



Transport  
for NSW

# Transport for NSW, Sydney Metro and Roads and Maritime Services Flexible Working Hours Agreement 2019

## 31 July 2019 Version

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## 1 INTRODUCTION

1.1 This Agreement ("the Agreement") is to be read in conjunction with the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* and the *Roads and Maritime Services Consolidated Salaried Award 2019* ("the Awards"). This Agreement is made in accordance with the provisions of clause 10 and 21 Local Arrangements of the Awards between the:

- Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales (PSA)
- the Rail, Tram and Bus Union of New South Wales (RTBU);
- the Australian Services Union of N.S.W. (ASU)
- the Association of Professional Engineers, Scientists and Managers Australia (NSW Branch) (APESMA)
- the Australian Maritime Officers' Union of New South Wales (AMOU)
- the Australian Institute of Marine and Power Engineers New South Wales District (AIMPE)
- the Seamen's Union of Australia, New South Wales Branch (MUA) and
- Transport Secretary (the Employer)

1.2 This Agreement applies to Employees who work flexible working hours in accordance with the Awards.

1.3 This Agreement will take effect on a date determined by the Employer in consultation with the union parties to this Agreement, but no later than 31 March 2019 and remain in force for the life of the awards, unless otherwise terminated or varied.

1.4 This Agreement replaces clause 19 of the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019*, clause 22.2(e) of the *Roads and Maritime Services Consolidated Salaried Award 2019* and clause 6 of the *Transport Service of New South Wales Sydney Metro Agreement 2018*.

## 2 PRINCIPLES

2.1 This Agreement will apply to all Award based employees covered by the Awards, as defined in clause 3 "Definitions" of this Agreement.

2.2 This Agreement will apply to employees who are covered by the Awards and will replace any former Flexible Working Hours clauses that might have applied.

2.3 Flexible working hours as provided for in this Agreement – including the taking of flex leave – operate subject to demonstrated operational requirements as determined by the Employer.

This Agreement is intended to improve the Employer's organisational performance; attracting and retaining talent; and to increase flexibility for all employees whilst ensuring appropriate service delivery levels are maintained or improved.

- 2.4 Implementation of this Agreement will be on a cost neutral basis.
- 2.5 Flexible working hours is a work arrangement that, subject to the approval of the Employer, allows an Employee to vary the time they start and finish work during the bandwidth. Such approval will take into consideration the following factors:
- (a) the demonstrated operational requirements of the Employee's business unit and the Employee's role;
  - (b) the individual Employee's personal circumstances;
  - (c) any impact on other employees within the business unit;
  - (d) any demonstrated service delivery contact hours of the Employer;
  - (e) the availability of work, as determined by the Employer;
  - (f) demonstrated peaks of work, including within the relevant business unit;
  - (g) the project based nature of some business units;
  - (h) the need to limit the working of overtime; and
  - (i) Work Health & Safety and equity issues.
- 2.6 Decisions regarding flexible work arrangements shall be made in an equitable, transparent and fair manner.
- 2.7 The use of this agreement will not be used to replace shift work or temporary shift arrangements, or where work would be more appropriately arranged under the shift work provisions of the Awards.

### 3 DEFINITIONS

- 3.1 Accrued Work Time (AWT) is all time worked by TfNSW employees within the bandwidth with the exception of paid overtime and meal breaks.
- 3.2 The Awards are the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* and *Roads and Maritime Services Consolidated Salaried Award 2019* or their successors.
- 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. For a fulltime staff member the contract hours over the settlement period is 420 hours.
- 3.5 Employee means all persons in ongoing or temporary employment, in either a full or a part-time capacity, under the provisions of the *Transport Administration Act 1988*, and who are covered by the Flexible Working Hours of the Award. In addition, this Agreement will not apply to Transport Service senior managers, Transport Service senior executives, casual employees, shift workers, and other employees consistent with Clause 19 of the Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019 and Subclause 22.2(e) of the Roads and Maritime Services Consolidated Salaried Award 2019.
- 3.6 The Employer means the Transport Secretary as head of the Transport Service or a work group within the TfNSW Group of staff, the RMS Group of staff or the Sydney Metro Group of staff of the Transport Service. Where the Employer refers to a person exercising an authority, that reference includes an employee within the Transport Service who is authorised by delegation to exercise an authority.
- 3.7 Flex leave means a period of time that an employee may, subject to the approval of the employee's supervisor and the terms of the Agreement, absent themselves from work within the bandwidth.
- 3.8 Flexible Working Hours Credit means the time which exceeds the Minimum Contract Hours for a settlement period and is able to be accumulated under the Agreement or carried over into the next settlement period.
- 3.9 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.
- 3.10 Flexible Working Hours of the Award means Clause 19 of the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* and Subclause 22.2(e) of the *Roads and Maritime Services Consolidated Salaried Award 2019*.
- 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 Ordinary Hours means those hours worked within the bandwidth that are not overtime as provided for in clause 11.
- 3.13 Secretary means the Transport Secretary in accordance with s68C(3) of the *Transport Administration Act 1988*
- 3.14 Service Delivery Contact Hours means the span of hours during which the Employer may need to respond to external and internal clients.
- 3.15 Settlement period is 12 consecutive weeks. The settlement periods for the purposes of time recording and for flex leave shall coincide.
- 3.16 Standard Hours are in accordance with clause 18.7(a) of the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* or Subclause 22.2(d) of the *Roads and Maritime Services Consolidated Salaried Award 2019*.

