreement** (in so far as it applies to employees within the Department of Justice)
  - 1.3.11. **Field Flexible Working Hours Policy 1986**
- 1.4. This Agreement also rescinds and replaces all other previous flexible working hours' local practices that are or were in place immediately before this Agreement.

## 2. PRINCIPLES

- 2.1. This Agreement will apply to all employees within the Department of Justice, as defined in clause 3 “Definitions” of this Agreement.
- 2.2. This Agreement will apply to employees who join the Department and will replace any former Flexible Working Hours Agreement that might have applied in the employee’s former Department/Agency.
- 2.3. The purpose of this Agreement is to provide enhanced flexible working hours conditions for employees, as provided by clause 21 Flexible Working Hours of the Award.
- 2.4. This Agreement is intended to improve the Department’s organisational performance and increase flexibility for all employees whilst ensuring appropriate service delivery levels are maintained or improved.
- 2.5. Actual working hours and patterns of work will be determined by the Department in line with operational needs.
- 2.6. Decisions regarding working hours and patterns of work will be made by the Department taking into account the following factors:
  - 2.6.1. the operational requirements of the Department;
  - 2.6.2. the service delivery contact hours of the Department;
  - 2.6.3. the availability of work, as determined by the Department, including whether the work is required to be performed at that time;
  - 2.6.4. seasonal peaks of work within the Department;
  - 2.6.5. the need to limit the working of overtime;
  - 2.6.6. Work Health & Safety and equity issues; and
  - 2.6.7. any other business requirements as may be determined by the Department, from time to time.
- 2.7. Decisions regarding flexible work arrangements shall be made in an equitable, transparent and fair manner.
- 2.8. An absence during the core time must be by way of Flex Leave in accordance with this Agreement, or another form of approved leave.

## 3. DEFINITIONS

- 3.1. Accrued Work Time (AWT) is all time worked by the Department’s employees within the bandwidth with the exception of paid overtime and meal breaks.
- 3.2. The Award is the *Crown Employees (Public Service Conditions of Employment) Reviewed Award 2009* or its successor.
- 3.3. Bandwidth is the period during the working day when all employees may work, record time and accrue credit for time worked.

- 3.4. Contract Hours for a settlement period shall be calculated by multiplying the employee's weekly contract hours by the number of weeks in a settlement period.
- 3.5. Core Time is the period during the day when an employee is required to be on duty.
- 3.6. The Department means the Department of Justice, or a work group within the Department of Justice. Where the Department refers to a person exercising an authority, that reference includes an employee within the Department of Justice who is authorised by delegation to exercise an authority.
- 3.7. Employee means all persons, in ongoing or temporary employment for the Department, in either a full or a part-time capacity, under the provisions of the *Government Sector Employment Act 2013*, and who are covered by clause 21 Flexible Working Hours of the Award. In addition, this Agreement will not apply to Public Service Senior Executives of the Department, casual employees, shiftworkers, and other employees consistent with clause 21 of the Award.
- 3.8. Flex leave means a period of time that an employee may, subject to the approval of the employee's supervisor and the principles of the Agreement, absent themselves from work within the bandwidth.
- 3.9. Flexible Working Hours Credit means the time which exceeds the contract hours for a settlement period and is able to be accumulated under the Agreement or carried over into the next settlement period.
- 3.10. 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 including any carry over from the previous settlement period, are less than the contract hours for the period.
- 3.11. Minimum Daily Contract Hours for full-time employees means 7 hours of work for employees engaged on a 35 hours per week basis, excluding any meal breaks. Minimum Daily Contract Hours for part time employees will be pro-rated, unless agreed to within the part time work agreement.
- 3.12. Secretary means the Secretary of the Department of Justice.
- 3.13. Service Delivery Contact Hours means the span of hours during which the Department's offices are open and may need to respond to external and internal clients.
- 3.14. Settlement period is 12 consecutive weeks. The settlement periods for the purposes of time recording and for flex leave shall coincide.
- 3.15. Standard Hours are from 8.30 am to 4.30 pm, Monday to Friday, with a lunch break of one hour, but may be any 8 consecutive hours within bandwidth with an hour for lunch, as determined by the Department.