## 4 BANDWIDTH

- 4.1 The bandwidth is from 6:00am to 8:00pm Monday to Friday.
- 4.2 Employees may vary their start and finish times within the bandwidth subject to the factors set out at 2.5 of this Agreement, subject to the Employer's agreement and subclause 4.3.
- 4.3 Employer may direct when an Employee will start and/or finish work due to one or more of the factors set out in clause 2.5 of this Agreement. Such direction will be subject to consultation with the Employee about the reasons for the direction and to *subclause 24.1(a)* of the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* and subclause 24.3 of the *Roads and Maritime Services Consolidated Salaried Award 2019* Overtime of this Agreement.
- 4.4 For the purposes of accrual under clause 8, time will not be credited to employees for attendance outside the bandwidth or when working additional hours for which overtime is approved.
- 4.5 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. In exceptional circumstances, TfNSW may direct an employee to work their Minimum Daily Contract Hours.

## 5 STANDARD HOURS

- 5.1 Nothing in this Agreement prevents the operation of the standard hours provisions of the Awards.
- 5.2 An employee may elect to work standard hours in accordance with subclause clause 18 of the *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* and clause 22 of the *Roads and Maritime Services Consolidated Salaried Award 2019*, provided the hours worked meet the demonstrated operational needs of the Employer.

## 6 SUSPENSION OF FLEXIBLE WORKING HOURS ARRANGEMENTS

- 6.1 In exceptional circumstances, the Secretary or delegated officer may temporarily suspend flexible working arrangements for part or all Employees during emergency response and recovery operations.
- 6.2 While flexible working arrangements are suspended, affected employees will be required to work Standard Hours as directed by the Employer.
- 6.3 While flexible working arrangements are suspended, overtime will be paid in accordance with the Award.

## 7 LUNCH AND MEAL BREAKS

- 7.1 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.
- 7.2 The standard lunch period shall be no less than ½ hour and no more than 1 hour. However, by agreement with the Employer, an Employee may take up to 2½ hours. 7.3. The scheduling and duration of lunch breaks may be subject to the demonstrated operational requirements of the work unit.

## 8 ACCRUAL OF WORK TIME WITHIN THE SETTLEMENT PERIOD

- 8.1 Minimum ordinary hours of work on any day will be 5 for a full-time Employee and 3 for a part-time Employee, excluding breaks.
- 8.2 Maximum ordinary hours of work on any day to be accredited as flex-time will be 10 hours, excluding breaks.

- 8.3 Where an Employee is present for only part of the minimum 5 hours (3 for part-time Employees), approved leave (including flex leave) must be taken to make up the hours to the minimum.
- 8.4 Where an Employee is absent for an entire day, approved leave equivalent to the Employee's daily contract hours must be taken.
- 8.5 An employee may only accumulate AWT in excess of the Minimum Daily Contract Hours where TfNSW is satisfied that work is available and approves the employee to carry out such work.
- 8.6 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.
- 8.7 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.
- 8.8 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.
- 8.9 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.
- 8.10 An employee is entitled to carry over up to and including an additional 21 hours in excess of the 420 hours of AWT in any one settlement period. Except where approval is given in accordance with sub-clause 8.7, any additional hours accrued will be forfeited at the end of the settlement period.
- 8.11 Where exceptional circumstances arise and it appears that the employee will be required by the Employer to accrue more than 441 hours in a settlement period, the Employee's manager shall, with the agreement of the Employee, seek the approval of the Employer, in writing, to allow the Employee to carry over a credit of more than 30 hours into the next settlement period, subject to a plan as to how those hours will be reduced before the end of that settlement period
- 8.12 Repeated patterns where by staff members forfeit hours will be addressed by the manager and the staff member in order to formulate plans so that future working hours will not be forfeited.



## 9 MONITORING OF ACCRUED WORK TIME

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

## 10 FLEX LEAVE

- 10.1 The requesting, approving and taking of flex leave will be done in an equitable, transparent and fair manner and subject to demonstrated operational requirements.
- 10.2 Employees may take a maximum of 6 flex leave days (42 hours) per settlement period.
- 10.3 Employees may take flex leave as single days (7 hours) or half days (3.5 hours) or combinations of either, or in hours.
- 10.4 Consecutive flex days may be approved by the Employer subject to demonstrated operational requirements and the Employee's Recreation leave balance and any approved leave plans.
- 10.5 Where, due to demonstrated operational requirements, not all flex leave entitlements have been utilised in a settlement period, up to 5 days may be banked for use in accordance with clause 12 of this Agreement for use during the Closedown, subject to the minimum AWT at the end of the settlement period not being less than 406 hours after the banking of the hours.
- 10.6 To avoid doubt, banked flex leave days may be used in addition to the flex leave days referenced at 10.2.
- 10.7 Any additional hours accrued during the year to be taken during the Closedown and which have not been taken as outline above, will be forfeited on 1 February of that year.
- 10.8 Employees working in the Transport Management Centre – and other business areas as determined by the Employer – who have received an approval by the Employer may take the additional hours in accordance with that approval.
- 10.9 Where exceptional circumstances have arisen and an Employee accrues additional hours in accordance with clause 9.7 Accrual of Work Time of this Agreement, the Employer may

approve an additional day's flex leave in the following settlement period as part of the plan to reduce the excess hours.

10.10 The Employer may direct an Employee to reduce their hours of work during any normal working week during a settlement period, including health and safety or staff welfare grounds, if there is cause to believe that the staff member is working excessive hours.

10.11 Flex leave may be taken together with, or adjacent to other forms of leave, subject to the approval of the Employer.

10.12 An employee does not receive any credit towards their accrued work time when taking flex leave.

10.13 To ensure that recreation leave balances are maintained in accordance with NSW Government 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 an Employee has accrued 30 days'/6 weeks' recreation leave, or its part time equivalent, 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, subject to the approval of the Employer.

## 11 OVERTIME

11.1 The application of overtime under this Agreement will apply where an Employee is directed by the Employer to work:

- outside the bandwidth;
- in excess of 7 ordinary hours; or
- before 7am or after 7pm.

11.2 Overtime hours are not counted as AWT for the purposes of clause 8.

11.3 Overtime is to be paid or taken as time in lieu in accordance with subclause 24.9 *Transport for NSW and Sydney Metro Salaries & Conditions of Employment Award 2019* and subclause 24.2(a) of the *Roads and Maritime Services Consolidated Salaried Award 2019*, Payment for Overtime or Leave in Lieu of the Award.

11.4 Overtime may only be worked with the approval of the Employer.

## 12 ADDITIONAL FLEX ENTITLEMENTS

- 12.1 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 demonstrated operational requirements, on the Thursday preceding the Good Friday public holiday or a period as determined by NSW Public Sector Industrial Relations or its successor. All other provisions of this Agreement are to apply, including the limits on the carryover at the end of the settlement period.
- 12.2 Employees are required to work a minimum period of half their day's work (3.5 hours) prior to commencing the Easter additional half day's flex.
- 12.3 This clause overrides clause 6 of *the Transport Service of NSW Agreement 2012* and clause 6 of *the Transport Service of New South Wales Sydney Metro Agreement 2019* and both clauses have no further effect whilst this Agreement is in force.

## 13 CLOSEDOWN

- 13.1 The Employer may implement a Closedown in accordance with the Premier's Memorandum Christmas Closedown, as issued from time to time.
- 13.2 The Employer may grant exemptions to the Closedown for Employees with frontline responsibilities, the undertaking of time critical work with deadlines that can't be shifted, or working on significant Government priorities that need to be completed.
- 13.3 In exceptional circumstances, the Employer may approve an Employee not taking leave over all or part of the Closedown to accommodate personal circumstances including an approved leave plan, subject to the availability of suitable and relevant work and Work Health and Safety considerations.
- 13.4 Employees may take flex leave accrued in accordance with this Agreement during the period; accrued but untaken leave as per subclause 10.5; or a combination of both.
- 13.5 An employee who is directed to be on duty for some or all of the working days during the closedown period will be allowed to access any of their accrued Banked Flex that has been accrued in accordance with this clause and not taken during the closedown period by no later than 31 January of that year.