## 4. BANDWIDTH

- 4.1. The bandwidth is from 6.30 am to 9:00pm Monday to Friday.
- 4.2. The Department may determine the working hours (commencing and finishing time) during the bandwidth subject to operational and service delivery needs and to an employee being directed to work no more than 7 hours a day, subject to the provisions of clause 5 Core Time, and clause 13 Overtime of this Agreement. An employee may be directed not to start work before a certain time, or not finish work after a certain time, where the work is

not required to be performed at those times, or where the hours are judged to provide a WHS risk.

- 4.3. For the purposes of accrual under clause 10, time will not be credited to employees for attendance outside the bandwidth or when working additional hours for which overtime is approved.

## 5. CORE TIME

- 5.1. Core time will be worked under one of the following arrangements as determined by the Department:
  - 5.1.1. A standard core time of 10.00am to 3.00pm, (with the exception of Sheriff's Officers which will be 9.30am to 2pm on the basis that meal breaks cannot be taken in the last hour) or:
  - 5.1.2. A floating period of any five (5) or six (6) hour period (consecutive hours) within the bandwidth subject to operational or service delivery requirements as determined by the Department.
  - 5.1.3. No core time if a non-standard hours of work arrangement applies, as provided in clause 7 of this Agreement.
- 5.2. All employees are entitled to work their Minimum Daily Contract Hours on any normal working day. An employee cannot be directed to work less than the Minimum Daily Contract Hours on any normal working day. The Department may direct an employee to work their Minimum Daily Contract Hours.
- 5.3. Core times exclude lunch and meal breaks as provided by clause 9 Lunch and Meal Breaks of this Agreement.

## 6. STANDARD HOURS

- 6.1. The Department may direct an employee to work standard hours where the Secretary or delegated officer decides that the working of flexible hours by an employee or employees does not suit the operational requirements of the Department or section of the Department. A direction to work standard hours may also be given if the Secretary or delegated officer determines that the employee is not observing the terms of this Agreement.
- 6.2. Standard Hours are from 8.30 am to 4.30 pm, Monday to Friday, with a lunch break of one hour, but may be any 8 consecutive hours within bandwidth with an hour for lunch, as determined by the Department.
- 6.3. The Department may direct an employee to either commence and/or cease work at a time within the bandwidth in order to meet service delivery contact hours requirements.
- 6.4. An employee may elect to work standard hours, provided the hours worked meets the operational needs of the Department.

## 7. NON-STANDARD HOURS

- 7.1. The Department and an employee engaged under this Agreement may agree to a non-standard hours of work arrangement for either a short or extended period of time, in order to:
- 7.1.1. perform work on a project or other piece of major work that is largely self-guided or seasonal, or
  - 7.1.2. give effect to an approved flexible work option under a policy of the Department or of NSW Government.
- 7.2. Flexible options policies include:
- Work From Home Policy
  - Flexible Work Practices
  - Travel Choices
  - Other similar policies allowing flexible work options, or the flexible delivery of work, as approved by the Department from time to time.
- 7.3. Non-Standard Hours will only be worked under a written agreement between the employee and the relevant manager which will state the conditions of the arrangements.
- 7.4. During the period of a non-standard hours of work arrangement:
- 7.4.1. The employee will not be required to work within a bandwidth, a core time of hours, or work minimum daily contract hours.
  - 7.4.2. Hours will continue to average 35 per week of accrued work time (AWT), worked in a manner, and at a time of day appropriate to the needs of the work or project, in compliance with the relevant policy, and under the supervision of the relevant manager.
  - 7.4.3. Overtime will not apply where an employee elects to work hours that would otherwise attract additional payment under the Award.
  - 7.4.4. The employee will not accrue flex leave credits or debits, or be entitled to additional flex entitlements, but may schedule work as anticipated under the role description, and the applicable myPerformance Plan.
  - 7.4.5. The timekeeping records of clause 11 of this Agreement will be as determined by the manager.
  - 7.4.6. Leave will be according to the Award.
  - 7.4.7. A work performance plan will outline the expectations of the work and the working hours.
- 7.5. As far as practicable the start and finish of a period of non-standard hours should be planned to coincide with the start and finish of a settlement period, unless otherwise agreed.