## 14 TRANSITIONAL ARRANGEMENTS

- 14.1 This Agreement will commence across TfNSW on <future dates> as decided by the Employer in consultation with the union parties to this agreement.
- 14.2 An employee who has accumulated Banked Days under previous Agreements must take such days within two settlement periods of the commencement of this Agreement in their work area. Alternatively, such banked days may also be converted into carryover hours, provided that carried over hours meet the limits contained in clauses 9.6 and 9.7 of this Agreement.
- 14.3 Credit or debit balances as at the date of commencement of this Agreement will carry forward.

## 15 SEPARATION FROM THE EMPLOYER

- 15.1 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.
- 15.2 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.
- 15.3 Where a flexible working hours credit exists during the notice period the Employer 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.
- 15.4 A flexible working hours credit remaining on the last day of service, will require payment to 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 Employer 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 at the discretion of the new Department/Agency.

## 16 PART-TIME EMPLOYEES

- 16.1 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.

- 16.2 Flexible working hours credit and debit limits and the periods of flex leave permitted, will be the same as for full-time employees.
- 16.3 The calculation of hours for a flex day taken on a particular work day is based on the work hours as agreed under the Employee's part-time work agreement.

## 17 VARIATIONS TO THE AGREEMENT

- 17.1 Where the Employer agrees, an Employee may apply to vary their working hours, including bandwidth, at any time to assist them to balance personal or family responsibilities, or to meet the Employer's demonstrated operational requirements. Any such agreement will be recorded in writing and will apply in place of the provisions of this Agreement where there is any inconsistency.
- 17.2 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.
- 17.3 A variation under this clause is not permanent and subject to review based on the Employee's changed circumstances and/or the Employer's demonstrated 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 Employer decides. Any such decision will be reasonable.

## 18 DISPUTES CONCERNING THE AGREEMENT

- 18.1 Disputes that relate to the denial of flexible working provisions under this agreement will be dealt with via the respective Director People and union parties.
- 18.2 Any other disputes concerning the Agreement will be dealt with in accordance with the Dispute Settlement Procedures of the Awards.

## 19 DURATION, REVIEW AND TERMINATION PROVISIONS

- 19.1 This Agreement will operate for the life of the Awards until such time as they are rescinded or replaced.

- 19.2 Before the expiry of the Agreement, it will be reviewed by the parties as to its suitability to continue, to be amended or to be terminated. This does not prevent the parties from agreeing to vary the Agreement during its life.
- 19.3 Despite subclauses 18.1 and 18.2, 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.
- 19.4 The parties agree to review the operation of this Agreement after 12 months from its commencement.
- 19.5 In addition to sub-clauses 19.1, 19.2 and 19.3 above, this Agreement may be terminated and replaced following a period of three (3) months as a result of machinery of government changes.
- 19.6 In making a replacement Agreement, in the absence of an agreement between the parties for a Local Arrangement for Flexible Working Hours, the prevailing flexible working hours provisions of the Awards will apply.
- 19.7 The parties agree to enter into negotiations for the continuation, amendment or, termination of the Agreement by no later than six (6) months prior to the nominal expiry of the Agreement.

## 20 ENDORSEMENTS

- 20.1 This Agreement was made on the [insert day] day of [insert date], 2019 between
- (a) the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales;
  - (b) the Rail, Tram and Bus Union of New South Wales;
  - (c) the Association of Professional Engineers, Scientists and Managers Australia (NSW Branch);
  - (d) the Australian Services Union of N.S.W.;
  - (e) the Australian Maritime Officers' Union of New South Wales;
  - (f) Australian Institute of Marine and Power Engineers New South Wales District;
  - (g) The Seamens' Union of Australia, New South Wales Branch; and
  - (h) Transport Secretary (the employer)



SIGNED BY:

General Secretary Public Service Association and Professional Officers' Association Amalgamated  
Union of New South Wales

(in the presence of:)

.....

(Witness)

SIGNED BY:

Branch Secretary Rail, Tram and Bus Union of New South Wales

(in the presence of:)

.....

(Witness)

SIGNED BY:

Assistant Secretary The Association of Professional Engineers, Scientists and Managers, Australia  
(NSW Branch)

(in the presence of:)

.....

(Witness)



SIGNED BY:

Secretary Australian Services Union of N.S.W.

(in the presence of:)

.....

(Witness)

SIGNED BY:

Secretary Australian Maritime Officers' Union of New South Wales

(in the presence of:)

.....

(Witness)

SIGNED BY:

Secretary Australian Institute of Marine and Power Engineers New South Wales District

(in the presence of:)

.....

(Witness)





SIGNED BY:

Secretary the Seamens' Union of Australia, New South Wales Branch

(in the presence of:)

.....

(Witness)

SIGNED BY:

Transport Secretary

(in the presence of :)

.....

(Witness)