- 7.6. An employee may elect to return to the flexible terms of this Agreement at any time, provided it coincides with the start or finish of a settlement period, as far as practicable.
- 7.7. The manager may direct that a period of a non-standard hours of work arrangement should end, due to an operational reason, or any other reason. The employee may be then directed onto flexible working hours, or standard hours, as necessary, subject to operational requirements.
- 7.8. Nothing in a non-standard hours of work arrangement overrides the employee's entitlement to the benefits of this Agreement. .
- 7.9. Any dispute concerning the operation of a non-standard hours of work arrangement may be dealt with under the disputes resolution clause of the Award.

## 8. SUSPENSION OF FLEXIBLE WORKING HOURS ARRANGEMENTS

- 8.1. The Secretary or delegated officer may temporarily suspend flexible working arrangements for part or all Departmental employees during emergency response and recovery operations.
- 8.2. While flexible working arrangements are suspended, affected employees will be required to work Standard Hours or rostered shifts. The rostered shifts may be of seven hours or longer, depending on operational requirements.
- 8.3. While flexible working arrangements are suspended, any hours that an employee is directed to work in excess of seven hours will be overtime as provided within the Award.

## 9. LUNCH AND MEAL BREAKS

- 9.1. An employee must take a meal break of at least 30 minutes after 5 hours of continuous work. Time spent on a meal break does not count towards an employee's AWT.
- 9.2. Lunch breaks are to be taken between the hours of 11:30 am and 2:30 pm, or where there is a varied core time, may be taken at another time. Lunch breaks may be extended beyond 1 hour with the approval of the Department and may be extended up to 2 and a half hours.
- 9.3. The scheduling and duration of lunch breaks may be subject to the operational requirements of the work unit and the approval of the Department. The Department may direct lunch breaks to be taken at times that ensure continuity of service.

## 10. ACCRUAL OF WORK TIME WITHIN THE SETTLEMENT PERIOD



- 10.1. An employee may only accumulate AWT in excess of the Minimum Daily Contract Hours where the Department is satisfied that work is available and approves the employee to carry out such work.
- 10.2. All time worked during the settlement period in accordance with this Agreement will count towards the employee's AWT, with the exception of approved overtime.
- 10.3. A full time employee is contracted on the basis of a 35 hour week. This equates to 420 hours for each settlement period. Part time employees have the contract hours of their part time work agreement.
- 10.4. An employee should have a minimum AWT of 406 hours at the conclusion of a settlement period. The minimum of 406 hours includes all credited AWT and all approved leave.
- 10.5. Where AWT is less than 406 hours at the end of the settlement period, the employee may choose the form of accrued leave to cover the shortfall. If the employee has no accrued leave available, leave without pay (LWOP) will apply for the amount below 406 hours.
- 10.6. An employee is entitled to carry over up to and including an additional 42 hours in excess of the 420 hours of AWT in any one settlement period. Except where approval is given in accordance with sub-clause 10.7, any additional hours accrued will be forfeited at the end of the settlement period.
- 10.7. Where exceptional circumstances arise and it appears that the employee will be required by the Department to accrue more than 462 hours in a settlement period the Department may approve a higher carry over for that period and ensure the flex time record is amended accordingly.

## 11. MONITORING OF ACCRUED WORK TIME

- 11.1. Hours worked are to be monitored by the employee and the Department over a twelve (12) week period, through the use of flex time records, as determined by the Department.
- 11.2. All employees must complete an approved flex record, in a manner determined by the Department from time to time, for each settlement period and must record working times on a daily basis where practical to do so.
- 11.3. Employees must apply for Flex leave in the manner determined by the Department from time to time.

## 12. FLEX LEAVE

- 12.1. The requesting, approving and taking of flex leave will be done in an equitable, transparent and fair manner and subject to operational requirements.
- 12.2. Flex leave may be requested by employees in a manner as determined by the Department from time to time.
- 12.3. Requests for taking Flex leave will be considered by the Supervisor who has the delegated authority to approve leave and determined subject to operational requirements.
- 12.4. Employees may take a maximum of 6 flex leave days (42 hours) per settlement period.

- 12.5. Employees may take flex leave as consecutive single days (7 hours), half days (3.5 hours), quarter days (1.75 hours) or combinations of either, or in hours, up to the maximum of six (6) flex days (42 hours) in a given settlement period or, by mutual agreement, a certain number of individual hours up to 7 in a given day.
- 12.6. Where exceptional circumstances have arisen and an employee accrued additional hours in accordance with clause 10.7 Accrual of Work Time of this Agreement an additional day's flex leave may be taken in the following period if approved.
- 12.7. The Department may direct an employee to reduce their hours of work during any normal working week during a settlement period, on health and safety or staff welfare grounds, if there is cause to believe that the staff member is working excessive hours.
- 12.8. Flex leave may be taken together with, or adjacent to other forms of leave.
- 12.9. An employee does not receive any credit towards their accrued work time when taking flex leave.
- 12.10. To ensure that recreation leave balances are maintained in accordance with NSW Treasury directions, an employee with a recreation leave balance in excess of 30 days, or its part time equivalent of 6 weeks, may not take flex leave until the balance is reduced to below 30. Where a staff member has accrued 30 days / 6 weeks recreation leave, unless otherwise authorised by their manager, flex leave can only be taken where recreation leave has been applied for and approved. If, however, recreation leave has been applied for and declined or not actioned by the manager, access to flex leave is still available.

## 13. OVERTIME

- 13.1. The provisions of the Award will apply.
- 13.2. The application of overtime under this Agreement will be as follows:
  - 13.2.1. Overtime will apply where an employee is directed to work outside the bandwidth or if the employee having already worked seven (7) hours on the day in question is directed to work after:
    - a) 7:00pm in Corrective Services
    - b) 6:00pm in all other areas
  - 13.2.2. Overtime is to be paid or taken as time in lieu, in accordance with clause 96, Payment for Overtime or Leave in Lieu of the Award.
  - 13.2.3. Overtime may only be worked with the approval of the relevant delegated manager.

## 14. ADDITIONAL FLEX ENTITLEMENTS

Easter additional half day (3.5 hours): Subject to ongoing approval by the Secretary, an employee working under the provisions of the Agreement will be granted an additional half day flex (3.5 hours), subject to operational requirements, on the Thursday preceding the Good Friday public holiday or a period as determined by NSW Public Sector Industrial Relations. All other provisions of this Agreement are to apply including the limits on the carryover at the end of the settlement period.

## 15. TRANSITIONAL ARRANGEMENTS

- 15.1. This Agreement will commence in stages across the Department on future dates as decided by the Department. The Public Service Association (PSA) will be advised ahead of time of the commencement of the Agreement in each new work area.
- 15.2. An employee who has accumulated Banked Days under the Agreements listed in clause 1 of this Agreement must take such days within two settlement periods of the commencement of this Agreement in their work area. Such banked days may also be converted into carryover hours, provided that carried over hours meet the limits contained in clauses 10.6 and 10.7 of this Agreement within two settlement periods.
- 15.3. An employee who has a credit or debit balance as at the date of commencement of this Agreement may carry that credit or debit over to their balance under this Agreement, provided that any resultant credit or debit at the conclusion of two settlement periods following the commencement of this Agreement in their work area meets the limits contained in clauses 10.6 and 10.7 of this Agreement.

## 16. SEPARATION FROM THE DEPARTMENT

- 16.1. Where an employee has a flexible working hours credit or flexible working hours debit during their notice period, every effort must be made to balance the hours to zero prior to the last day of service. This will not be unreasonably refused.
- 16.2. Any flexible working hours debit on an employee's last day of service is to be deducted from any unpaid salary or the monetary value of accrued recreation or extended leave.
- 16.3. Where a flexible working hours credit exists during the notice period the Department may approve other measures locally, such as additional flex leave prior to the last day of service in order to balance the hours to zero.
- 16.4. A flexible working hours credit remaining on the last day of service is forfeited and no payment will be made in respect of any residual credit hours. However where an employee is to be employed by another NSW Department/Agency following termination of employment, the Department will take all reasonable steps to provide a schedule of the employee's balances to the new Department/Agency. The acceptance of any flex credits will be decided by the new Department/Agency.

## 17. PART-TIME EMPLOYEES

- 17.1. All part-time employees, including those in job-sharing arrangements, have the same rights to flexible working hours arrangements as full-time employees, on a pro rata basis, unless agreed in their part time work agreement.
- 17.2. Flexible working hours credit and debit limits and the periods of flex leave permitted, will be the same as for full-time employee.

- 17.3. Part-time employees may not be directed to work more than their daily pro-rata contract hours.

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## 18. VARIATIONS TO THIS AGREEMENT

- 18.1. All employees will work according to the terms of this Agreement but may apply to vary their working hours at any time. Any such agreement will be recorded in writing. The Delegation will be determined by the Department in its Human Resources delegations from time to time.
- 18.2. No variation can be for longer than 12 months but may be extended for a further maximum of 12 months prior to, or at its end.
- 18.3. Any variation to the terms of this Agreement to a workgroup or employee is not permanent and subject to review as to its operational suitability.
- 18.4. Variations to the standard core time provided in clause 5 may be reviewed and varied by the Department if operational or service delivery requirements are better met.
- 18.5. An employee may apply to work a varied core time or bandwidth to assist them to balance personal or family responsibilities, or to meet the Department's operational requirements. Any approval is not permanent and is subject to review based on the employee's changed circumstances and/or the Department's operational needs. No amount of time spent working an agreed variation will be used as a basis for permanency. Each agreed variation will be dependent on circumstances, and will revert to the terms of this Agreement if the Department decides. Any such decision will be reasonable.

## 19. DISPUTES CONCERNING THE AGREEMENT

Any disputes concerning the Agreement will be dealt with in accordance with clause 9 Grievance and Dispute Settling Procedures of the Award.

## 20. DURATION, REVIEW AND TERMINATION PROVISIONS

- 20.1. This Agreement will operate for a period of three (3) years and then will be reviewed by the parties as to its suitability to continue, to be amended or to be terminated.
- 20.2. Despite clause 20.1, above, any party may seek to terminate the Agreement by providing twelve (12) months written notice to the other party in accordance with clause 10 of the Award.
- 20.3. In addition to sub-clauses 20.1 and 20.2 above, this Agreement may be terminated and replaced following a period of three (3) months as a result of machinery of government changes.
- 20.4. In making a replacement Agreement, in the absence of an agreement between the parties for a Local Arrangement for Flexible Working Hours the prevailing provisions contained in clause 21 of the Award will apply.

20.5. The parties agree to enter into negotiations for the continuation, amendment or, termination of the Agreement by no later than six (6) months from the nominal expiry of the Agreement.

## 21. ENDORSEMENTS

This Agreement was made on the **[insert day]** day of **[insert date]**, 2017 between the Public Service Association of NSW, the Industrial Relations Secretary and the Secretary, Department of Justice

SIGNED BY:  
(General Secretary Public Service Association of NSW  
in the presence of:)

.....  
(Witness)

SIGNED BY:  
Secretary Department of Justice  
in the presence of :)

.....  
(Witness)

**SIGNED BY:**  
***(PSIR/NSW Treasury***  
***in the presence of :)***

.....  
(Witness)

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